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Aaganwadi Worker – **Respondent No. 6 claimed appointment on the basis of select list prepared in the year 2007 which was already acted upon by appointing one candidate on 04.10.2007, who was subsequently removed on 05.05.2010 because of her absence – Authority initiated fresh selection process – Respondent No. 6 took part in selection and remained unsuccessful candidate – Held – Earlier candidate was appointed and joined pursuant to select list of 2007, against which appeal was filed by respondent No. 6 and the same was dismissed – Dismissal order was not called in question – Therefore, the list prepared in the year 2007 became obsolete and was not to be acted upon specially when respondent No. 6 took part in the fresh selection process and remained unsuccessful – Cannot claim benefit of appointment in such illegal manner – Petition allowed. [Arti Upadhyaya Vs. State of M.P.]** ...321

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प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 19 – राज्य सरकार की अनुमति के बिना निर्माण – ट्रस्ट जैन आगम के अनुसार निर्माण चाहती है – स्थापत्य कला की नागरा शैली के अनुसार मंदिर का निर्माण प्रस्तावित है – अपीलार्थी के यह तर्क कि प्राचीन संस्मारक की पवित्रता को बनाये रखने के लिए, संरचना के समान ढांचे पर निर्माण होना चाहिए, परन्तु वैसा ही जैसा नष्ट होने के पहले विद्यमान था, उच्च न्यायालय द्वारा विचार में नहीं लिया गया – निर्माण की अनुमति हेतु आवेदन का विनिश्चय करते समय राज्य सरकार उपरोक्त पहलू को भी विनिर्दिष्ट रुप से विचार में लेगी – ट्रस्ट का इस तर्क की ओर भी ध्यान आकर्षित करने का मार्ग खुला रहेगा कि जैनों को धार्मिक

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***Arbitration and Conciliation Act (26 of 1996), Section 11(6) – See – Stamp Act, 1899, Article 5(d), Schedule I-A* [Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja]** ...239

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छावनी अधिनियम (2006 का 41), धारा 258, छावनी भूमि प्रशासन नियम 1937, नियम 3.1 – छावनी भूमि – रक्षा विभाग की भूमि तथा याचीगण की भूमि से लगी हुई अभिकथित सड़क को सेना ने बंद/अवरुद्ध किया – प्रश्नाधीन भूमि, रक्षा विभाग की भूमि वर्ग ए(1) की श्रेणी में आती है – सेना प्राधिकारियों को उसके उपयोग का पूर्णाधिकार है – किसी अनुतोष को प्रदान करने का प्रकरण नहीं बनता – रिट याचिका खारिज। (अमर सिंह कवात्रा (मेजर) (रिटायर्ड) वि. यूनियन ऑफ इंडिया) ...112

Cantonment Land Administration Rules 1937, Rule 3.1 – See – Cantonments Act, 2006, Section 258 [Amar Singh Kwatra (Major) (Retd.) Vs. Union of India] ...112

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Central Bank of India (Officers) Service Regulations, 1979, Regulation 46, Payment of Gratuity Act (39 of 1972), Section 4 – Payment of Gratuity Act being of superior status the provisions of Act of 1972 will have the overriding effect on the regulation. [Zonal Manager, Central Bank of India Vs. R.R. Das] ...80

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bus and can come back in evening – Trial court may direct the payment of travelling and other expenses by respondent – No material that she approached any competent lawyer and he refused to accept her brief – Apprehension that some unhappy incident may take place, the trial court on application of applicant may direct the police authorities to provide security if her apprehension is found to be correct – Petition dismissed. [Archna Singh (Smt.) Vs. Dilip Singh] ...793

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – प्रकरण का अंतरण – आवेदिका एवं प्रत्यर्थी के मध्य वैवाहिक विवाद – आवेदिका अपने पैतृक परिवार के साथ सागर में निवासरत् है – दमोह में प्रकरण में उपस्थित होने हेतु उसके साथ जाने के लिये कोई सक्षम पुरूष सदस्य उपलब्ध नहीं है साथ ही दमोह में उसे प्रत्यर्थी द्वारा हमेशा किसी अप्रिय घटना की आशंका भी बनी रहती है क्योंकि वह दमोह में वकालत कर रहा है – वह दमोह में उचित रूप से मुकदमा नहीं लड़ सकती क्योंकि उसका पक्ष पत्र स्वीकार करने वाला सक्षम अधिवक्ता उपलब्ध नहीं है – अभिनिर्धारित – सागर एवं दमोह के मध्य 200 किलोमीटर का फासला है और आवेदिका आसानी से बस द्वारा जाकर शाम को वापस लौट सकती है – विचारण न्यायालय प्रत्यर्थी द्वारा यात्रा एवं अन्य व्यय के भुगतान हेतु निदेश दे सकता है – कोई तथ्य नहीं कि वह किसी सक्षम अधिवक्ता के पास गई और उसने उसका पक्ष पत्र स्वीकार करने से मना कर दिया – अप्रिय घटना घटित होने की आशंका के मद्देनजर आवेदिका के आवेदन पर विचारण न्यायालय यदि उसकी आशंका को सही पाता है तो वह उसे सुरक्षा प्रदान करने हेतु पुलिस प्राधिकारियों को निदेशित कर सकता है – याचिका खारिज। (अर्चना सिंह (श्रीमती) वि. दिलीप सिंह)...793

***Civil Procedure Code (5 of 1908), Section 80, Sub-Section (2) & Order 6 Rule 17 – Amendment* – For filing any suit against the State, statutory notice u/s 80 is the condition precedent – Neither the statutory notice was issued nor any such leave was obtained from the trial court to file the suit before expiry of statutory period of 60 days – Impugned order rejecting application for amendment is in consonance with the existing legal position – Petition is dismissed. [Laxman Singh Vs. Hukum Singh] ...344**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 80 की उप-धारा (2) एवं आदेश 6 नियम 17 – संशोधन – राज्य के विरुद्ध कोई वाद प्रस्तुत करने हेतु, धारा 80 के अंतर्गत कानूनी नोटिस पुरोभाव्य शर्त है – न तो कानूनी नोटिस जारी किया गया और न ही 60 दिनों की कानूनी अवधि समाप्त होने से पहले, वाद प्रस्तुत करने के लिए विचारण न्यायालय से उक्त अनुमति अभिप्राप्त की गई – संशोधन हेतु आवेदन को अस्वीकार करने का आक्षेपित आदेश विद्यमान विधिक स्थिति के अनुरुप

है – याचिका खारिज। (लक्ष्मण सिंह वि. हुकुम सिंह) ...344

Civil Procedure Code (5 of 1908), Section 80, Sub-Section (2) & Order 6 Rule 17 – Amendment – **Relief of perpetual injunction could be claimed only against those person against whom the cause of action is available on the date of filing the suit and not on the basis of any subsequent date. [Laxman Singh Vs. Hukum Singh]** ...344

सिविल प्रक्रिया संहिता (1908 का 5), धारा 80 की उप-धारा (2) एवं आदेश 6 नियम 17 – संशोधन – स्थाई व्यादेश के अनुतोष का दावा केवल उन व्यक्तियों के विरुद्ध किया जा सकता है, जिनके विरुद्ध वाद प्रस्तुत करने की तिथि को वाद कारण उपलब्ध है और न कि किसी पश्चातवर्ती तिथि के आधार पर। (लक्ष्मण सिंह वि. हुकुम सिंह) ...344

Civil Procedure Code (5 of 1908), Section 100 – Suit for declaration and injunction decreed by the trial court – **First appellate court reversed the finding – Assailed on the ground that the first appellate court re-appreciated the evidence beyond the limit which was not permissible – Held – Since plaintiff failed to prove sale deed according to the provisions of Sections 62, 64 and 68 of the Evidence Act as well as possession over the suit property – Whereas evidence of the witnesses of defendant is more reliable – Appellate Court has rightly re-appreciated the evidence and did not cross its limit – Finding of facts arrived by first appellate court neither perverse nor illegal – Appeal is dismissed. [Lalita Bai (Smt.) Vs. Ajay Pal Singh]** ...406

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विचारण न्यायालय द्वारा घोषणा एवं व्यादेश के लिये वाद डिक्रित – प्रथम अपीली न्यायालय ने निष्कर्ष पलट दिया – इस आधार पर चुनौती दी गई कि प्रथम अपीली न्यायालय द्वारा साक्ष्य का पुनः मूल्यांकन सीमा से परे जाकर किया गया जो अनुज्ञेय नहीं था – अभिनिर्धारित – चूंकि वादी साक्ष्य अधिनियम की धारा 62, 64 एवं 68 के उपबंधों के अनुसार विक्रय विलेख के साथ ही वाद ग्रस्त संपत्ति पर कब्जा साबित करने में असफल रहा – जबकि प्रतिवादी के साक्षियों का साक्ष्य अधिक विश्वसनीय – अपीली न्यायालय ने उचित ही साक्ष्य का पुनः मूल्यांकन किया और अपनी सीमा से परे नहीं गया – प्रथम अपीली न्यायालय द्वारा निकाले गये तथ्यों के निष्कर्ष न तो विपर्यस्त न ही अवैध – अपील खारिज। (ललिता बाई (श्रीमती) वि. अजय पाल सिंह) ...406

Civil Procedure Code (5 of 1908), Section 115 – Civil Revision – Scope – **Power u/s 115 of the Code though limited can be exercised if it is found that material irregularity of jurisdiction or law is committed**

by lower court. [Dayalu Vs. Mannulal Sahu] ...250

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – सिविल पुनरीक्षण – व्याप्ति – संहिता की धारा 115 के अंतर्गत शक्ति यद्यपि सीमित है, उसका प्रयोग किया जा सकता है, यदि यह पाया जाता है कि निचले न्यायालय द्वारा अधिकारिता या विधि की तात्विक अनियमितता कारित की गयी है। (दयालु वि. मन्नूलाल साहू) ...250

***Civil Procedure Code (5 of 1908), Section 115 – Civil Suit* – Suit for recovery of money was filed on the ground that wheat which was sold by applicant/defendant was taken back by applicant forcibly by stopping the tractor – F.I.R. in this regard was also made – Plaintiff however failed to place copy of F.I.R. on record – No independent evidence was produced – Lower appellate court failed to see the provisions of the Evidence Act – Respondent has to prove its case – He cannot be given benefit of the weakness of the applicant – Revision is allowed. [Dayalu Vs. Mannulal Sahu] ...250**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – सिविल वाद – रकम की वापसी के लिए वाद इस आधार पर प्रस्तुत किया गया कि आवेदक/प्रतिवादी ने जो गेहूँ विक्रय किया, उसे आवेदक ने बलपूर्वक ट्रेक्टर रोककर वापस ले लिया था – इस संबंध में एफ.आई.आर. भी की गई थी – किन्तु वादी एफ.आई.आर. की प्रति अभिलेख पर लाने में असफल रहा – स्वतंत्र साक्ष्य प्रस्तुत नहीं किया गया – निम्न अपीली न्यायालय साक्ष्य अधिनियम के उपबंधों का अवलोकन करने में असफल रहा – प्रत्यर्थी को अपना प्रकरण साबित करना होगा – उसे आवेदक की कमजोरी का लाभ नहीं दिया जा सकता – पुनरीक्षण मंजूर। (दयालु वि. मन्नूलाल साहू) ...250

***Civil Procedure Code (5 of 1908), Section 115 – See – Arbitration and Conciliation Act, 1996, Section 34* [Bhatia International Ltd. Vs. Vitol S.A. Geneva, Switzerland] ...397**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धारा 34 (भाटिया इंटरनेशनल लि. वि. विटोल एस.ए. जिनेवा, स्विट्जरलेण्ड) ...397

***Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Eviction Suit* – Respondent No.1 filed suit for eviction against respondent No.2 – Petitioners filed application for impleading her as a party on the strength of will claiming infact testator of will was the owner of the property in dispute – Held – Since petitioners are not parties to the suit finding given by the trial on the issue of title shall not be binding on the petitioners – In a suit between landlord and tenant presence of**

other persons are not required – Other party or the court cannot insist to plaintiff of a suit to implead any person as defendant or in some other manner in such suit – Petition is dismissed. [Saroj Garg (Smt.) Vs. Aparna Gupta] ...64

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – बेदखली का वाद – प्रत्यर्थी क्र. 1 ने प्रत्यर्थी क्र. 2 के विरुद्ध बेदखली हेतु वाद प्रस्तुत किया – याची ने वसीयत के आधार पर यह दावा करते हुए कि विवादित सम्पति का स्वामी वास्तव में वसीयतकर्ता था, उसे पक्षकार के रुप में आलिप्त किये जाने हेतु आवेदन प्रस्तुत किया – अभिनिर्धारित – चूंकि याचीगण वाद के पक्षकार नहीं, विचारण न्यायालय द्वारा हक के विवाद्यक पर दिया गया निष्कर्ष, याचीगण पर बंधनकारक नहीं होगा – भूमिस्वामी और किरायेदार के बीच के वाद में अन्य व्यक्तियों की उपस्थिति अपेक्षित नहीं – अन्य पक्षकार या न्यायालय किसी व्यक्ति को प्रतिवादी या किसी अन्य रुप में उक्त वाद में आलिप्त करने के लिए वाद के वादी से आग्रह नहीं कर सकता – याचिका खारिज की गई। (सरोज गर्ग (श्रीमती) वि. अपर्णा गुप्ता) ...64

Civil Procedure Code (5 of 1908), Order 6 Rule 17 **– Acceptance of cost, by reserving right to challenge would not preclude the petitioner to challenge the impugned order. [Sonu Dubey Vs. Shri Virendra Kumar Rai] ...108**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – व्यय की स्वीकृति, चुनौती के अधिकार को सुरक्षित रखते हुए याची को आक्षेपित आदेश को चुनौती देने से नहीं रोकेगी। (सोनू दुबे वि. श्री वीरेन्द्र कुमार राय) ...108

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment – Delay **– After closer of the plaintiff's evidence, defendant filed an application for amendment in the written statement – No explanation was offered for such delay – Held – The defendants have failed to satisfy that they could not file the application for amendment before the trial court despite due diligence at earlier point of time. [Sonu Dubey Vs. Shri Virendra Kumar Rai] ...108**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – विलम्ब – वादी का साक्ष्य समाप्त करने के पश्चात, प्रतिवादी ने लिखित कथन में संशोधन हेतु आवेदन प्रस्तुत किया – उक्त विलम्ब के लिए कोई स्पष्टीकरण नहीं पेश किया गया – अभिनिर्धारित – प्रतिवादीगण इस बात की संतुष्टि करने में विफल रहे कि सम्यक तत्परता के बावजूद समय के पूर्वतर प्रक्रम पर वे विचारण न्यायालय के समक्ष संशोधन हेतु आवेदन प्रस्तुत नहीं कर सके थे। (सोनू दुबे वि. श्री वीरेन्द्र कुमार राय) ...108

Civil Procedure Code (5 of 1908), Order 7 Rule 10 – Return of plaint – **Respondent No.1/Plaintiff filed the suit for declaration of title, permanent injunction and possession – Issue was framed that whether plaintiff had properly valued the suit and has paid proper court fee – Trial court held the suit has not been valued properly and proper court fees has not been paid – It was further held that trial court has no jurisdiction – Trial court also held that plaintiff has failed to prove his title – Held – After having held that trial court had no jurisdiction, court should have returned the plaint – There was no need for court to decide the case on merits – Direction by the Appellate Court for returning the plaint is proper – Appeal dismissed. [Chandrakant Vs. Tikam Das]** ...181

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 10 – वादपत्र की वापसी – प्रत्यर्थी क्र. 1/वादी ने हक की घोषणा, स्थायी व्यादेश एवं कब्जे हेतु वाद प्रस्तुत किया – विवाद्यक विरचित किया गया कि क्या वादी ने वाद का उचित रुप से मूल्यांकन किया और उचित न्यायालय शुल्क अदा किया है अथवा नहीं – विचारण न्यायालय ने अभिनिर्धारित किया कि वाद का उचित मूल्यांकन नहीं किया गया और उचित न्यायालय शुल्क अदा नहीं किया गया है – आगे अभिनिर्धारित कि विचारण न्यायालय को अधिकारिता नहीं थी – विचारण न्यायालय ने यह भी अभिनिर्धारित किया कि वादी अपना हक साबित करने में असफल रहा – अभिनिर्धारित – यह धारणा करने के पश्चात कि विचारण न्यायालय को अधिकारिता नहीं है, न्यायालय को वादपत्र वापस करना चाहिए – न्यायालय के लिए आवश्यक नहीं था कि प्रकरण को गुण-दोषों पर निर्णित करे – अपीलीय न्यायालय द्वारा वादपत्र की वापसी के लिये निदेश उचित – अपील खारिज। (चन्द्रकांत वि. टीकम दास) ...181

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Representation of the People Act, 1951, Sections 80, 81 **[Krishna Kumar Gupta Vs. Rajendra Shukla]** ...152

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11–देखें–लोक प्रतिनिधित्व अधिनियम, 1951, धाराऐं 80, 81 (कृष्ण कुमार गुप्ता वि. राजेन्द्र शुक्ला) ...152

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Representation of the People Act, 1951, Section 82 **[Ram Khelawan Patel Vs. Dr. Rajendra Kumar Singh]** ...749

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धारा 82 (राम खेलावन पटेल वि. डॉ. राजेन्द्र कुमार सिंह) ...749

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Representation of the People Act, 1951, Sections 86, 81(3) & 87(1) **[Rahul Singh Lodhi Vs. Smt. Chanda Devi] ...143**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धाराऐं 86, 81(3) व 87(1) (राहुल सिंह लोधी वि. श्रीमती चन्दा देवी) ...143

Civil Procedure Code (5 of 1908), Order 18 Rule 3 – Stage of filing application – **Plaintiff after conclusion of his evidence filed application reserving his right to lead evidence in rebuttal of issues regarding counter claim after the evidence of defendant – Application has to be filed before commencement of evidence by other party – Trial Court erred in dismissing the application – Application allowed. [Mahesh Vs. Harisingh] ...638**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 3 – आवेदन प्रस्तुत करने का प्रकम – वादी ने अपना साक्ष्य समाप्त होने के पश्चात्, प्रतिवादी के साक्ष्य के पश्चात् प्रतिदावे से संबंधित विवाद्यकों के खंडन में साक्ष्य प्रस्तुत करने का अधिकार सुरक्षित रखते हुए आवेदन प्रस्तुत किया – दूसरे पक्षकार द्वारा साक्ष्य आरंभ करने से पूर्व आवेदन प्रस्तुत करना होता है – आवेदन खारिज करने में विचारण न्यायालय ने त्रुटि की – आवेदन मंजूर। (महेश वि. हरिसिंह) ...638

Civil Procedure Code (5 of 1908), Order 22 Rule 4 – Legal Representatives – **Plaintiff filed suit for specific performance of Contract – Application for bringing Legal Representatives of sole defendant on record was filed belatedly and without any application for condonation of delay – Trial Court allowed the application – Held – Filing of application for condonation of delay is mandatory – Ignorance of legal consequence without something more would not be sufficient to condone a huge delay – As application for condonation of delay was not filed Trial Court committed error in allowing the application for bringing Legal Representatives on record – Petition allowed. [Kalpana Pandey (Smt.) Vs. Bheekam Prasad] ...364**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4 – विधिक प्रतिनिधिगण – वादी ने संविदा के विनिर्दिष्ट पालन हेतु वाद प्रस्तुत किया – एकमात्र प्रतिवादी के विधिक प्रतिनिधिगण को अभिलेख पर लाये जाने हेतु आवेदन विलम्ब से और विलम्ब के लिये माफी हेतु किसी आवेदन के बिना प्रस्तुत किया गया – विचारण न्यायालय ने आवेदन मंजूर किया – अभिनिर्धारित – विलम्ब के लिये

माफी हेतु आवेदन आज्ञापक है – विधिक परिणाम की अनभिज्ञता से कुछ अधिक के बिना, अत्याधिक विलम्ब के लिये माफी हेतु पर्याप्त नहीं होगा – चूंकि विलम्ब के लिये माफी हेतु आवेदन प्रस्तुत नहीं किया गया था, विचारण न्यायालय ने विधिक प्रतिनिधिगण को अभिलेख पर लाने हेतु आवेदन को मंजूर करके त्रुटि कारित की – याचिका मंजूर। (कल्पना पाण्डे (श्रीमती) वि. भीकम प्रसाद) ...364

Civil Procedure Code (5 of 1908), Order 47 – Review **– If judgment is passed against statute, or against binding precedent, or in excess of the jurisdiction, review lies. [Bhatia International Ltd. Vs. Vitol S.A. Geneva, Switzerland]** ...397

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 – पुनर्विलोकन – यदि निर्णय को कानून के विरूद्ध या बाध्यकारी पूर्व निर्णय के विरूद्ध या अधिकारिता के आधिक्य में पारित किया गया है, पुनर्विलोकन प्रस्तुत होगा। (भाटिया इंटरनेशनल लि. वि. विटोल एस.ए. जिनेवा, स्विट्जरलेण्ड) ...397

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(4) & Rule 32 – Non-supply of inquiry report and non-issuance of show cause notice before termination **– Held – Apparently neither the enquiry report was supplied to the petitioner nor show cause notice was issued to him prior to issuance of impugned order – There is also non-compliance of Rule 32 of the Civil Services Rules – Order of punishment and appellate order is quashed – Petitioner is reinstated – Matter is remitted back to the disciplinary authority to proceed further by strictly following the procedure prescribed. [Yogiraj Sharma (Dr.) Vs. State of M.P.]** ...741

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(4) व नियम 32 – सेवा समाप्ति के पूर्व जांच प्रतिवेदन प्रदाय न किया जाना एवं कारण बताओ नोटिस जारी नहीं किया जाना – अभिनिर्धारित – आक्षेपित आदेश जारी होने के पूर्व तक प्रत्यक्षतः याची को न तो जांच प्रतिवेदन प्रदाय किया गया न ही उसे कारण बताओ नोटिस जारी किया गया – साथ ही सिविल सेवा नियम के नियम 32 का भी पालन नहीं किया गया – दंड का आदेश एवं अपीली आदेश अभिखंडित – याची को बहाल किया गया – विहित प्रकिया का कड़ाई से पालन करते हुए आगामी कार्यवाही हेतु मामला अनुशासनिक प्राधिकारी को प्रति–प्रेषित। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य) ...741

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 16 – Minor Penalty **– Before imposing Minor Penalty, the disciplinary authority has to take representation of delinquent officer**

and after referring to the same findings on each misconduct or misbehavior is to be recorded and then can impose punishment – Disciplinary authority has not considered the defence raised by the respondent while imposing minor punishment – Order of punishment quashed. [State of M.P. Vs. N.S. Chouhan] (DB)...309

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 16 – लघु शास्ति – लघु शास्ति अधिरोपित करने से पहले, अनुशासनिक प्राधिकारी को अपचारी अधिकारी का अभ्यावेदन विचार में लेना होगा और उक्त को निर्दिष्ट करने के पश्चात् प्रत्येक अवचार या कदाचार के निष्कर्षों को अभिलिखित करना होता है और तब शास्ति अधिरोपित कर सकता है – लघु शास्ति अधिरोपित करते समय अनुशासनिक प्राधिकारी ने प्रत्यर्थी द्वारा उठाये गये बचाव को विचार में नहीं लिया है – शास्ति का आदेश अभिखंडित। (म.प्र. राज्य वि. एन.एस. चौहान) **(DB)...309**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 16 – Show Cause Notice **– Show Cause Notice issued to the respondent pointing out irregularities which were alleged to have been committed – No separate Charge sheet is required to be issued if the authority proposes to proceed under Rule 16 – Show Cause Notice containing charges would amount to charge sheet. [State of M.P. Vs. N.S. Chouhan] (DB)...309**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 16 – कारण बताओ नोटिस – अभिकथित रूप से कारित की गई अनियमितता दर्शाते हुए प्रत्यर्थी को कारण बताओ नोटिस जारी किया गया – पृथक आरोप पत्र जारी करना अपेक्षित नहीं यदि प्राधिकारी नियम 16 के अंतर्गत कार्यवाही प्रस्तावित करता है – कारण बताओ नोटिस जिसमें आरोप अंतर्विष्ट है, आरोप पत्र की कोटि में आयेगा। (म.प्र. राज्य वि. एन.एस. चौहान) **(DB)...309**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 20 – Departmental Enquiry **– Appellant whose parent department is Forest Department was sent on deputation to Rajya Van Vikas Nigam in the year 1988 which is an independent autonomous corporation – He was repatriated back to the parent department where he joined after 06.11.1989 – On 08.05.1990, he was charge sheeted by M.D. of the borrowing Corporation – Held – Rule 20 provides for provisions regarding officers lent to another department – Action by borrowing department can be taken under Rule 20 only when an employee is on deputation – After the employee is repatriated back to parent department, borrowing department cannot initiate departmental proceedings –**

Borrowing department may transmit the documents to parent department and may recommend for taking action – Punishment imposed is set aside – Borrowing department may recommend parent department to take action. [B.L. Satyarthi Vs. State of M.P.] (DB)...26

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 20 – विभागीय जांच – अपीलार्थी जिसका मूल विभाग वन विभाग है, उसे प्रतिनियुक्ति पर वर्ष 1988 में राज्य वन विकास निगम में भेजा गया, जो कि एक स्वतंत्र स्वायत्त निगम है – उसे मूल विभाग को वापस किया गया, जहां उसने 06.11.1989 के पश्चात पदभार ग्रहण किया – 08.05.1990 को उस पर आदाता निगम के एम.डी. द्वारा आरोप लगाया गया – अभिनिर्धारित – नियम 20, अन्य विभाग को सेवा प्रदाता अधिकारियों से संबंधित उपबंधों को उपबंधित करता है – अदाता विभाग द्वारा नियम 20 के अंतर्गत केवल तब कार्यवाही की जा सकती है, जब कर्मचारी प्रतिनियुक्ति पर हो – मूल विभाग में कर्मचारी की वापसी के पश्चात अदाता विभाग, विभागीय कार्यवाही आरंभ नहीं कर सकता – आदाता विभाग दस्तावेजों को मूल विभाग को भेज सकता है और कार्यवाही करने के लिये अनुशंसा कर सकता है – अधिरोपित शास्ति अपास्त – आदाता विभाग, मूल विभाग को कार्यवाही करने की अनुशंसा कर सकता। (बी.एल. सत्यार्थी वि. म.प्र. राज्य) **(DB)...26**

Commercial Tax Act, M.P., 1994 (5 of 1995), Sections 9, 10A and 19(1)(a) – Surcharge **– Surcharge payable u/s 10A is nothing but a tax payable under the Act – It is only one way of enhancement of the tax – Once the petitioner is permitted composition of tax u/s 19(1)(a), then no liability to pay any surcharge u/s 10A would arise – Impugned orders are quashed – Petition allowed. [Narmada Transmission Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)...736**

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धाराऐं 9, 10ए व 19(1)(ए) – अधिभार – धारा 10ए के अंतर्गत देय अधिभार कुछ नहीं बल्कि अधिनियम के अंतर्गत देय कर है – यह मात्र कर की वृद्धि का एक रास्ता है – एक बार याची को धारा 19 (1)(ए) के अंतर्गत कर के प्रशमन की अनुमति प्रदान करने पर धारा 10ए के अंतर्गत कोई अधिभार अदा करने का दायित्व नहीं उत्पन्न होगा – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (नर्मदा ट्रांसमिशन प्रा.लि. (मे.) वि. म.प्र. राज्य) **(DB)...736**

Commercial Tax Act, M.P. 1994 (5 of 1995), Item 89 of Schedule I **– Whether PVC pipes used in pumping set can be held as accessories of the pumps, and if so, whether they are exempted from payment of Commercial Tax – Held – PVC pipes are an essential part of the pumping set and can never be considered as an accessory – Therefore,**

the same are taxable. [Annapurna Industries (M/s.) Vs. Deputy Commissioner, Commercial Taxes, Indore] (DB)...600

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुच्छेद I का मद 89 – क्या पम्पिंग सेट में प्रयुक्त पी.व्ही.सी. पाइप को पम्प के सहायक उपकरण के रूप में माना जा सकता है और यदि ऐसा है तब क्या इसे वाणिज्यिक कर के भुगतान से छूट प्राप्त है – अभिनिर्धारित – पी.व्ही.सी. पाइप पम्पिंग सेट का एक आवश्यक हिस्सा है और इसे कभी भी सहायक उपकरण के रूप में नहीं माना जा सकता – इसलिये यह कर योग्य है। (अन्नपूर्णा इंडस्ट्रीज (मे.) वि. डिप्टी कमिश्नर, कमर्शियल टैक्स, इंदौर) **(DB)...600**

***Companies Act (1 of 1956), Section 446(2) – Civil Suit – Competency of Civil Court* – Liquidation proceedings pending – Jurisdiction of Civil Court vis-a-vis Company Judge is not ousted by the provisions of Companies Act – State of M.P. in another Civil suit sought for declaration and recovery of possession against official liquidator which was dismissed on the ground of non-maintainability in absence of leave of the Company Court – Said order has attained finality – Declaration to the effect that property in dispute belongs to company under liquidation has attained finality – Dismissal of application for permission u/s 446(2) of the Act does not suffer from any perversity or illegality or arbitrariness – Appeal dismissed. [Satya Narayan Vs. M/s. Jiyajeerao Cotton Mills Ltd.] (DB)...243**

कम्पनी अधिनियम (1956 का 1), धारा 446(2) – सिविल वाद – सिविल न्यायालय की सक्षमता – समापन कार्यवाही लंबित – कम्पनी अधिनियम के उपबंध, कंपनी जज के साथ ही सिविल न्यायालय की अधिकारिता को अलग नहीं करते – म.प्र. राज्य ने अन्य सिविल वाद में शासकीय समापक के विरुद्ध कब्जे की वापसी और घोषणा चाही, जिसे कम्पनी न्यायालय से अनुमति के अभाव में अपोषणीयता के आधार पर खारिज किया गया – उक्त आदेश को अंतिमता प्राप्त हुई – इस प्रभाव की घोषणा कि विवादित सम्पत्ति समापन के अधीन कम्पनी की है, को अंतिमता प्राप्त हुई – अधिनियम की धारा 446(2) के अंतर्गत अनुमति हेतु आवेदन की खारिजी, किसी विपर्यस्तता या अवैधता या मनमानापन से ग्रसित नहीं – अपील खारिज। (सत्य नारायण वि. मे. जियाजीराव कॉटन मिल्स लि.) **(DB)...243**

***Constitution – Article 14 & 16 – Intervention applications* – Intervenors who are wait list candidates have filed applications after the lapse of more than 1½ years on expiry of the validity period – They have also not filed petition seeking appointment – Intervention is merit less – They are not entitled to any relief. [Ankita Bohare (Dr.)**

(Mrs.) Vs. M.P. Public Service Commission] ...379

संविधान – अनुच्छेद 14 व 16 – मध्यक्षेप के आवेदनपत्र – मध्यक्षेपकर्ता, जो प्रतीक्षा सूची वाले अभ्यर्थी हैं, ने विधिमान्य अवधि समाप्त होने के 1½ वर्ष से अधिक समय व्यपगत होने के पश्चात् आवेदनपत्र प्रस्तुत किये – उन्होंने नियुक्ति हेतु याचिका भी प्रस्तुत नहीं की – मध्यक्षेप गुणदोष विहीन है – वे किसी अनुतोष के हकदार नहीं। (अंकिता बोहरे (डॉ.) (श्रीमती) वि. एम.पी. पब्लिक सर्विस कमीशन) ...379

Constitution – Article 14 & 16 – Negation of Chance of Promotion – Chances of promotion are not conditions of Service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service –It amounts to infractions of Articles 14 and 16 of Constitution of India. [Panchraj Tiwari Vs. M.P. State Electricity Board]. (SC)...281

संविधान – अनुच्छेद 14 व 16 – पदोन्नति की संभावना को नकारा जाना – पदोन्नति की संभावनाएं सेवा की शर्तें नहीं, परंतु पदोन्नति की संभावना को भी नकारा जाना सेवा शर्तों में परिवर्तन की कोटि में निश्चित रूप से आता है – यह भारत के संविधान के अनुच्छेद 14 व 16 के व्यतिकमण की कोटि में आता है। (पंचराज तिवारी वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) (SC)...281

Constitution – Article 14 & 16 – Termination – Petitioner's candidature for appointment was rejected due to not having teaching experience of 10 years although she was having experience of 9 years 6 months and 20 days – She was appointed in terms of order passed by Hon'ble High Court provisionally – Subsequently as petition was dismissed W.A. was preferred but without awaiting the order of Division Bench, she was terminated – Held – Since she has been found eligible for appointment on possessing the alternative qualification by the Selection Committee of PSC, therefore, after recommendation of PSC, she was appointed by the State Government subject to final outcome of W.P. which though was dismissed but W.A. was allowed – Therefore, termination of the petitioner during the pendency of W.A. is unsustainable – Hence, quashed. [Ankita Bohare (Dr.) (Mrs.) Vs. M.P. Public Service Commission] ...379

संविधान – अनुच्छेद 14 व 16 – सेवा समाप्ति – 10 वर्ष अध्यापन का अनुभव नहीं होने के कारण नियुक्ति हेतु याची की अभ्यर्थिता अस्वीकार की गई, यद्यपि, उसे 9 वर्ष 6 माह और 20 दिन का अनुभव था – उसे माननीय उच्च न्यायालय द्वारा पारित आदेश के अनुसरण में अनन्तिम रूप से नियुक्त किया गया

– तत्पश्चात्, चूंकि याचिका खारिज की गयी थी, रिट अपील प्रस्तुत की गयी परंतु खंड न्यायपीठ के आदेश की प्रतीक्षा किये बिना उसकी सेवा समाप्त की गई – अभिनिर्धारित – चूंकि नियुक्ति हेतु वैकल्पिक अर्हता प्राप्त करने पर उसे पी.एस.सी. की चयन समिति द्वारा योग्य पाया गया, अतः पी.एस.सी. की अनुशंसा के पश्चात् राज्य सरकार द्वारा उसे रिट याचिका के अंतिम निर्णय के अधीन नियुक्त किया गया, यद्यपि रिट याचिका खारिज की गयी परन्तु रिट अपील मंजूर की गई थी – इसलिये रिट अपील के लंबित रहने के दौरान याची की सेवा समाप्ति, कायम रखने योग्य नहीं – अतः अभिखंडित। (अंकिता बोहरे (डॉ.) (श्रीमती) वि. एम.पी. पब्लिक सर्विस कमीशन) ...379

Constitution –Article 14 & 16– W.P.No. 6294/2011 – Petitioner participated in the selection process and not found place in the merit list – **In absence of any allegation of bias and malice against the Selection Committee, interference in the facts is not warranted, same is dismissed – Intervention application filed in W.P.No. 4086/2011 is also dismissed. [Ankita Bohare (Dr.) (Mrs.) Vs. M.P. Public Service Commission]** ...379

संविधान – अनुच्छेद 14 व 16 – रिट याचिका क्र. 6294/2011 – याची ने चयन प्रकिया में हिस्सा लिया और मेरिट लिस्ट में स्थान नहीं पा सका – चयन समिति के विरूद्ध, पूर्वाग्रह या दुर्भावना के अभिकथनों की अनुपस्थिति में तथ्यों में हस्तक्षेप की आवश्यकता नहीं, उक्त को खारिज किया गया – रिट याचिका क्र. 4086/2011 में प्रस्तुत किया गया मध्यक्षेप का आवेदनपत्र भी खारिज किया गया। (अंकिता बोहरे (डॉ.) (श्रीमती) वि. एम.पी. पब्लिक सर्विस कमीशन) ...379

Constitution – Article 19(1)(g) & Petroleum Act (30 of 1934), Section 3 & Petroleum Rules, 2002, Rules 144, 149 – **Establishment of retail outlets by the Oil Company – NOC have been granted by various concerned department – Denial of NOC by NHAI based upon the guidelines – Held – Guidelines framed by the Indian Road Congress are not mandatory they have no statutory force – Therefore, a retail outlet can be established within the distance of 1000 meter of the existing fuel station – So, far as the toll plaza is concerned same is not in existence – Denial of establishment of retail outlets and denial of NOC to Indian Oil Corporation Ltd. amounting to violation of Fundamental Rights guaranteed under Article 19(1)(g) of the Constitution – Impugned order is set-aside. [Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd.]** ...98

संविधान – अनुच्छेद 19(1)(जी) एवं पेट्रोलियम अधिनियम (1934 का 30),

धारा 3 एवं पेट्रोलियम नियम, 2002, नियम 144, 149 – तेल कंपनी द्वारा खुदरा विक्रय केन्द्रों की स्थापना – भिन्न संबंधित विभाग द्वारा अनापत्ति प्रमाण पत्र जारी किये गये – एन.एच.ए.आई. द्वारा अनापत्ति प्रमाण पत्र से इंकार, दिशा-निर्देशों पर आधारित – अभिनिर्धारित – भारतीय सड़क कांग्रेस द्वारा विरचित दिशा-निर्देश आज्ञापक नहीं हैं, वे कानूनी शक्ति नहीं रखते – अतः, विद्यमान पेट्रोल पंप से 1000 मीटर की दूरी पर एक खुदरा विक्रय केन्द्र स्थापित किया जा सकता है – जहां तक चुंगी-चौकी का संबंध है, वह अस्तित्व में नहीं है – इंडियन ऑयल कॉर्पोरेशन लिमिटेड को खुदरा विक्रय केन्द्र की स्थापना नामंजूर करना एवं अनापत्ति प्रमाण पत्र नामंजूर करना संविधान के अनुच्छेद 19(1)(जी) के अंतर्गत प्रत्याभूत मूलभूत अधिकारों का उल्लंघन की कोटि में आता है – आक्षेपित आदेश अपास्त। (सरोज भाटिया (श्रीमती) वि. इंडियन ऑइल कारपोरेशन लि.) ...98

Constitution – Article 21 – Fair Trial **– Charge sheet filed before the Sessions Court – Trial is not vitiated unless and until it has caused prejudice to the accused. [Mohd. Juned Vs. State of M.P.] ...484**

संविधान – अनुच्छेद 21 – उचित विचारण – सत्र न्यायालय के समक्ष आरोप पत्र प्रस्तुत किया गया – विचारण दूषित नहीं होगा जब तक कि इससे अभियुक्त को प्रतिकूल प्रभाव कारित नहीं होता। (मोहम्मद जुनेद वि. म.प्र. राज्य) ...484

Constitution – Article 226 – Contract – Judicial Review **– High Court in exercise of power under Article 226 would not normally grant the relief of specific performance of contract. [Sri Ram Builders Vs. State of M.P.] (SC)...1**

संविधान – अनुच्छेद 226 – संविदा – न्यायिक पुनर्विलोकन – उच्च न्यायालय अनुच्छेद 226 के अंतर्गत शक्ति का प्रयोग करते हुए सामान्यतः संविदा के विनिर्दिष्ट पालन का अनुतोष प्रदान नहीं करेगा। (श्री राम बिल्डर्स वि. म.प्र. राज्य) (SC)...1

Constitution – Article 226 – Delay **– Claim of Petitioner rejected in the year 2010 – Petitioner approached the court thereafter – Prior to rejection of her claim she was not having any cause of action – There is no delay or latches. [Keshar Bai (Smt.) Vs. Western Coalfields Ltd.] ...328**

संविधान – अनुच्छेद 226 – विलम्ब – याची का दावा वर्ष 2010 में अस्वीकार किया गया – तत्पश्चात् याची न्यायालय के समक्ष आई है – उसके दावे की खारिजी से पूर्व उसके पास कोई वाद कारण नहीं था – कोई विलम्ब या उपेक्षा नहीं। (केशर बाई (श्रीमती) वि. वेस्टर्न कोलफील्डस् लि.) ...328

Constitution – Article 226 **– Non-joinder of 22 applicants, who besides respondent No. 3, had not been granted lease – Held – Non-joinder of those 22 person is of no consequence. [Ultratech Cement Ltd. Vs. State of M.P.] (DB)...123**

संविधान – अनुच्छेद 226 – 22 आवेदकों का असंयोजन जिन्हें प्रत्यर्थी क्र. 3 के अतिरिक्त पट्टा प्रदान नहीं किया गया – अभिनिर्धारित – उन 22 व्यक्तियों का असंयोजन प्रभावहीन है। (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य)**(DB)...123**

Constitution – Article 226 – Recommendations of Selection Committee – Malafides – Scope of Judicial Review **– Merely because there was some delay in communication of decision would not prove malafide or malice in law – Judicial Review is limited only to the decision making process and does not extend the merits of the decision taken. [Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan] (DB)...571**

संविधान – अनुच्छेद 226 – चयन समिति की अनुशंसाऐं – कदाशय – न्यायिक पुनर्विलोकन की व्याप्ति – मात्र इसलिये कि निर्णय की संसूचना में कुछ विलंब हुआ था, यह विधि अंतर्गत कदाशय या विद्वेष साबित नहीं होगा – न्यायिक पुनर्विलोकन केवल निर्णय की प्रकिया तक सीमित है और दिये गये निर्णय के गुणदोषों को प्रभावित नहीं करता। (भारत पेट्रोलियम कारपोरेशन लि. वि. लक्ष्मण चौहान) **(DB)...571**

Constitution – Article 226 – Recommendations of Selection Committee – Tied Up Volumes **– Affidavits of residents of close vicinity cannot be considered for assessment with regard to tied up volume to which the capability to generate business. [Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan] (DB)...571**

संविधान – अनुच्छेद 226 – चयन समिति की अनुशंसाऐं – संबद्ध परिमाण – कारोबार करने की क्षमता के निर्धारण हेतु, संबद्ध परिमाण के लिये आसपास के क्षेत्र के निवासियों के शपथ पत्रों को विचार में नहीं लिया जा सकता। (भारत पेट्रोलियम कारपोरेशन लि. वि. लक्ष्मण चौहान) **(DB)...571**

Constitution – Article 226 & 227 – Maintainability **– Petitioner challenged validity of recommendations of State Govt. in favour of respondent No. 3 without assailing order executing mining lease in his favour by State Govt. – W.P. cannot be held to be not maintainable in absence of challenge to consequential order passed by State Govt. in granting lease to respondent No. 3. [Ultratech Cement Ltd. Vs. State of M.P.] (DB)...123**

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संविधान – अनुच्छेद 226 व 227 – पोषणीयता – याची ने राज्य सरकार द्वारा प्रत्यर्थी क्र. 3 के पक्ष में खनन पट्टा निष्पादित करने के आदेश को चुनौती दिये बिना, उसके पक्ष में राज्य सरकार की अनुशंसाओं की वैधता को चुनौती दी – प्रत्यर्थी क्र. 3 को पट्टा प्रदान करने में राज्य सरकार द्वारा पारित किये गये परिणामिक आदेश को चुनौती के अभाव में यह अभिनिर्धारित नहीं किया जा सकता कि रिट याचिका पोषणीय नहीं है। (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य) (DB)...123

Constitution – Article 226 & 227 – Territorial Jurisdiction – **Respondent No. 3 has raised objection with regard to territorial jurisdiction of M.P. High Court – Land in question over which mining rights are being claimed is situated within territorial jurisdiction of M.P. High Court at Jabalpur – Similarly, order has been passed by State Govt. within territorial jurisdiction of M.P. High Court at Jabalpur – Thus, part of cause of action has arisen within territorial jurisdiction of M.P. High Court at Jabalpur. [Ultratech Cement Ltd. Vs. State of M.P.]** (DB)...123

संविधान – अनुच्छेद 226 व 227 – क्षेत्रीय अधिकारिता – प्रत्यर्थी क्र. 3 ने म. प्र. उच्च न्यायालय की क्षेत्रीय अधिकारिता के संबंध में आक्षेप उठाया है – प्रश्नगत भूमि जिस पर खनन अधिकारों का दावा किया गया है, वह म.प्र. उच्च न्यायालय जबलपुर के क्षेत्रीय अधिकारिता के भीतर स्थित है – उसी प्रकार से राज्य सरकार द्वारा म.प्र. उच्च न्यायालय जबलपुर की क्षेत्रीय अधिकारिता के भीतर आदेश पारित किया गया – अतः वाद कारण का हिस्सा म.प्र. उच्च न्यायालय जबलपुर की क्षेत्रीय अधिकारिता के भीतर उत्पन्न हुआ है। (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य) (DB)...123

Constitution – Article 227 – **During the course of final argument, the court directed plaintiffs/respondents to supply some better particulars – Although neither party has requested the trial court to call any better particulars – Held – Plaintiffs are sole *dominus litus* of their litigation and without their request, they could not be insisted by the court to amend the pleadings or to supply better particulars – There was no occasion with the trial court to call the better particulars at the stage of final hearing – Petition is allowed. [Akbar Khan Vs. Smt. Krishna Devi (Dead) Through L.Rs.]** ...342

संविधान – अनुच्छेद 227 – अंतिम तर्क के दौरान न्यायालय ने वादीगण/प्रत्यर्थीगण को निदेशित किया कि कुछ बेहतर विशिष्टियां प्रदाय करें – यद्यपि किसी पक्षकार ने बेहतर विशिष्टियां बुलाये जाने हेतु विचारण न्यायालय से निवेदन नहीं किया – अभिनिर्धारित – वादीगण अपने मुकदमे के एकमेव वाद नियंत्रक (डोमिनस लिटिस) है और उनके निवेदन के बिना अभिवचनों में संशोधन

या बेहतर विशिष्टियां प्रदाय करने के लिए न्यायालय द्वारा उन पर जोर नहीं डाला जा सकता – अंतिम सुनवाई के प्रक्रम पर बेहतर विशिष्टियां बुलाने का विचारण न्यायालय के पास कोई अवसर नहीं था – याचिका मंजूर। (अकबर खान वि. श्रीमती कृष्णा देवी (मृतिका) द्वारा विधिक प्रतिनिधि) ...342

Constitution – Article 243Q, Municipal Corporation Act, M.P. (23 of 1956), Section 405, Municipalities Act, M.P. (37 of 1961), Section 5-A – Consideration of objection by Governor **– Whether he has to act on aid or advise of Council of Ministers or has to exercise discretion on his own – Held – It is for Governor to consider the objections as he deem fit – Final decision to accept or reject objections must be that of Governor – However, he is not precluded from requisitioning aid and advise of Council of Ministers – Review petition dismissed. [State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore]** (DB)...754

संविधान – अनुच्छेद 243Q, नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 405, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5–ए – राज्यपाल द्वारा आक्षेप का विचारण – क्या उसे मंत्री परिषद् की सहायता या परामर्श पर कार्यवाही करना होती है अथवा उसे स्वयं अपने विवेकाधिकार का प्रयोग करना होता है – अभिनिर्धारित – यह राज्यपाल के लिये है कि वह आक्षेपों को विचार में ले, जैसा कि वह उचित समझे – आक्षेपों को स्वीकार करने का अथवा अस्वीकार करने का अंतिम निर्णय राज्यपाल का ही होना चाहिए – अपितु, वह मंत्री परिषद् की सहायता एवं परामर्श तलब करने से प्रवारित नहीं – पुनर्विलोकन याचिका खारिज। (म.प्र. राज्य द्वारा सेक्रेटरी, अर्बन एडमिनिस्ट्रेशन एण्ड डव्हेलपमेन्ट डिपार्टमेन्ट वि. अभिनेश महोरे) (DB)...754

Contract Act (9 of 1872), Section 28, Criminal Procedure Code, 1973 (2 of 1974), Sections 125 & 127 **– Order granting maintenance was set-aside by revisional court on the ground that lump-sum maintenance was granted by Lok-Adalat under an agreement entered into between the parties – Held – As per Section 28 of the Contract Act the condition that the applicant could not ask for further maintenance was violative to the provision of Section 127 of the Cr.P.C. – Therefore, that portion of the contract was void. [Leela Bai Vs. Ganpati]** ...501

संविदा अधिनियम (1872 का 9), धारा 28, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 125 व 127 – भरणपोषण प्रदान करने के आदेश को पुनरीक्षण न्यायालय द्वारा इस आधार पर अपास्त किया गया कि पक्षकारों के मध्य किये गये करार के अंतर्गत

लोक अदालत द्वारा एकमुश्त भरणपोषण प्रदान किया गया है – अभिनिर्धारित – संविदा अधिनियम की धारा 28 के अनुसार, यह शर्त कि आवेदक आगे भरणपोषण की मांग नहीं कर सकता, द.प्र.सं. की धारा 127 के उपबंध का उल्लंघन था – अतः संविदा का वह अंश शून्य था। (लीला बाई वि. गणपति) ...501

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 77, Co-Operative Tribunal – Constitution – **A former Judge as Chairman or Ex-District Judge – One of two members has to be person not below rank of Joint Registrar and other person connected with Co-operative movement or advocate – Provision is not unconstitutional. [Satya Pal Anand Vs. State of M.P.]** (SC)...288

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 77, सहकारी अधिकरण – गठन – अध्यक्ष के रुप में एक भूतपूर्व जज या भूतपूर्व जिला न्यायाधीश – दो में से एक सदस्य संयुक्त रजिस्ट्रार की पद श्रेणी से निम्न पद श्रेणी का न हो और अन्य व्यक्ति, सहकारी आंदोलन से जुड़ा होना चाहिए या अधिवक्ता होना चाहिए – उपबंध असंवैधानिक नहीं। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...288

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 77(3)(b), Co-operative Tribunal – Appointment of Chairman and Members – **To be through Public Service Commission in consultation with High Court. [Satya Pal Anand Vs. State of M.P.]** (SC)...288

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 77(3)(बी), सहकारी अधिकरण – अध्यक्ष एवं सदस्यों की नियुक्ति – उच्च न्यायालय के परामर्श से लोक सेवा आयोग द्वारा। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...288

Court Fees Act (7 of 1870), Section 35 – Suit for possession – **Claimed exemption from payment of Court Fees under notification dated 01.04.1983, being a member of weaker section of society – Whether separate application under Order 33 Rule 1 of C.P.C. is required to be filed – Held – Since the respondent was not seeking permission to sue as an indigent person but was claiming benefit of exemption granted under notification dated 01.04.1983, he is required to make such a declaration in the plaint – There is no provision in the Court Fees Act for making a separate application – Court is required to conduct a limited enquiry to conclude as to whether the said exemption is admissible to the plaintiff or not. [Mohd. Sadik Vs. Khursheed Ahmed]** ...35

न्यायालय फीस अधिनियम (1870 का 7), धारा 35 – कब्जे के लिए वाद –

समाज के कमजोर वर्ग का सदस्य होने के नाते अधिसूचना दिनांक 01.04.1983 के अंतर्गत न्यायालय फीस के भुगतान में छूट का दावा – क्या सि.प्र.सं. के आदेश 33 नियम 1 के अंतर्गत पृथक से आवेदन प्रस्तुत करना अपेक्षित है – अभिनिर्धारित – चूंकि प्रत्यर्थी ने एक निर्धन व्यक्ति के तौर पर वाद प्रस्तुत करने की अनुमति नहीं मांगी, किन्तु अधिसूचना दिनांक 01.04.1983 के अंतर्गत छूट का लाभ दिये जाने का दावा किया था, उसे वाद पत्र में ऐसी घोषणा करना अपेक्षित है – न्यायालय फीस अधिनियम में पृथक से आवेदन देने हेतु प्रावधान नहीं है – यह निष्कर्ष निकालने के लिए न्यायालय से सीमित जांच करना अपेक्षित है कि उक्त छूट वादी को लागू होगी या नहीं। (मोहम्मद सादिक वि. खुर्शीद अहमद) ...35

Criminal Procedure Code, 1973 (2 of 1974), Section 24 – Special Prosecutor **– Court granted permission to two counsels to assist Public Prosecutor – Complainant cannot seek mandamus that his private counsels be appointed as Special Public Prosecutor. [Manoj Mishra Vs. State of M.P.]** ...96

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24 – विशेष अभियोजक – लोक अभियोजक की सहायता के लिए न्यायालय ने दो अधिवक्ताओं को अनुमति प्रदान की – शिकायतकर्ता अपने निजी वकीलों को विशेष लोक अभियोजक के रुप में नियुक्ति के लिए परमादेश की मांग नहीं कर सकता। (मनोज मिश्रा वि. म.प्र. राज्य) ...96

Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Recovery of Weapon **– Katar is alleged to have been recovered from an open place and everybody had access to the site – Blood group could not be ascertained – Recovery unreliable. [Ritesh Vs. State of M.P.]** (DB)...218

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 – शस्त्र की बरामदगी – अभिकथित रुप से कटार की बरामदगी खुले स्थान से की गई और वह स्थल सभी के लिए खुला था – रक्त समूह को सुनिश्चित नहीं किया जा सका – बरामदगी अविश्वसनीय। (रीतेश वि. म.प्र. राज्य) (DB)...218

Criminal Procedure Code, 1973 (2 of 1974), Sections 125 & 127 –Maintenance **– Since the agreement took place contrary to the statutory provision contained u/s 127 of the Cr.P.C., applicant can file application seeking maintenance – Impugned order suffers from illegality and perversity therefore same is set-aside and order passed by Trial court is restored. [Leela Bai Vs. Ganpati]** ...501

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 125 व 127 – भरणपोषण

– चूंकि द.प्र.सं. की धारा 127 के अंतर्गत अंतर्विष्ट कानूनी उपबंध के विपरीत करार हुआ है, आवेदक भरणपोषण चाहते हुए आवेदन प्रस्तुत कर सकता है – आक्षेपित आदेश अवैधता और विपर्यस्तता से ग्रसित, अतः उक्त को अपास्त किया गया और विचारण न्यायालय द्वारा पारित किये गये आदेश को पुनः स्थापित किया गया। (लीला बाई वि. गणपति) ...501

Criminal Procedure Code, 1973 (2 of 1974), Sections 125 & 127 – See –Contract Act, 1872, Section 28 [Leela Bai Vs. Ganpati] ...501

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 125 व 127 – देखें – संविदा अधिनियम, 1872, धारा 28 (लीला बाई वि. गणपति) ...501

***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) –* Order u/s 156(3) was issued 3 years back and charge-sheet has also been filed – Order u/s 156(3) of Cr.P.C. cannot be challenged after three years. [Sheikh Ismail Vs. State of M.P.]** ...789

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – धारा 156(3) के अंतर्गत 3 वर्ष पूर्व आदेश जारी किया गया एवं आरोप–पत्र भी प्रस्तुत किया गया – दं.प्र.सं. की धारा 156(3) के अंतर्गत आदेश को 3 वर्ष पश्चात् चुनौती नहीं दी जा सकती। (शेख इस्माइल वि. म.प्र. राज्य) ...789

***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) – Triable by Court of Sessions* – Magistrate has power u/s 156(3) to issue direction for registration of F.I.R. and investigation. [Sheikh Ismail Vs. State of M.P.]** ...789

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – सत्र न्यायालय द्वारा विचारणीय – धारा 156 (3) के अंतर्गत मजिस्ट्रेट के पास प्रथम सूचना प्रतिवेदन पंजीबद्ध करने एवं अन्वेषण के लिये निदेश देने की शक्ति है। (शेख इस्माइल वि. म.प्र. राज्य) ...789

***Criminal Procedure Code, 1973 (2 of 1974), Section 228 – See – Penal Code, 1860, Sections 467, 468* [Sheikh Ismail Vs. State of M.P.]** ...789

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – देखें – दण्ड संहिता, 1860, धाराएं 467, 468 (शेख इस्माइल वि. म.प्र. राज्य) ...789

***Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Summoning of additional accused* – Sessions Court can issue summons on the basis of records transmitted to him as a result of the committal order passed by Magistrate. [Jashvant Rathore Vs. State of M.P.]** ...257

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अतिरिक्त अभियुक्त को समन किया जाना – मजिस्ट्रेट द्वारा पारित सुपुर्दगी आदेश के परिणामस्वरुप उसे भेजे गये अभिलेखों के आधार पर सेशन न्यायालय समन जारी कर सकती है। (जसवंत राठौर वि. म.प्र. राज्य) ...257

Criminal Procedure Code, 1973 (2 of 1974), Sections 321, 482 – Withdrawal of criminal case – **On the application filed by prosecution agency, trial Court permitted the withdrawal of criminal case – Revisional Court observed that the applicant and non-applicant are real brother and civil case is pending between them and found that no irregularity was committed by learned Magistrate – Held – There is nothing on record to show that learned Magistrate exercised the jurisdiction erroneously – In the instant case civil litigation is already pending – Question of ownership and possession can only be decided by the civil court – No case is made out for interfering in the order. [Dongar Singh Rathore Vs. State of M.P.]** ...277

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 321, 482 – आपराधिक प्रकरण को वापस लिया जाना – अभियोजन ऐजेंसी द्वारा प्रस्तुत किये आवेदन पर, विचारण न्यायालय ने आपराधिक प्रकरण को वापस लेने की अनुमति दी – पुनरीक्षण न्यायालय ने यह संदीक्षित किया कि आवेदक एवं अनावेदक सगे भाई हैं एवं उनके मध्य सिविल वाद लंबित है और यह पाया कि विद्वान मजिस्ट्रेट ने कोई अनियमितता कारित नहीं की – अभिनिर्धारित – अभिलेख पर कुछ भी नहीं जो यह दर्शाता हो कि विद्वान मजिस्ट्रेट ने अधिकारिता का त्रुटिपूर्ण प्रयोग किया है – वर्तमान प्रकरण में सिविल वाद पहले से लंबित है – स्वामित्व एवं कब्जे का प्रश्न केवल सिविल न्यायालय निर्णीत कर सकता है – आदेश में हस्तक्षेप के लिये प्रकरण नहीं बनता। (डोंगर सिंह राठौर वि. म.प्र. राज्य) ...277

Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 401, Limitation Act (36 of 1963), Section 5 – Condonation of delay – **Criminal appeal against conviction was dismissed after dismissing application for condonation of delay – Delay was of only six days and the ground on which the delay was caused was also sufficiently explained by medical certificate and supported by his own affidavit – If the petitioner/ accused is able to establish that he has a prima facie case for acquittal in appeal, the appeal ought not to be thrown out on the technical grounds – It is always better to dispose of the case on merits rather than to dismiss the same on technical grounds – No hardship would be caused to the State if an application is allowed and an**

opportunity is given to the accused/petitioner who is undergoing sentence to put-forth his case before the higher court for re-appreciation of evidence – Delay of six days in filing the criminal appeal is condoned – Revision allowed. [Arjun Namdeo Vs. State of M.P.] ...476

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) धाराऐं 397 व 401, परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिए माफी – विलम्ब के लिए माफी हेतु आवेदन खारिज किये जाने के पश्चात् दोषसिद्धि के विरूद्ध दाण्डिक अपील खारिज की गई – विलम्ब केवल छः दिनों का था और जिन आधारों पर विलम्ब कारित हुआ था उसे भी चिकित्सीय प्रमाणपत्र द्वारा पर्याप्त रूप से स्पष्ट किया गया है तथा उसके स्वयं के शपथपत्र द्वारा समर्थित है – यदि याची/अभियुक्त यह स्थापित करने में सक्षम है कि अपील में उसकी दोषमुक्ति हेतु प्रथम दृष्ट्या प्रकरण है, तब तकनीकी आधारों पर अपील को अस्वीकार नहीं किया जाना चाहिये था – प्रकरण को तकनीकी आधारों पर खारिज किये जाने की बजाय उसके गुणदोषों पर निपटारा किया जाना सदैव बेहतर होता है – राज्य को कोई कठिनाई कारित नहीं होगी यदि आवेदन मंजूर किया जाता है और अभियुक्त/याची जो दण्डादेश भुगत रहा है उसे उच्चतर न्यायालय के समक्ष साक्ष्य के पुनः मूल्यांकन हेतु अपना प्रकरण रखने का अवसर दिया जाता है – दाण्डिक अपील प्रस्तुत करने में छः दिनों का विलम्ब माफ किया गया – पुनरीक्षण मंजूर। (अर्जुन नामदेव वि. म.प्र. राज्य) ...476

Criminal Procedure Code, 1973 (2 of 1974), Sections 437, 438 & 439 – Bail **– Power conferred u/s 438 is not ordinarily resorted to like the power u/s 439 & 437 of Cr.P.C. [Praveen Dubey Vs. Ravishankar] ...518**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 437, 438 व 439 – जमानत – द.प्र.सं. की धारा 439 एवं 437 के अंतर्गत शक्ति के समान, धारा 438 के अंतर्गत प्रदत्त शक्ति का साधारणतः अवलम्ब नहीं लिया जा सकता। (प्रवीण दुबे वि. रविशंकर) ...518

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory bail **– Parameters and principles to grant bail under section 438 and 439 are different – However grant of bail u/s 439 Cr.P.C. to co-accused would not lead to accept material change in the circumstances to other co-accused persons – Hence it does not make a ground to allow repeat bail application u/s 438 Cr.P.C. – Held – Petition allowed – Bail granted to non-applicant No. 1 and 2 on repeat bail application by impugned order, set aside. [Praveen Dubey Vs. Ravishankar] ...518**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – धारा 438 एवं धारा 439 के अंतर्गत जमानत प्रदान करने के लिये मापदण्ड और सिद्धांत भिन्न हैं – किन्तु सह–अभियुक्त को धारा 439 दं.प्र.सं. के अंतर्गत जमानत प्रदान किये जाने से अन्य सह–अभियुक्तगण के लिये परिस्थितियों में तात्विक बदलाव होना स्वीकार करने की धारणा नहीं की जा सकेगी – अतः धारा 438 दं. प्र.सं. के अंतर्गत जमानत का पुनरावेदन मंजूर करने का आधार नहीं बन सकता – अभिनिर्धारित – याचिका मंजूर – आक्षेपित आदेश द्वारा अनावेदक क. 1 व 2 को जमानत के पुनरावेदन पर प्रदान की गई जमानत, अपास्त। (प्रवीण दुबे वि. रविशंकर) ...518

Criminal Procedure Code, 1973 (2 of 1974), Sections 438 & 439, Penal Code (45 of 1860), Sections 306 & 34 – Anticipatory bail – Special power of High Court or court of session regarding bail – **Grant of subsequent anticipatory bail by the Additional Sessions Judge was beyond her competence after rejection of the application of the accused person by the High Court as there was no substantial change in the facts and circumstances – Such power exercised by A.S.J. amounts to abuse of powers of the court, which cannot be sustained in law. [Praveen Dubey Vs. Ravishankar]** ...518

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 438 व 439, दण्ड संहिता (1860 का 45), धाराऐं 306 व 34 – अग्रिम जमानत – जमानत के संबंध में उच्च न्यायालय या सत्र न्यायालय की विशेष शक्ति – उच्च न्यायालय द्वारा अभियुक्तगण के आवेदनपत्र को अस्वीकार किये जाने के पश्चात् अतिरिक्त सत्र न्यायाधीश द्वारा पश्चात्वर्ती अग्रिम जमानत प्रदान की जाना उसकी सक्षमता से परे था, जबकि तथ्यों और परिस्थितियों में कोई सारभूत बदलाव नहीं हुआ था – अतिरिक्त सत्र न्यायाधीश द्वारा उक्त शक्ति का प्रयोग, न्यायालय की शक्तियों का दुरूपयोग की कोटि में आता है, जिसे विधि अंतर्गत कायम नहीं रखा जा सकता। (प्रवीण दुबे वि. रविशंकर) ...518

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Conditions for granting bail – **Held – While granting bail the Courts will keep in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, and the accused can be released on his own bond, with or without sureties – When sureties should be demanded and what sum should be insisted on are dependent on variables – Condition imposed by ASJ for two local sureties through Rin Pustika in which previously no bail was furnished is modified. [Omkar Vs. State of M.P.]** ...803

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विलयन का सिद्धांत – विशेष अनुमति याचिका का आरंभ में खारिज किया

जाना – विशेष अनुमति याचिका आरंभ में ही खारिज – यह नहीं कहा जा सकता कि उच्च न्यायालय के निर्णय का सर्वोच्च न्यायालय के आदेश के साथ विलय हुआ। (श्री राम बिल्डर्स वि. म.प्र. राज्य) (SC)...1

Education – Admission Test – Mass Copying – **Mass Copying has to be decided in the facts of each case and cannot be laid down with mathematical precision – Seating Pattern was changed and candidates were sitting in pairs at the end of row – Candidates sitting in pairs had secured same marks and one of the candidates of the pair was from outside the State of Madhya Pradesh and other candidates, in most of cases, did not belong to the city where examination centre was located – There is striking similarity in right match answers and wrong match answers – Candidates who were from outside the State of Madhya Pradesh and had secured good marks have neither taken admission nor challenged the cancellation of result – Decision of Committee to cancel the result as candidates were indulged in mass copying was right – Principle of Natural Justice does not apply. [Neetu Singh Markam Vs. State of M.P.]** (DB)...651

शिक्षा – प्रवेश परीक्षा – सामूहिक नकल – सामूहिक नकल का निर्णय प्रत्येक प्रकरण के तथ्यों के अनुसार होगा और गणितीय परिशुद्धता के साथ प्रतिपादित नहीं किया जा सकता – बैठने की व्यवस्था बदली गई और अभ्यर्थीगण पंक्ति के अंत में जोडियों में बैठे थे – जोड़ियों में बैठे अभ्यर्थियों ने समान अंक प्राप्त किये और जोड़ी का एक अभ्यर्थी मध्यप्रदेश राज्य के बाहर का था तथा अधिकतर मामलों में अन्य अभ्यर्थी उस शहर से नहीं थे जहां परीक्षा केंद्र स्थित था – सही अंकित उत्तरों में एवं गलत अंकित उत्तरों में बहुत स्पष्ट रूप से समानताएं हैं – अभ्यर्थीगण जो मध्यप्रदेश राज्य के बाहर से थे और जिन्होंने अच्छे अंक प्राप्त किये थे, ना तो उन्होंने प्रवेश लिया न ही परिणाम के निरस्तीकरण को चुनौती दी – सामूहिक नकल में अभ्यर्थियों के लिप्त होने के कारण परिणाम निरस्त करने का समिति का निर्णय उचित था – नैसर्गिक न्याय का सिद्धांत लागू नहीं होता। (नीतू सिंह मरकाम वि. म.प्र. राज्य) (DB)...651

Education – Opinion of Experts – **Academic issues must be left to be decided by Expert Body which deserves great respect – Court cannot act as an appellate authority in such matters – When two views are possible and if Expert Body has taken a possible view, the same deserves acceptance. [Neetu Singh Markam Vs. State of M.P.]** (DB)...651

शिक्षा – विशेषज्ञ का अभिमत – शैक्षिक विवाद्यकों का निराकरण विशेषज्ञ समूह पर छोड़ा जाना चाहिये जो विशेष सम्मान के पात्र हैं –न्यायालय उक्त मामलों

में अपीली प्राधिकारी के रूप में कार्यवाही नहीं कर सकता – जब दो दृष्टिकोण संभावित हैं और यदि विशेषज्ञ समूह ने एक संभावित दृष्टिकोण लिया है वह स्वीकार करने योग्य है। (नीतू सिंह मरकाम वि. म.प्र. राज्य) (DB)...651

Employees' State Insurance Act (34 of 1948), Section 53, Motor Vehicles Act (59 of 1988), Section 166 – Motor Accident Claim – Maintainability – **Review sought by the Insurance Company on the ground that the claim under the Motor Vehicle Act was not maintainable and was statutorily barred – Held – There is no pleading, proof or evidence whatsoever to indicate that the injury as sustained by the applicant was an employment injury sustained by him as an employee under the ESI Act – The case has been dealt with as a plain and simple case of motor accident in which compensation has been awarded – Review petition dismissed. [IFFCO Tokyo General Insurance Co. Ltd. Vs. Smt. Meena Mahesh]** ...758

कर्मचारी राज्य बीमा अधिनियम (1948 का 34), धारा 53, मोटर यान अधिनियम (1988 का 59), धारा 166 – मोटर दुर्घटना दावा – पोषणीयता – बीमा कंपनी द्वारा इस आधार पर पुनर्विलोकन चाहा गया कि मोटरयान अधिनियम के अंतर्गत दावा पोषणीय नहीं था और कानूनी रूप से वर्जित था – अभिनिर्धारित – यह दर्शाने के लिये कोई अभिवचन, सबूत या साक्ष्य नहीं कि आवेदक द्वारा सहन की गई क्षति उसके द्वारा कर्मचारी राज्य बीमा अधिनियम के अंतर्गत एक कर्मचारी के रूप में सहन की गई नियोजन क्षति है – प्रकरण को मोटर दुर्घटना के एक सीधे सादे प्रकरण के रूप में निपटाया गया जिसमें प्रतिकर अवार्ड किया गया – पुनर्विलोकन याचिका खारिज। (इफको टोक्यो जनरल इंश्योरेन्स कं. लि. वि. श्रीमती मीना महेश) ...758

Evidence Act (1 of 1872), Section 3 – See – Penal Code, 1860, Section 302 **[Jagannath Yadav Vs. State of M.P.]** (DB)...458

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धारा 302 (जगन्नाथ यादव वि. म.प्र. राज्य) (DB)...458

Evidence Act (1 of 1872), Section 3 – Witness – **Examination in chief of prosecution witnesses was recorded on 17.12.1999 – Witnesses were not cross examined on the ground of non-preparation of case – Prosecution witnesses were cross examined after one month when they turned hostile – Witnesses were either won over or they were threatened not to support the prosecution's case – In such circumstance, previous testimony cannot be brushed aside on the ground that the**

witness was declared hostile – Deposition of witness given prior to cross examination can be relied upon if there is corroborative evidence to that effect. [Samar Jeet Singh Vs. State of M.P.] (DB)...187

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षी – अभियोजन साक्षियों का मुख्य परीक्षण 17.12.1999 को अभिलिखित किया गया – प्रकरण की तैयारी नहीं होने के आधार पर साक्षियों का प्रतिपरीक्षण नहीं किया गया – अभियोजन साक्षियों का प्रतिपरीक्षण एक माह पश्चात किया गया, जब वे पक्ष विरोधी बन गये – साक्षीगण को या तो अपने तरफ किया गया या अभियोजन प्रकरण का समर्थन न करने के लिए धमकाया गया – उक्त परिस्थिति में, पूर्वतर परिसाक्ष्य को इस आधार पर ठुकराया नहीं जा सकता, कि साक्षी को पक्ष विरोधी घोषित किया गया था – प्रतिपरीक्षण से पूर्व साक्षी के कथन पर विश्वास किया जा सकता है, यदि उस प्रभाव का पुष्टिकारक साक्ष्य है। (समर जीत सिंह वि. म.प्र. राज्य) **(DB)...187**

***Evidence Act (1 of 1872), Section 24 – See – Penal Code, 1860, Section 302* [Hemraj Vs. State of M.P.] (DB)...437**

साक्ष्य अधिनियम (1872 का 1), धारा 24 – देखें – दण्ड संहिता, 1860, धारा 302 (हेमराज वि. म.प्र. राज्य) **(DB)...437**

***Evidence Act (1 of 1872), Section 45 – Expert Opinion* – Expert opinion can be admitted only when the expert opining the act has actually seen the corpus – Merely seeing the postmortem report and opining the expertness is not admissible. [Ritesh Vs. State of M.P.] (DB)...218**

साक्ष्य अधिनियम (1872 का 1), धारा 45 – विशेषज्ञ का अभिमत – विशेषज्ञ का अभिमत केवल तब स्वीकार किया जा सकता है, जब कृत्य का अभिमत देने वाले विशेषज्ञ ने प्रत्यक्ष रुप से शव देखा हो – मात्र शव विच्छेदन प्रतिवेदन देखकर विशेषज्ञ अभिमत देना ग्राह्य नहीं। (रीतेश वि. म.प्र. राज्य) **(DB)...218**

***Evidence Act (1 of 1872), Section 45 – See – Negotiable Instruments Act, 1881, Section 20* [Iqrar Ahmed Vs. Mohd. Sadiq] ...511**

साक्ष्य अधिनियम (1872 का 1), धारा 45 – देखें – परक्राम्य लिखत अधिनियम, 1881, धारा 20 (इकरार अहमद वि. मोहम्मद सादिक) **...511**

***Guardians and Wards Act (8 of 1890), Sections 12 & 25 – See – Hindu Minority and Guardianship Act, 1956, Section 6* [Surendra Patel Vs. Ritu @ Vandana Patel] (DB)...177**

संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धाराऐं 12 व 25 – देखें – हिंदू अप्राप्तवयता और संरक्षकता अधिनियम, 1956, धारा 6 (सुरेन्द्र पटेल वि.

रितु उर्फ वन्दना पटेल) (DB)...177

Hindu Marriage Act (25 of 1955), Section 24 – Grant of interim alimony to wife – **Respondent is legally wedded wife residing separately – Not having any source of income – Held – Impugned order has been passed under the vested discretionary jurisdiction, same cannot be interfered with – If alimony is not granted to the spouse, who is not having any source of income, then such person could not live to see the fate of the matter – Amount of Rs. 5,000/- by the trial court, could not said to be on higher side – Petition dismissed. [Rajesh Gupta Vs. Mohini Gupta]** ...348

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – पत्नी को अंतरिम निर्वाह व्यय दिया जाना – प्रत्यर्थी विधिक रूप से विवाहित पत्नी है जो कि अलग रह रही है– उसके पास आय का कोई साधन नहीं– अभिनिर्धारित– आक्षेपित आदेश निहित वैवेकिक अधिकारिता के अंतर्गत पारित, उक्त के साथ हस्तक्षेप नहीं किया जा सकता– पत्नी को यदि निर्वाह व्यय नहीं दिया गया, जिसके पास आय का कोई साधन नहीं है, तब ऐसा व्यक्ति मामले का भाग्य देखने के लिए जीवित ही नहीं रहेगा – विचारण न्यायालय द्वारा 5,000/– रू. की राशि, अधिक होना नहीं कहा जा सकता – याचिका खारिज। (राजेश गुप्ता वि. मोहनी गुप्ता) ...348

Hindu Marriage Act (25 of 1955), Section 24 – Interim alimony and litigation cost – **Interim alimony @ Rs. 1000/- per month for respondent and school going son – Challenge is made on the ground that the wife is living seperately without any sufficient cause although the petitioner is ready to keep her – She is also Samvida Shala Shikshika-I and competent to maintain herself – Held – Even if the respondent is excluded to get interim alimony, petitioner is bound to pay the award amount for the welfare of school going boy despite the fact that she is also getting Rs. 1000/- per month awarded by Magistrate u/s 125 of Cr.P.C. – Petition dismissed. [Brijesh Vishwakarma Vs. Smt. Laxmi Vishwakarma]** ...609

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – अंतरिम निर्वाह व्यय एवं वाद व्यय – रू. 1000/– प्रतिमाह की दर से प्रत्यर्थी एवं स्कूल में पढ़ने वाले पुत्र हेतु अंतरिम निर्वाह व्यय – इस आधार पर चुनौती दी गई कि पत्नी बिना किसी पर्याप्त कारण के अलग रह रही है यद्यपि याची उसे रखने के लिये तैयार है – वह संविदा शाला शिक्षिका–I भी है और स्वयं का भरणपोषण करने के लिये सक्षम है – अभिनिर्धारित – यदि अंतरिम निर्वाह व्यय प्राप्त करने के लिये प्रत्यर्थी को अपवर्जित किया जाता है, तब भी याची, स्कूल में पढ़ने वाले बालक के कल्याण हेतु

अवार्ड की रकम अदा करने के लिये बाध्य है, इस तथ्य के बावजूद कि प्रत्यर्थी को मजिस्ट्रेट द्वारा द.प्र.सं. की धारा 125 के अंतर्गत अवार्ड किया गया रू.1000/– प्रतिमाह भी प्राप्त हो रहा है – याचिका खारिज। (ब्रजेश विश्वकर्मा वि. श्रीमती लक्ष्मी विश्वकर्मा) ...609

Hindu Marriage Act (25 of 1955), Section 24 – Interim alimony and maintenance – **If the husband is healthy and abled body person then he could not escape from his liability to pay interim alimony or the maintenance to his wife on account of not having any source of income or less income. [Dileep Singh Vs. Smt. Bharti Mehar] ...607**

हिन्दू विवाह अधिनियम (1955 का 25) – धारा 24 – अंतरिम निर्वाह व्यय एवं भरण–पोषण – यदि पति स्वस्थ एवं सक्षम शरीर का व्यक्ति है तो आय का कोई स्त्रोत न होने या कम आमदनी होने के आधार पर वह पत्नी को अंतरिम निर्वाह व्यय या भरण–पोषण प्रदाय करने के दायित्व से नहीं बच सकता। (दिलीप सिंह वि. श्रीमती भारती मेहर) ...607

Hindu Marriage Act (25 of 1955), Section 25 – Permanent alimony – **Permanent alimony @ Rs. 4,000/- p.m. was granted while passing decree of divorce – No application in this regard was made – Held – Learned trial court has committed an error while awarding permanent alimony and maintenance u/s 25 of the Act without filing any application for this purpose by wife – Impugned order pertaining to grant of permanent alimony to respondent is set-aside. [Manoj Vs. Smt. Raksha] (DB)...173**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 25 – स्थाई निर्वाह भत्ता – विवाह विच्छेद की डिक्री पारित करते हुए 4000/– रु. प्रतिमाह की दर से स्थाई निर्वाह भत्ता प्रदान किया गया था – इस संबंध में आवेदन नहीं दिया गया – अभिनिर्धारित – पत्नी द्वारा इस प्रयोजन हेतु कोई आवेदन प्रस्तुत किये बिना विद्वान विचारण न्यायालय ने अधिनियम की धारा 25 के अंतर्गत स्थाई निर्वाह भत्ता एवं भरण पोषण प्रदाय कर त्रुटि कारित की – प्रत्यर्थी को स्थाई निर्वाह भत्ता देने से संबंधित आक्षेपित आदेश अपास्त। (मनोज वि. श्रीमती रक्षा) (DB)...173

Hindu Minority and Guardianship Act, (32 of 1956), Section 6, Guardians and Wards Act (8 of 1890), Sections 12 & 25 – Custody of minor girl aged 4½ years – Consideration – **Custody given to mother – Paramount consideration is welfare of child and not rights of her parents – Both families belong to agricultural class and they have similar financial and social back ground – Daughter is still 4½ years**

old and the mother is capable for taking care her properly – No infirmity in the impugned order – Appeal dismissed. [Surendra Patel Vs. Ritu @ Vandana Patel] (DB)...177

हिंदू अप्राप्तवयता और संरक्षकता अधिनियम, (1956 का 32), धारा 6, संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धाराऐं 12 व 25 – 4½ वर्ष की उम्र की अवयस्क बालिका का संरक्षण – विचारण – संरक्षण मां को सुपुर्द किया गया – शिशु का कल्याण सर्वोपरि विचार में लिया जाता है और न कि माता-पिता के अधिकार – दोनों परिवार कृषि वर्ग से संबंधित हैं और समान वित्तीय एवं सामाजिक पृष्ठभूमि के हैं – बालिका अभी 4½ वर्ष की है और उसकी उचित देखरेख करने में माता सक्षम है – आक्षेपित आदेश में कोई निःशक्तता नहीं – अपील खारिज। (सुरेन्द्र पटेल वि. रितु उर्फ वन्दना पटेल) (DB)...177

***Income Tax Act (43 of 1961), Section 132 – Search & Seizure* – Attachment of agricultural land and open plots – Held – Action of seizure of the immovable properties which are in the nature of agricultural lands and open plots is wholly without any authority of law and cannot be sustained – No case by respondents is made out of impossibility or impracticability as per the requirement of second proviso of Section 132(1) – Taking the recourse of the provision of deemed seizure of the petitioner's immovable properties is wholly unwarranted – Impugned action of seizure quashed – Petitioner's immovable properties be released from attachment forthwith – Petition allowed. [Rajendra Singh Nayak Vs. Deputy Director of Investigation-Income Tax] (DB)...350**

आयकर अधिनियम (1961 का 43), धारा 132 – तलाशी एवं जप्ती – कृषि भूमि एवं खुले भूखंड की कुर्की – अभिनिर्धारित – अचल संपत्तियां जो कृषि भूमि एवं खुले भूखंडों के स्वरूप की हैं उसकी जप्ती की कार्यवाही पूर्णतः विधि के किसी प्राधिकार के बिना की गई है और कायम नही रखी जा सकती है – प्रत्यर्थीगण द्वारा धारा 132(1) के द्वितीय परंतुक की अपेक्षानुसार असंभाव्यता या अव्यवहारिकता का कोई प्रकरण गठित नहीं किया गया – याची की अचल संपत्ति के बारे में जप्ती माने जाने के उपबंध का अवलंब लेना पूर्णतः अनावश्यक है – जप्ती की आक्षेपित कार्यवाही अभिखंडित – तत्काल प्रभाव से याची की अचल संपत्ति को कुर्की से मुक्त किया जाए – याचिका मंजूर। (राजेन्द्र सिंह नायक वि. डिप्टी डायरेक्टर ऑफ इनवेस्टिगेशन–इनकम टैक्स) (DB)...350

***Income Tax Act (43 of 1961), Section 147 – Reassessment proceedings* – Can it be reopened by Assessing Officer for the year 2007-08 on the basis of directions of CIT (Appeals) passed in appeal filed for the assessment year 2008-09 – Held – Since the impugned**

notice issued by the Assessing Officer u/s 147 of the Act merely on the basis of directions issued by CIT (Appeals) in the appeal filed in respect of the year 2008-09 – Same has not been issued independently – Is not sustainable – However, Assessing Officer can take fresh steps against the petitioner. [Pramod Kumari Singhal (Smt.) Vs. Income Tax Officer, Indore] (DB)...92

आयकर अधिनियम (1961 का 43), धारा 147 – पुनर्निर्धारण कार्यवाही – निर्धारण वर्ष 2008-09 के लिए प्रस्तुत की गई अपील में पारित किये गये सी.आई.टी. (अपील) के निदेशों के आधार पर वर्ष 2007-08 हेतु क्या उसे निर्धारण अधिकारी द्वारा पुनः खोला जा सकता है – अभिनिर्धारित – चूंकि वर्ष 2008-09 में प्रस्तुत की गई अपील के संबंध में केवल सी.आई.टी.(अपील) द्वारा जारी निदेशों के आधार पर अधिनियम की धारा 147 के अंतर्गत निर्धारण अधिकारी द्वारा आक्षेपित नोटिस जारी किया गया – उक्त को स्वतंत्र रुप से जारी नहीं किया गया – कायम नहीं रखा जा सकता – किन्तु याची के विरुद्ध कर निर्धारण अधिकारी नये सिरे से कार्यवाही कर सकता है। (प्रमोद कुमारी सिंघल (श्रीमती) वि. इनकम टैक्स ऑफीसर, इंदौर) (DB)...92

***Industrial Disputes Act (14 of 1947) – Section 33(2)(b) – Approval* – Dispute pertaining to promotion of petitioner was pending before Labour Court – In the meanwhile charge-sheet was issued and after holding departmental enquiry, an application was filed by respondents seeking approval of the punishment of termination of service – Held – Section 33(1) relates to dispute in respect of which proceeding is pending and Section 33(2) relates to matter not connected with the dispute – As dispute pending pertains to promotion and not dismissal therefore, approval for action sought was in respect of termination and therefore, the matter is covered under Section 33(2)(b) and not Section 33(1)(b) – By granting approval Labour Court has not exceeded its jurisdiction – Petition dismissed. [Prayag Modi Vs. South Eastern Coal Fields Ltd.] ...355**

औद्योगिक विवाद अधिनियम (1947 का 14) – धारा 33(2)(बी) –अनुमोदन – याची का पदोन्नति से संबंधित विवाद, श्रम न्यायालय के समक्ष लंबित था – इसी दौरान आरोप पत्र जारी किया गया और विभागीय जांच करने के पश्चात् सेवा समाप्ति की शास्ति का अनुमोदन चाहते हुए प्रत्यर्थी द्वारा आवेदन प्रस्तुत किया गया – अभिनिर्धारित – धारा 33(1) ऐसे विवाद से संबंधित है जिसके संबंध में कार्यवाही लंबित है और धारा 33(2), ऐसे मामले से संबंधित है जो विवाद से जुड़ा नहीं है – चूंकि लंबित विवाद पदोन्नति से संबंधित है न कि पदच्युति से, अतः चाही गयी कार्यवाही हेतु अनुमोदन, सेवा समाप्ति के संबंध में था और इसलिये मामला धारा

33(2)(बी) के अंतर्गत आच्छादित है और न कि धारा 33 (1)(बी) के अंतर्गत – अनुमोदन प्रदान करके श्रम न्यायालय अपनी अधिकारिता से बाहर नहीं गया है – याचिका खारिज। (प्रयाग मोदी वि. साउथ ईस्टर्न कोल फील्डस् लि.) ...355

Industrial Disputes Act (14 of 1947), Section 33C(2) – Back Wages **– Respondent raised an industrial dispute and reference was answered in favour of respondent and employer was directed to treat the respondent in service till he completed 60 years of age – Joining of respondent was accepted however, he was asked to execute an agreement of disclaimer of back wages of 54 months – Labour Court directed for payment of Rs. 98,442 in lieu of wages for 54 months as reference – Held – Any agreement which is forbidden by law is prohibited – Further action of employer in getting the agreement executed amounts to unfair labour practice – Labour Court was well within its jurisdiction in allowing the application under Section 33C(2) of 1947 Act – Petition dismissed. [State of M.P. Vs. Jai Kishan]** ...362

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33सी(2) – पिछला वेतन – प्रत्यर्थी ने औद्योगिक विवाद उठाया और प्रत्यर्थी के पक्ष में निर्देश का समाधान किया गया तथा प्रत्यर्थी को 60 वर्ष की आयु पूर्ण होने तक सेवारत माने जाने के लिये नियोक्ता को निदेशित किया गया – प्रत्यर्थी का पदभार ग्रहण मान्य किया गया परंतु उसे 54 माह के पिछले वेतन का दावा–त्याग का करार निष्पादित करने को कहा गया – श्रम न्यायालय ने निर्देश के रूप में 54 माह के वेतन के बदले रू. 98,442 का भुगतान करने के लिये निदेशित किया – अभिनिर्धारित – कोई करार जो विधि द्वारा निषिद्ध है, वह प्रतिषिद्ध है – करार निष्पादित करने की नियोक्ता की अतिरिक्त कार्यवाही, अनुचित श्रम–व्यवहार की कोटि में आती है – अधिनियम 1947 की धारा 33सी (2) के अंतर्गत आवेदन मंजूर करना भलीभांति श्रम न्यायालय की अधिकारिता के भीतर था – याचिका खारिज। (म.प्र. राज्य वि. जय किशन) ...362

Jail Services (Gazetted) Recruitment and Promotion Rules, M.P. 2002 – Promotion **– Respondent Nos. 3 to 7 were promoted in accordance with unamended Rules – Rules were amended on 25.10.2008 by reducing earlier prescribed quota for Senior Probation and Welfare Officer from 20% to 10% – D.P.C. meeting was held on 25.06.2009 – Promotion of respondent Nos. 3 to 7 under unamended 2002 Rules was challenged as bad in law – Held – Since in the years 2004, 2006 and 2007, no post of Superintendent, District Jail were filled in by promotion of Senior Probation and Welfare Officers, same were**

carried forward – There were 5 backlog posts of Superintendent, District Jail available for promotion from amongst the Senior Probation and Welfare Officer – D.P.C. was convened and the respondent Nos. 3 to 7 were considered and as they have completed the requisite years of service – They have rightly been promoted – Petition dismissed. [Madhukant Tiwari Vs. State of M.P.] ...50

जेल सेवा (राजपत्रित) भर्ती एवं पदोन्नति नियम, म.प्र. 2002 – पदोन्नति – प्रत्यर्थी क्र. 3 से 7 तक को असंशोधित नियमों के अनुसार पदोन्नत किया गया – वरिष्ठ परिवीक्षा एवं कल्याण अधिकारी के पूर्व में विहित कोटा को, 25.10.2008 को नियम संशोधित करके 20 प्रतिशत से घटाकर 10 प्रतिशत किया गया – डी.पी.सी. मीटिंग 25.06.2009 को की गई – प्रत्यर्थी क्र. 3 से 7 की असंशोधित नियम, 2002 के अंतर्गत पदोन्नति को विधि में अनुचित बताते हुए चुनौती दी गई – अभिनिर्धारित – चूंकि वर्ष 2004, 2006 और 2007 में अधीक्षक, जिला जेल के किसी पद को वरिष्ठ परिवीक्षा एवं कल्याण अधिकारियों की पदोन्नति द्वारा नहीं भरा गया और उन्हें अग्रनीत किया गया – वरिष्ठ परिवीक्षा एवं कल्याण अधिकारी में से पदोन्नति हेतु अधीक्षक, जिला जेल के 5 अवशिष्ट पद उपलब्ध थे – डी.पी.सी. बुलायी गयी और प्रत्यर्थी क्र. 3 से 7 तक को विचार में लिया गया और जैसा कि उन्होंने अपेक्षित वर्षों की सेवा पूर्ण कर ली थी, उन्हें उचित रुप से पदोन्नत किया गया है – याचिका खारिज। (मधुकांत तिवारी वि. म.प्र. राज्य) ...50

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 53 – Bail **– Held – There is no possibility that if petitioner is released on bail, his release shall bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release shall defeat the ends of justice – Both the courts below committed jurisdictional error and illegality in passing both the orders – Petitioner released on bail – Revision allowed. [Ishan @ Lucky Vs. State of M.P.] ...479**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 53 – जमानत – अभिनिर्धारित– कोई संभावना नहीं कि यदि आवेदक को जमानत पर छोड़ा गया तो उसकी रिहाई उसे किसी नामी अपराधी के सानिध्य में लायेगी या उसे नैतिक, शारीरिक या मानसिक खतरे में डालेगी या उसकी रिहाई न्याय के उद्देश्य को पराजित करेगी – दोनों निचले न्यायालयों ने दोनों आदेश पारित करने में अधिकारिता की त्रुटि एवं अवैधता, कारित की – याची को जमानत पर छोड़ा गया – पुनरीक्षण मंजूर। (ईशान उर्फ लकी वि. म.प्र. राज्य) ...479

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 53 – Bail **– Though the bail application of the applicant**

cannot be rejected on the first two grounds provided in Section 12 of the Act, however, after considering the peculiar facts that the offence is committed in public place in broad day light by causing 24 injuries to the deceased is sufficient to infer that the applicant is in a position to scare the witnesses and no witness would come forward to depose before the trial court – Therefore, in view of the third ground of Section 12 of the Act, his being at large would defeat the ends of justice – Revision is dismissed. [Mintu @ Siryaaz Khan Vs. State of M.P.] ...505

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 53 – जमानत – यद्यपि आवेदक के जमानत के आवेदन को अधिनियम की धारा 12 में उपबंधित प्रथम दो आधारों पर अस्वीकार नहीं किया जा सकता, किन्तु विशिष्ट तथ्यों को विचार में लेने के पश्चात् कि अपराध दिन–दहाड़े सार्वजनिक स्थान पर मृतक को 24 क्षतियां पहुंचाकर कारित किया गया, यह इस निष्कर्ष पर पहुंचने के लिये पर्याप्त है कि आवेदक, साक्षियों को भयभीत करने की स्थिति में है और विचारण न्यायालय के समक्ष कथन करने के लिये कोई साक्षी आगे नहीं आयेगा – इसलिये अधिनियम की धारा 12 के तृतीय आधार को दृष्टिगत रखते हुए, उसके आज़ाद रहने से न्यायहित की हानि होगी – पुनरीक्षण खारिज। (मिन्टू उर्फ सिरयाज खान वि. म.प्र. राज्य) ...505

Land Acquisition Act (1 of 1894), Sections 4 and 6 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24 **[Jeevan Lal Mishra Vs. State of M.P.] (DB)...731**

भूमि अर्जन अधिनियम (1894 का 1), धाराऐं 4 व 6 – देखें – भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013, धारा 24 (जीवनलाल मिश्रा वि. म.प्र. राज्य) **(DB)...731**

Land Acquisition Act (1 of 1894), Section 5-A – Notices **– Petitioners do not disclose the names of the land owners to whom the personal notices were not served under section 5-A of Act, 1894 – Proceedings are not vitiated. [Jeevan Lal Mishra Vs. State of M.P.] (DB) ...731**

भूमि अर्जन अधिनियम (1894 का 1), धारा 5–ए – नोटिस – याचीगण ने उन भूमि स्वामियों के नाम प्रकट नहीं किये जिन पर अधिनियम 1894 की धारा 5–ए के अंतर्गत व्यक्तिगत नोटिस तामील नहीं किये गये – कार्यवाही दूषित नहीं। (जीवनलाल मिश्रा वि. म.प्र. राज्य) **(DB)...731**

Land Revenue Code, M.P. (20 of 1959), Section 248 **– Penalty for unauthorizedly taking possession of land – Held – That, the**

provisions of this Section are applicable to municipal area. [State of M.P. Vs. Rajendra Kumar] ...185

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 248 – अप्राधिकृत रुप से भूमि का कब्जा लेने के लिये शास्ति – अभिनिर्धारित – यह कि, इस धारा के उपबंध नगरपालिका क्षेत्र को लागू होते हैं। (म.प्र. राज्य वि. राजेन्द्र कुमार) ...185

Limitation Act (36 of 1963), Section 5 – Condonation of delay – Restoration application **– There is long delay of 2581 days – Filed on the ground of lack of information from the counsel – There is also no affidavit of the advocate in support of application – Held – Whenever any proceeding is filed at belated stage after the period prescribed under the law, then during that period the valuable right is mature in favour of the other side and such right of the other party could not be curtailed lightly by adopting any lenient view or for extending the sympathy to the party – Petitioner has not proved sufficient cause for condoning the delay – Petition is dismissed. [Saiyad Kamar Ali Vs. State of M.P.] ...509**

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिए माफी – प्रत्यावर्तन का आवेदन – 2581 दिनों का दीर्घ विलम्ब – अधिवक्ता से सूचना का अभाव के आधार पर प्रस्तुत – आवेदन के समर्थन में अधिवक्ता का शपथपत्र भी नहीं – अभिनिर्धारित – जब कभी विधि अंतर्गत विहित अवधि के पश्चात, विलंबित प्रक्रम पर कोई कार्यवाही प्रस्तुत की जाती है, तब उस अवधि के दौरान अन्य पक्षकार के पक्ष में मौलिक अधिकार पूर्ण हो जाता है और अन्य पक्षकार के उक्त अधिकार को किसी उदार दृष्टिकोण को अपनाकर या पक्षकार को सहानुभूति देने हेतु, उदासीनतापूर्वक कम नहीं किया जा सकता – याची ने विलम्ब के लिए माफी का पर्याप्त कारण साबित नहीं किया – याचिका खारिज। (सैयद कमर अली वि. म. प्र. राज्य) ...509

Limitation Act (36 of 1963), Section 5 – See – Criminal Procedure Code, 1973, Sections 397 & 401 **[Arjun Namdeo Vs. State of M.P.] ...476**

परिसीमा अधिनियम (1963 का 36), धारा 5 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराऐं 397 व 401 (अर्जुन नामदेव वि. म.प्र. राज्य) ...476

Limitation Act (36 of 1963), Sections 5 & 14 – See – Arbitration and Conciliation Act, 1996, Section 34 **[Commissioner, M.P. Housing Board Vs. M/s. Mohan Lal & Co.] ...785**

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परिसीमा अधिनियम (1963 का 36), धाराऐं 5 व 14 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धारा 34 (कमिश्नर, एम.पी. हाउसिंग बोर्ड वि. मे. मोहनलाल एण्ड कं.) ...785

Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jation Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. 1994, Section 4 **– Promotion of Respondent No. 2 to 7 was called in question on the ground that the same has been made de-hors the 100 point roster – 100 point roster would be applicable for the vacancies and the post available in one cadre – As per roster only 2 candidates of ST and one candidate of SC could have been considered for promotion – However respondent No. 2 to 7 were illegally promoted – Held – The action of respondent No. 1 cannot be affirmed – Since petitioners have also been promoted during the pendency of this petition but their seniority is placed after respondent No. 2 to 7, respondent No. 1 is directed to convene review DPC and to consider the case of the petitioners for grant of promotion with retrospective effect – In case they are found fit they be given promotion – Seniority list be prepared assigning proper placement to all these persons from the appropriate date – Reversion of illegally promoted persons, if necessary, be also ordered. [Ashok Kumar Shukla Vs. Awadhesh Pratap Singh University]** ...335

लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिए आरक्षण) अधिनियम,म.प्र.1994 धारा 4 – प्रत्यर्थी क्र.2 से 7 की पदोन्नति को इस आधार पर प्रश्नाधीन किया गया कि उक्त को 100 बिन्दु रोस्टर के असंबंद्ध किया गया है – 100 बिन्दु रोस्टर, एक काडर की रिक्तियों को और उपलब्ध पद को लागू होगा – रोस्टर के अनुसार, केवल अनु.ज.जा. के दो अभ्यर्थी एवं अनु. जाति के एक अभ्यर्थी को पदोन्नति हेतु विचार में लिया जा सकता था – किन्तु प्रत्यर्थी क्र.2 से 7 को अवैध रूप से पदोन्नत किया गया – अभिनिर्धारित – प्रत्यर्थी क्र.1 की कार्यवाही की पुष्टि नहीं की जा सकती – चूंकि याचियों को भी इस याचिका के लंबित रहने के दौरान पदोन्नत किया गया, परन्तु उनकी वरिष्ठता को प्रत्यर्थी क्र.2 से 7 के नीचे रखा गया, प्रत्यर्थी क्र.1 को निदेशित किया गया कि पुनर्विलोकन विभागीय पदोन्नति समिति बुलाये और याचियों को भूतलक्षी प्रभाव से पदोन्नति प्रदान किये जाने हेतु याचीगण के प्रकरण का विचार करें – यदि उन्हें योग्य पाया जाता है, उन्हें पदोन्नत किया जाये – इन सभी व्यक्तियों को उचित तिथि से योग्य स्थान पर रखकर वरिष्ठता सूची तैयार की जाये – अवैध रूप से पदोन्नत व्यक्तियों का प्रत्यावर्तन, यदि आवश्यक हो, भी आदेशित किया जाये। (अशोक कुमार शुक्ला वि. अवधेश प्रताप सिंह यूनिवर्सिटी) ...335

Mineral Concession Rules 1960, Rule 26 – See – *Mines and Minerals (Development and Regulation) Act, 1957, Section 11* [Ultratech Cement Ltd. Vs. State of M.P.] (DB)...123

खनिज छूट नियम, 1960, नियम 26 – देखें – *खान और खनिज (विकास और विनियमन) अधिनियम, 1957, धारा 11* (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य) (DB)...123

Mineral Concession Rules, 1960, Rule 63-A – Petitioner applied for grant of mining lease – Application for grant of mining lease was rejected belatedly without assigning any reasons – No reasons have been placed on record to show the inordinate delay in deciding the applications by State Govt. – Apparently the petitioner has suffered a prejudice on account of delay in passing the order – Impugned order cannot be sustained. [Ultratech Cement Ltd. Vs. State of M.P.] (DB)...123

खनिज छूट नियम, 1960, नियम 63ए – याची ने खनन पट्टा प्रदान किये जाने हेतु आवेदन किया – खनन पट्टा प्रदान किये जाने हेतु आवेदन को कोई कारण दर्शाये बिना विलम्बित रुप से अस्वीकार किया गया – राज्य सरकार द्वारा आवेदनों का विनिश्चिय करने में अत्याधिक विलम्ब का कोई कारण अभिलेख पर नहीं रखा गया – प्रकट रुप से याची ने आदेश पारित किये जाने में विलम्ब के फलस्वरुप प्रतिकूल प्रभाव सहन किया है – आक्षेपित आदेश को कायम नहीं रखा जा सकता। (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य) (DB)...123

Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18, Criminal Procedure Code, 1973 (2 of 1974), Section 457 – Supurdnama of Vehicle – Vehicle in question was seized as it was transporting illegal coal – No intimation to Magistrate as per the provisions of Rule 18 is given by authorized person – Magistrate has no power to release the vehicle unless and until intimation is given by authorized person – Application rejected. [Ruaab Ahmed Vs. State of M.P.] ...796

खनिज (अवैध खनन, परिवहन तथा भण्डारण निवारण) नियम, म.प्र. 2006, नियम 18, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 – *वाहन का सुपुर्दनामा* – प्रश्नगत वाहन को जप्त किया गया क्योंकि उसमें अवैध रूप से कोयले का परिवहन किया जा रहा था – प्राधिकृत व्यक्ति द्वारा नियम 18 के उपबंधों के अनुसार मजिस्ट्रेट को सूचित नहीं किया गया – मजिस्ट्रेट को वाहन मुक्त करने की शक्ति नहीं थी जब तक कि प्राधिकृत व्यक्ति द्वारा सूचना नहीं दी जाती – आवेदन अस्वीकार किया गया। (रूआब अहमद वि. म.प्र. राज्य) ...796

Mines and Minerals (Development and Regulation) Act (67 of

1957), Section 11 and Mineral Concession Rules 1960, Rule 26 – **Application of petitioner for grant of mining lease rejected by State Govt. – State Govt. has failed to assign reasons for rejection of the application of the petitioner by comparing the merits and demerits cases of other application qua the petitioner – Recording of reasons is a principle of natural justice – It ensures transparency and fairness in decision making – Impugned order has been passed contrary to the statutory mandate contained in Section 11(3) of the Act and Rule 26 of the Rules as well as in violation of principles of natural justice – Impugned order cannot be sustained in eye of law. [Ultratech Cement Ltd. Vs. State of M.P.]** **(DB)...123**

खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धारा 11 व खनिज छूट नियम, 1960, नियम 26 – खनन पट्टा प्रदान किये जाने हेतु याची के आवेदन को राज्य सरकार द्वारा अस्वीकार किया गया – जहां तक याची की योग्यता का संबंध है, अन्य आवेदन के प्रकरणों के गुण–दोषों की तुलना द्वारा याची के आवेदन की अस्वीकृति हेतु कारण दर्शाने मे राज्य सरकार विफल रही है – कारण अभिलिखित किये जाना नैसर्गिक न्याय का सिद्धांत है – यह निर्णय करने में पारदर्शिता एवं न्यायपूर्णता सुनिश्चित करता है – आक्षेपित आदेश को अधिनियम की धारा 11(3) एवं नियमों के नियम 26 में अंतर्विष्ट कानूनी आज्ञा के विपरीत पारित किया गया है और नैसर्गिक न्याय के सिद्धांतों का उल्लंघन है – आक्षेपित आदेश को विधि की दृष्टि से कायम नहीं रखा जा सकता। (अल्ट्राटेक सीमेन्ट लि. वि. म.प्र. राज्य) **(DB)...123**

Motor Vehicles Act (59 of 1988), Section 147 – Liability of Insurance Company – Fake driving licence **– If owner was vigilant enough to examine the driving licence of the driver and examined his competence at the time of engaging him, Insurance company is liable to indemnify the insured even if the licence is subsequently found fake. [Oriental Insurance Co. Ltd. Vs. Sandelal]** **...770**

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कंपनी का दायित्व – फर्जी ड्राइविंग लाइसेंस – यदि वाहन चालक के ड्राइविंग लाइसेंस का परीक्षण करने में स्वामी पर्याप्त रूप से सतर्क था और उसके नियोजन के समय उसकी सक्षमता का उसने परीक्षण किया था, यदि बाद में लाइसेंस को फर्जी पाया गया तब भी बीमा कंपनी बीमित की क्षतिपूर्ति के लिए उत्तरदायी है। (ऑरिएन्टल इंश्योरेन्स कं. लि. वि. संदेलाल) **...770**

Motor Vehicles Act (59 of 1988), Section 149 – Liability of Insurer **– Accident took place at 11 O'clock – Premium of insurance**

deposited at 3.10 O'clock – Vehicle was not insured when accident took place – Insurance Company not liable. [National Insurance Co. Ltd. Vs. Harpal Singh] ...168

मोटर यान अधिनियम (1988 का 59), धारा 149 – बीमाकर्ता का दायित्व – 11 बजे दुर्घटना घटी – बीमा का प्रीमियम 3.10 बजे जमा किया गया – दुर्घटना के समय वाहन बीमित नहीं – बीमा कम्पनी का दायित्व नहीं। (नेशनल इंश्योरेन्स कंपनी लि. वि. हरपाल सिंह) ...168

Motor Vehicles Act (59 of 1988), Section 149 – Liability of Insurer – **Tractor was insured for agricultural purposes – At the time of accident, tractor was being used for transporting sand and deceased was sitting on the trolley of such tractor – As tractor was being plied contrary to the purpose for which the same was insured, the insurance company is not liable. [Karan Lal Vs. Charan Lal] ...164**

मोटर यान अधिनियम (1988 का 59), धारा 149 – बीमाकर्ता का दायित्व – ट्रैक्टर को कृषि प्रयोजनों हेतु बीमित किया गया था – दुर्घटना के समय, ट्रैक्टर का उपयोग रेत परिवहन हेतु किया जा रहा था और उक्त ट्रैक्टर की ट्रॉली में मृतक बैठा था – चूंकि ट्रैक्टर को उस प्रयोजन के विपरीत चलाया जा रहा था, जिसके लिये वह बीमित था, बीमा कम्पनी उत्तरदायी नहीं। (करण लाल वि. चरण लाल) ...164

Motor Vehicles Act (59 of 1988), Section 166 – Claim Petition – Involvement of vehicle – **It is not discernible that from whom and from which vehicle belonging to BSF, the accident took place – Held – Matter remitted back with a direction to ascertain the involvement of offending vehicle – Tribunal shall also insist the appellants to produce the fact finding report and shall also examine the drivers who were deployed at relevant time – A fresh award be passed against the person involved in the accident. [Union of India Vs. Smt. Girja Sahu] ...760**

मोटर यान अधिनियम (1988 का 59), धारा 166 – दावा याचिका – वाहन की संलिप्तता – यह स्पष्ट नहीं कि बी.एस.एफ. के किस वाहन से और किससे दुर्घटना कारित हुई है – अभिनिर्धारित – इस निदेश के साथ मामला प्रतिप्रेषित कि दोषी वाहन की संलिप्तता को सुनिश्चित किया जाये – अधिकरण, अपीलार्थीगण से तथ्य के निष्कर्ष का प्रतिवेदन प्रस्तुत करने के लिये आग्रह करेगा और सुसंगत समय पदस्थ वाहन चालकों का परीक्षण भी करेगा – दुर्घटना में शामिल व्यक्ति के विरूद्ध नये सिरे से अवार्ड पारित किया जाये। (यूनियन ऑफ इंडिया वि. श्रीमती गिरजा साहू) ...760

Motor Vehicles Act (59 of 1988), Section 166 – See – Employees'

State Insurance Act, 1948, Section 53 **[IFFCO Tokyo General Insurance Co. Ltd. Vs. Smt. Meena Mahesh] ...758**

मोटर यान अधिनियम (1988 का 59), धारा 166 – देखें – कर्मचारी राज्य बीमा अधिनियम, 1948, धारा 53 (इफको टोक्यो जनरल इंश्योरेन्स कं. लि. वि. श्रीमती मीना महेश) ...758

Motor Vehicles Act (59 of 1988), Section 173(1) – Appeal against award **– Award is assailed on the ground that the driver was not having valid driving licence – Held – Since the owner has duly verified and checked the existence of driving licence before engaging the driver, he has not committed any mistake – Tribunal has rightly allowed the claim holding appellant liable to pay compensation – Appeal being merit less is dismissed. [ICICI Lombard Gen. Insurance Co. Vs. Golu] ...404**

मोटर यान अधिनियम (1988 का 59), धारा 173 (1) – अवार्ड के विरूद्ध अपील – अवार्ड को इस आधार पर चुनौती दी गई कि वाहन चालक के पास वैध ड्राईविंग लाइसेंस नहीं था – अभिनिर्धारित – चूंकि स्वामी ने वाहन चालक को नियोजित करने से पूर्व, ड्राईविंग लाइसेंस की उपस्थिति को सम्यक रूप से सत्यापित किया था और जांचा था, उसने कोई गलती कारित नहीं की – अधिकरण ने उचित रूप से प्रतिकर के भुगतान हेतु अपीलार्थी को उत्तरदायी ठहराते हुए दावा मंजूर किया – अपील गुणदोष विहीन होने से खारिज। (आई.सी.आई.सी.आई. लोम्बार्ड जनरल इंश्योरेन्स कं. वि. गोलू) ...404

Motor Vehicles Act (59 of 1988), Section 173(1) **– Award is assailed on the ground that there is negligence on the part of the deceased and awarded compensation is on higher side – Held – Tribunal has rightly awarded the compensation and has correctly recorded the finding regarding negligent driving on the part of the driver of the bus – Award amount is also not found to be excessive – Appeal being merit less is dismissed. [Shriram General Insurance Co. Ltd. Vs. Smt. Jeevan Bai] ...402**

मोटर यान अधिनियम (1988 का 59), धारा 173(1) – अवार्ड को इस आधार पर चुनौती दी गई कि मृतक की ओर से उपेक्षा थी और अवार्ड किया गया प्रतिकर अधिक था – अभिनिर्धारित – अधिकरण ने उचित रूप से प्रतिकर अवार्ड किया है और बस के चालक की ओर से उपेक्षापूर्ण वाहन चलाने के संबंध में सही ढंग से निष्कर्ष अभिलिखित किया है – अवार्ड की गई रकम भी अत्यधिक नहीं पायी गई – अपील गुणदोष विहीन होने से खारिज। (श्रीराम जनरल इंश्योरेन्स कं. लि. वि. श्रीमती जीवन बाई) ...402

Municipal Corporation Act, M.P. (23 of 1956), Section 405 – See – Constitution – Article 243Q **[State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore] (DB)...754**

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 405 – देखें – संविधान – अनुच्छेद 243Q (म.प्र. राज्य द्वारा सेक्रेटरी, अर्बन एडमिनिस्ट्रेशन एण्ड डव्हेलपमेन्ट डिपार्टमेन्ट वि. अभिनेश महोरे) **(DB)...754**

Municipalities Act, M.P. (37 of 1961), Section 5-A – See – Constitution – Article 243Q, **[State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore] (DB)...754**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5–ए – देखें – संविधान – अनुच्छेद 243Q, (म.प्र. राज्य द्वारा सेक्रेटरी, अर्बन एडमिनिस्ट्रेशन एण्ड डव्हेलपमेन्ट डिपार्टमेन्ट वि. अभिनेश महोरे) **(DB)...754**

'Municipalities Act, M.P. (37 of 1961), Section 5-A(2) – **Objections made with regard to the first notification expressing intent of inclusion of villages in the limits of Chhindwara Municipality were decided by the Collector and proposal was submitted to Governor on the basis of which final notification was issued on 28.08.2014 – Held – Sub-section (2) of Section 5-A explicitly postulates that the objection received by the Collector with regard to the intention to exclude or include certain areas from the limits of municipal areas must be placed before Governor for consideration before taking final decision – Impugned decision vitiated being not considered by the competent authority i.e. the Governor – Hence, original notification dated 18.06.2014 will remain undisturbed and objections concerning original notification be placed before the Governor for consideration. [Abhinesh Mahore Vs. State of M.P.] (DB)...376**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5–ए(2) – छिंदवाड़ा नगरपालिका की सीमाओं में गांवों को शामिल करने का आशय व्यक्त करते हुये प्रथम अधिसूचना के संबंध में किये गये आक्षेपों को कलेक्टर द्वारा निर्णित किया गया और राज्यपाल को प्रस्ताव प्रस्तुत किया गया जिसके आधार पर अंतिम अधिसूचना दिनांक 28.08.2014 को जारी की गई – धारा 5–ए की उपधारा (2) स्पष्ट रूप से परिकल्पित करती है कि नगरपालिक क्षेत्रों की सीमाओं से कतिपय क्षेत्रों का अपवर्जन या समावेश के आशय के संबंध में कलेक्टर द्वारा प्राप्त किये गये आक्षेप को, अंतिम निर्णय लेने से पूर्व राज्यपाल के समक्ष विचारण हेतु रखा जाना चाहिये – आक्षेपित निर्णय, सक्षम प्राधिकारी अर्थात् राज्यपाल द्वारा विचार में नहीं लिये

जाने के कारण दूषित – अतः मूल अधिसूचना दिनांक 18.06.2014 निर्विघ्न रूप से बनी रहेगी तथा मूल अधिसूचना से संबंधित आक्षेपों को राज्यपाल के समक्ष विचारण हेतु रखा जाये। (अभिनेश महोरे वि. म.प्र. राज्य) **(DB)...376**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8(c), 21 & 29 – Sentence **– Appellants convicted u/s 21(1) and sentenced to 15 years R.I. with fine of Rs.1,00,000/- lakhs – Appellants are in jail for more than 12 years – Held – Taking into consideration all these facts while maintaining their conviction substantive sentence of R.I. for 15 years is reduced to the period already undergone – The default sentence is also reduced to the period R.I. for one year instead of R.I. for 3 years which period shall also be inclusive of the period already undergone by the appellants – Appeal Partly allowed. [Ranbir Singh Vs. State of M.P.]** **(DB)...422**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराऐं 8(सी), 21 व 29 – दण्डादेश – अपीलार्थीगण को धारा 21(1) के अंतर्गत, दोषसिद्ध किया गया और रु. 1,00,000/– के अर्थदण्ड के साथ 15 वर्षों के सश्रम कारावास से दण्डादिष्ट किया गया – अपीलार्थीगण 12 वर्षों से अधिक समय से जेल में हैं – अभिनिर्धारित – इन सभी तथ्यों को विचार में लेते हुए, उनकी दोषसिद्धि कायम रखते हुए 15 वर्षों के लिए सश्रम कारावास के मूल दण्डादेश को घटाकर, भुगताई जा चुकी अवधि तक किया गया – व्यतिक्रम के दण्डादेश को भी 3 वर्षों के सश्रम कारावास की बजाय 1 वर्ष के सश्रम कारावास की अवधि तक घटाया गया जिस अवधि में अपीलार्थीगण को भुगताई जा चुकी अवधि भी शामिल होगी – अपील अंशतः मंजूर। (रणबीर सिंह वि. म.प्र. राज्य) **(DB)...422**

National Coal Wage Agreement – Clause 9 – Monetary Compensation in lieu of compassionate appointment **– Petitioner made 1st application in 2000 for monetary compensation after death of husband – Application remained pending – A case was filed by another lady seeking succession certificate which was compromised out of court – Petitioner again filed application in the year 2006 – Committee also gave a finding that she is entitled for monetary compensation till she attains the age of 60 years – Application was rejected on the ground that if she can survive for 10 years without monetary compensation, therefore she had means of livelihood – Held – Petitioner is entitled for compensation from 2006 i.e. her second application. [Keshar Bai (Smt.) Vs. Western Coalfields Ltd.]** **...328**

राष्ट्रीय कोयला मजदूरी अनुबंध – खंड 9 – अनुकम्पा नियुक्ति के स्थान पर

आर्थिक प्रतिकर – याची ने पति की मृत्यु के पश्चात् आर्थिक प्रतिकर हेतु सन् 2000 में प्रथम आवेदन किया – आवेदन लंबित रहा – उत्तराधिकार प्रमाणपत्र चाहते हुए अन्य महिला द्वारा एक प्रकरण प्रस्तुत किया गया, जिसमें न्यायालय के बाहर समझौता किया गया – याची ने वर्ष 2006 में पुनः आवेदन प्रस्तुत किया – समिति ने भी निष्कर्ष दिया कि वह 60 वर्ष की आयु प्राप्त करने तक आर्थिक प्रतिकर की हकदार है – आवेदन को इस आधार पर अस्वीकार किया गया कि यदि वह बिना आर्थिक प्रतिकर के 10 वर्षों तक जीवित रह सकती है, अतः उसके पास आजीविका के साधन हैं – अभिनिर्धारित – याची 2006 अर्थात् उसके द्वितीय आवेदन की तिथि से प्रतिकर की हकदार है। (केशर बाई (श्रीमती) वि. वेस्टर्न कोलफील्डस् लि.) ...328

National Security Act (65 of 1980), Section 3(2) – Detenu already in custody – **Held – Detention order can validly be passed and confirmed by the concerned authority only after recording satisfaction that they are aware of the fact that detenu is already in custody and on the basis of reliable material they have reason to believe that there is possibility that in case the detenu is released he would in all probabilities indulge in prejudicial activities – Since there is not a slightest indication in the impugned orders that the authorities were aware of the fact that the detenu is already in custody – Impugned orders are quashed. [Md. Vakil Vs. State of M.P.]** (DB)...626

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 (2) – बंदी पहले से अभिरक्षा में है – अभिनिर्धारित – निरोध आदेश को संबंधित प्राधिकारी द्वारा केवल संतुष्टि अभिलिखित किये जाने के पश्चात् ही विधि मान्य रूप से पारित एवं अभिपुष्ट किया जा सकता है कि वे इस तथ्य से अवगत हैं कि बंदी पहले से अभिरक्षा में है और विश्वसनीय सामग्री के आधार पर उनके पास यह विश्वास करने का कारण है कि संभावना है कि बंदी को मुक्त किये जाने की स्थिति में पूरी तरह संभावित है कि वह विपरीत कार्यकलापों में लिप्त होगा – चूंकि आक्षेपित आदेशों में जरा भी संकेत नहीं कि प्राधिकारीगण इस तथ्य से अवगत थे कि बंदी पहले से अभिरक्षा में है – आक्षेपित आदेश अभिखंडित। (एम.डी. वकील वि. म.प्र. राज्य) (DB)...626

Negotiable Instruments Act (26 of 1881), Section 20, Evidence Act (1 of 1872), Section 45 – Handwriting Expert – **Accused filed application for verification of signatures on registered A.D. – Accused did not dispute his signatures on cheque – Accused also did not dispute his address – He also participated in Court proceedings – Opinion of Handwriting Expert on registered A.D. card not necessary – Application rejected. [Iqrar Ahmed Vs. Mohd. Sadiq]** ...511

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 20, साक्ष्य अधिनियम (1872

का 1), धारा 45 – हस्तलेख विशेषज्ञ – रजिस्ट्री डाक प्राप्य स्वीकृति पर हस्ताक्षरों के सत्यापन हेतु अभियुक्त ने आवेदन पत्र प्रस्तुत किया – अभियुक्त ने चेक पर अपने हस्ताक्षरों को विवादित नहीं किया – अभियुक्त ने अपने पते को भी विवादित नहीं किया – उसने न्यायालयीन कार्यवाहियों में भी हिस्सा लिया – रजिस्ट्री डाक प्राप्य स्वीकृति पर हस्तलेख विशेषज्ञ का अभिमत आवश्यक नहीं – आवेदन अस्वीकार किया गया। (इकरार अहमद वि. मोहम्मद सादिक) ...511

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 69, 70, 86(2) – Appointment of Panchayat Karmi – **Advertisement for appointment of Panchayat Karmi was issued with a clear stipulation that merit and clean record would be considered for selection and the candidates who are facing criminal prosecution would not be entitled to take part in selection – Held – Since the respondent No. 6 who was facing criminal prosecution at the relevant time has submitted incorrect declaration – He has also not made the application within time – His candidature has rightly not been considered – Order passed by Addl. Commissioner is quashed and order passed by Collector is affirmed – Petition is allowed. [Archana Tiwari (Smt.) Vs. State of M.P.]** ...316

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराऐं 69, 70, 86(2) – पंचायत कर्मी की नियुक्ति – पंचायत कर्मी की नियुक्ति हेतु स्पष्ट शर्तों के साथ विज्ञापन जारी किया गया कि चयन के लिये योग्यता एवं स्वच्छ अतीत को विचार में लिया जायेगा तथा जो अभ्यर्थी आपराधिक अभियोजन का सामना कर रहे हैं, उन्हें चयन में भाग लेने का अधिकार नहीं होगा – अभिनिर्धारित – चूंकि प्रत्यर्थी क्र. 6 जो सुसंगत समय में आपराधिक अभियोजन का सामना कर रहा था, उसने असत्य घोषणा पत्र प्रस्तुत किया – उसने आवेदन भी समय सीमा के भीतर नहीं किया है – उसकी अभ्यर्थिता को उचित ही विचार में नहीं लिया गया – अतिरिक्त आयुक्त द्वारा पारित आदेश अभिखंडित एवं जिलाधिकारी द्वारा पारित आदेश अभिपुष्ट – याचिका मंजूर। (अर्चना तिवारी (श्रीमती) वि. म.प्र. राज्य) ...316

Payment of Gratuity Act (39 of 1972), Section 4 – See – Central Bank of India (Officers) Service Regulations, 1979, Regulation 46 **[Zonal Manager, Central Bank of India Vs. R.R. Das]** ...80

उपदान का भुगतान अधिनियम (1972 का 39), धारा 4 – देखें – सेन्ट्रल बैंक ऑफ इंडिया (अधिकारी) सेवा विनियमन, 1979, विनियम 46 (जोनल मेनेजर, सेन्ट्रल बैंक ऑफ इंडिया वि. आर.आर. दास) ...80

Payment of Gratuity Act (39 of 1972), Section 7(7) – Depositing

the amount of gratuity – Respondents/Badli employees had filed claim before Controlling Authority for payment of gratuity – Appeals were filed without depositing the amount as required under Section 7(7) – Question whether Controlling Authority of State Government or Central Government has jurisdiction is a mixed question of law which has to be decided by Appellate Authority – Writ Court rightly dismissed the writ petition observing that writ has been filed to circumvent the provision of Section 7(7) – Writ appeal dismissed. [National Textile Corporation Ltd. Vs. Controlling Authority Under Payment of Gratuity Act & Asstt. Labour Commissioner] (DB)...304

उपदान संदाय अधिनियम (1972 का 39), धारा 7(7) – उपदान की रकम जमा की जाना – प्रत्यर्थीगण/बदली कर्मचारियों ने उपदान के भुगतान हेतु नियंत्रण प्राधिकारी के समक्ष दावा प्रस्तुत किया – धारा 7(7) के अंतर्गत अपेक्षित रकम जमा किये बिना अपील प्रस्तुत की गई – यह प्रश्न कि क्या राज्य सरकार अथवा केंद्र सरकार के नियंत्रण प्राधिकारी को अधिकारिता है, विधि का संमिश्र प्रश्न है जिसे अपीली प्राधिकारी द्वारा निर्णित करना होता है – रिट न्यायालय ने यह संविक्षा करते हुए उचित रूप से रिट याचिका खारिज की है कि धारा 7(7) के उपबंध में गतिरोध उत्पन्न करने हेतु रिट प्रस्तुत की गई है – रिट अपील खारिज। (नेशनल टेक्सटाईल कारपोरेशन लि. वि. कंट्रोलिंग आथॉरिटी अंडर पेमेन्ट ऑफ ग्रेच्युटी एक्ट एण्ड असिस्टेन्ट लेबर कमिश्नर) (DB)...304

Penal Code (45 of 1860), Section 148 – Unlawful Assembly – No finding by Trial Court that all the 14 accused persons had formed unlawful assembly – On the contrary presence of 12 accused persons out of 14 is not proved beyond doubt. [Jagannath Yadav Vs. State of M.P.] (DB)...458

दण्ड संहिता (1860 का 45), धारा 148 – विधिविरूद्ध जमाव – विचारण न्यायालय का कोई निष्कर्ष नहीं कि सभी 14 अभियुक्तों ने विधिविरूद्ध जमाव बनाया – इसके विपरीत 14 में से 12 अभियुक्तों की उपस्थिति संदेह से परे साबित नहीं की गई। (जगन्नाथ यादव वि. म.प्र. राज्य) (DB)...458

Penal Code (45 of 1860), Section 302 – Circumstantial Evidence – Appellant and his fiancée after joining the party went for an outing – Appellant informed the police that two unknown persons had attacked him and his fiancée – Deceased has suffered multiple injuries as well as appellant had also received multiple injuries including which was dangerous to life – Appellant alleged to have started disliking his fiancée because of her fattiness and introvert nature – Deceased had

already joined health club for reducing her weight – Motive to commit murder due to deceased fattiness and due to her being introvert is wholly unreliable. [Ritesh Vs. State of M.P.] (DB)...218

दण्ड संहिता (1860 का 45), धारा 302 – परिस्थितिजन्य साक्ष्य – अपीलार्थी एवं उसकी मंगेतर समारोह में शामिल होने के बाद प्रमोद-भ्रमण पर गये – अपीलार्थी ने पुलिस को सूचित किया कि दो अज्ञात व्यक्तियों ने उस पर एवं उसकी मंगेतर पर हमला किया – मृतिका ने अनेक क्षतियां सहन की, साथ ही अपीलार्थी को भी अनेक क्षतियां आई, जिसमें जीवन के लिए घातक क्षतियां शामिल थी – अभिकथित है कि अपीलार्थी अपनी मंगेतर के मोटापे एवं अंतर्मुखी स्वभाव के कारण उसे नापसंद करने लगा था – मृतिका ने अपना वजन घटाने के लिए पहले ही हेल्थ क्लब में प्रवेश ले लिया था – मृतिका के मोटापे के कारण या उसके अंर्तमुखी स्वभाव के कारण हत्या कारित करने का हेतुकं पूर्णतः अविश्वसनीय है। (रीतेश वि. म.प्र. राज्य) **(DB)...218**

***Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 3 – Related Witness* – P.W. 1 and P.W. 2 had named 7 accused persons in their F.I.R. and statement under Section 161 of Cr.P.C. – However, in supplementary statement names of all 14 accused persons were mentioned – No explanation given by witnesses as to why they did not mention the names of all the 14 accused persons in F.I.R. and statement under Section 161 of Cr.P.C. – Evidence of witnesses in respect of subsequently added 7 accused persons not reliable. [Jagannath Yadav Vs. State of M.P.] (DB)...458**

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 3 – संबंधी साक्षी – अ. सा. 1 व 2 ने प्रथम सूचना रिपोर्ट में और द.प्र.सं. की धारा 161 के अंतर्गत कथन में 7 अभियुक्तों को नामित किया – किन्तु पूरक कथन में सभी 14 अभियुक्तों के नामों को उल्लिखित किया – साक्षियों द्वारा कोई स्पष्टीकरण नहीं दिया गया कि उन्होंने प्रथम सूचना रिपोर्ट एवं द.प्र.सं. की धारा 161 के अंतर्गत कथन में सभी 14 अभियुक्तों के नाम उल्लिखित क्यों नहीं किये – पश्चात्वर्ती रूप से जोड़े गये 7 अभियुक्तों के संबंध में साक्षियों का साक्ष्य विश्वसनीय नहीं। (जगन्नाथ यादव वि. म.प्र. राज्य) **(DB)...458**

***Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 24 – Extra Judicial Confession* – Accused made extra judicial confession before village Choukidar and Patel soon after the incident before his arrest – Eye witnesses and other witnesses have not supported the prosecution case – Whether conviction, made only on the basis of extra judicial confession is sustainable – Held – Since the**

witnesses to the extra judicial confession are independent witnesses who do not have any reason to depose against accused – Same also finds place in Dehati Nalishi, recorded soon after the incident – Which is duly corroborated by medical evidence and other circumstances – No infirmity in the order – Conviction is maintained. [Hemraj Vs. State of M.P.] (DB)...437

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 24 – न्यायिकेतर संस्वीकृति – अभियुक्त ने घटना के तुरंत पश्चात्, अपनी गिरफ्तारी से पूर्व, गांव के चौकीदार और पटेल के समक्ष न्यायिकेतर संस्वीकृति दी – चक्षुदर्शी साक्षी एवं अन्य साक्षियों ने अभियोजन प्रकरण का समर्थन नहीं किया है – क्या केवल न्यायिकेतर संस्वीकृति के आधार पर दोषसिद्धि कायम रखने योग्य है – अभिनिर्धारित – चूंकि न्यायिकेतर संस्वीकृति के साक्षीगण स्वतंत्र साक्षीगण हैं जिनके पास अभियुक्त के विरूद्ध कथन करने का कोई कारण नहीं – उक्त का उल्लेख, घटना के तुरंत पश्चात् अभिलिखित की गई देहाती नालिशी में भी पाया जाता है – जिसकी चिकित्सीय साक्ष्य एवं अन्य परिस्थितियों द्वारा सम्यक रूप से पुष्टि होती है – आदेश में कोई निर्बलता नहीं – दोषसिद्धि कायम रखी गयी। (हेमराज वि. म.प्र. राज्य) **(DB)...437**

Penal Code (45 of 1860), Section 302 – Injuries **– Doctor had opined that injuries on the body of the deceased were caused by two different weapons – However, prosecution tried to fasten everything on appellant – Absence of blood group and absence of evidence of origin of blood group destroyed the case of prosecution – It is unreasonable to draw adverse inference against the appellant. [Ritesh Vs. State of M.P.] (DB)...218**

दण्ड संहिता (1860 का 45), धारा 302 – क्षतियां – चिकित्सक का अभिमत कि मृतिका के शरीर की क्षतियां, दो भिन्न शस्त्रों द्वारा कारित थीं – किन्तु अभियोजन ने सब कुछ अपीलार्थी पर लादने का प्रयास किया – रक्त समूह की अनुपस्थिति तथा रक्त समूह के स्त्रोत के साक्ष्य की अनुपस्थिति से अभियोजन प्रकरण नष्ट हुआ – अपीलार्थी के विरुद्ध प्रतिकूल निष्कर्ष निकालना अयुक्तियुक्त है। (रीतेश वि. म.प्र. राज्य) **(DB)...218**

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial Evidence **– Court has to examine the evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from evidence is the guilt of accused – If more than one inference can be drawn then the accused must have the benefit of doubt. [Ritesh Vs. State of M.P.] (DB)...218**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – न्यायालय को साक्ष्य का परीक्षण उसकी संपूर्णता में करना चाहिए, विशेष रुप से परिस्थितिजन्य साक्ष्य के प्रकरण में और सुनिश्चित करना चाहिए कि साक्ष्य से निकाला गया निष्कर्ष केवल अभियुक्त की दोषिता का है – यदि एक से अधिक निष्कर्ष निकाले जा सकते हैं, तब अभियुक्त को संदेह का लाभ मिलना चाहिए। (रीतेश वि. म.प्र. राज्य) (DB)...218

Penal Code (45 of 1860), Section 302 – Murder **– Complainant alongwith his son and daughter were collecting Mahua when the appellant No. 1 tried to stop them from doing so – On refusal to do so, appellant No. 1 threatened that he will bring a gun and teach them a lesson – After some time, the complainant noticed that the accused persons were coming with gun and tangi – All the three persons ran towards their house – The appellants entered inside the house of the complainant and fired at son of complainant who died on the spot – Appellant No. 1 also fired causing injury to complainant – F.I.R. was lodged within 2 hours – Gun shot was fired by the appellant with an intention to kill deceased – Trial Court rightly convicted him u/s 302. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – शिकायतकर्ता अपने पुत्र और पुत्री के साथ महुआ एकत्रित कर रहा था, जब अपीलार्थी क्र. 1 ने उसे ऐसा करने से रोका – इंकार करने पर अपीलार्थी क्र. 1 ने धमकाया कि वह बंदूक लायेगा और उन्हें सबक सिखायेगा – कुछ देर बाद शिकायतकर्ता ने देखा कि अभियुक्त गण बंदूक और टांगी लेकर आ रहे थे – तीनों व्यक्ति अपने घर की तरफ भागे – अपीलार्थीगण ने शिकायकर्ता के मकान के अंदर प्रवेश किया और शिकायतकर्ता के पुत्र पर गोली चलायी, जिसकी मृत्यु घटनास्थल पर ही हो गई – अपीलार्थी क्र. 1 ने भी गोली चलायी, जिससे शिकायतकर्ता को चोट कारित हुई – प्रथम सूचना रिपोर्ट 2 घंटे के भीतर दर्ज कराई गई – अपीलार्थी द्वारा मृतक को जान से मारने के आशय से गोली चलायी गई – विचारण न्यायालय ने उसे उचित रुप से धारा 302 के अंतर्गत दोषसिद्ध किया। (समर जीत सिंह वि. म.प्र. राज्य) (DB)...187

Penal Code (45 of 1860), Section 302 – Murder – Last seen together **– Appellant and deceased used to go of outing after their engagement – Appellant from very beginning had accepted that the deceased was with him – Doctor had opined that the injuries sustained by appellant cannot be self inflicted – In view of medical evidence, injuries suffered by appellant were neither self inflicted nor friendly hand. [Ritesh Vs. State of M.P.] (DB)...218**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अंतिम बार एक साथ देखा जाना – अपीलार्थी एवं मृतिका अपनी सगाई के बाद प्रमोद-भ्रमण पर (बाहर घूमने) जाने लगे थे – अपीलार्थी शुरुआत से यह स्वीकार कर रहा है कि मृतिका उसके साथ थी – चिकित्सक का यह अभिमत कि अपीलार्थी को आई क्षतियां स्वयं कारित क्षतियां नहीं – चिकित्सीय साक्ष्य की दृष्टि से अपीलार्थी द्वारा सहन की गई क्षतियां न तो स्वयं कारित थी, न ही मैत्रीपूर्ण हाथों से। (रीतेश वि. म.प्र. राज्य) (DB)...218

Penal Code (45 of 1860), Section 302 – Murder **– No injury by hard and blunt object was found on the body of deceased – Evidence that 5 accused persons assaulted deceased by means of lathi not worth reliance. [Jagannath Yadav Vs. State of M.P.] (DB)...458**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृतक के शरीर पर सख्त और मोथरे वस्तु से क्षति नहीं पायी गई – साक्ष्य कि 5 अभियुक्तों ने मृतक पर लाठियों से हमला किया था, विश्वसनीय नहीं। (जगन्नाथ यादव वि. म.प्र. राज्य) (DB)...458

Penal Code (45 of 1860), Section 302 – Murder – Seizure of weapon **– On 09.12.1995, certain belongings of appellant and deceased were recovered but was not able to get Katar despite information of Ritesh – Recovery of Katar on 10.12.1995 from the same place clearly goes to prove that it was planted on the spot after search on 09.12.1995 – Recovery of Katar unreliable. [Ritesh Vs. State of M.P.] (DB)...218**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – शस्त्र की जब्ती – 09.12.1995 को अपीलार्थी एवं मृतिका की कतिपय वस्तुऐं बरामद की गई थी, परन्तु रितेश की सूचना के बावजूद कटार नहीं मिल पाई – उसी स्थान से 10.12.1995 को कटार की बरामदगी, स्पष्ट रुप से साबित करती है कि उसे 09.12.1995 की तलाशी के पश्चात घटनास्थल पर रखा गया था। (रीतेश वि. म.प्र. राज्य) (DB)...218

Penal Code (45 of 1860), Section 302 – Murder – Suspicion **– Suspicion how so ever strong is suspicion only and cannot take shape of proof. [Ritesh Vs. State of M.P.] (DB)...218**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – संदेह – संदेह कितना ही प्रबल क्यों न हो वह केवल संदेह ही है और वह सबूत का रुप नहीं ले सकता। (रीतेश वि. म.प्र. राज्य) (DB)...218

Penal Code (45 of 1860), Section 302 – Murder – Witness **– Previous version of witnesses is duly corroborated by timely lodged FIR, Post-Mortem Report, M.L.C. of injured – Acceptable testimony of witnesses may be acted upon. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – साक्षी – साक्षियों का पूर्वतर कथन, समय पर दर्ज की गयी प्रथम सूचना रिपोर्ट, शव परीक्षण प्रतिवेदन, आहत की एम.एल.सी. द्वारा सम्यक रुप से अभिपुष्ट होता है – साक्षीगण की स्वीकार योग्य परिसाक्ष्य पर कार्यवाही की जा सकती है। (समर जीत सिंह वि. म.प्र. राज्य) (DB)...187

Penal Code (45 of 1860), Sections 302, 34 **– Appellant Maiyadeen and Ramswaroop caused injury to the deceased and continued to assault him till he died – Both the accused showed common intention. [State of M.P. Vs. Maiyadeen] (DB)...200**

दण्ड संहिता (1860 का 45), धाराऐं 302, 34 – अपीलार्थी मैयादीन एवं रामस्वरुप ने मृतक को क्षतियां पहुंचाई और उसकी मृत्यु होने तक लगातार प्रहार किये – दोनों अभियुक्तों का सामान्य आशय दर्शाता है। (म.प्र. राज्य वि. मैयादीन) (DB)...200

Penal Code (45 of 1860), Section 302/34 – Common intention **– Appellant No. 1 had hot talk with complainant – He went to the house of complainant and his intention could be to kill the complainant – There was no need for appellant No. 1 to cause any harm to 11 year old boy who died in the incident – Appellant No. 1 never intended to kill the deceased – Merely by going to the house of complainant with gun and two companions do not mean that appellant No. 1 had intended to kill the deceased – No common intention of appellant No. 1 with appellant No. 2 to kill deceased child – Conviction of appellant No. 1 for offence u/s 302/34 set aside. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 302/34 – सामान्य आशय – शिकायतकर्ता के साथ अपीलार्थी क्र. 1 की कहा-सुनी हुई थी – वह शिकायतकर्ता के घर गया और उसका आशय शिकायतकर्ता को जान से मारना हो सकता है – 11 वर्षीय बालक को कोई हानि कारित करने की अपीलार्थी क्र. 1 को कोई आवश्यकता नहीं थी, जिसकी घटना में मृत्यु हुई – मृतक की मृत्यु कारित करने का अपीलार्थी क्र. 1 का आशय नहीं था – मात्र शिकायतकर्ता के घर बंदूक लेकर और दो साथियों के साथ जाने से यह अर्थ नहीं है कि अपीलार्थी क्र. 1 का आशय मृतक को जान से मारना था – मृतक बालक को जान से मारने का अपीलार्थी क्र. 2 के साथ अपीलार्थी क्र. 1 का सामान्य आशय नहीं – धारा 302/34 के अंतर्गत अपीलार्थी क्र. 1 की दोषसिद्धि अपास्त। (समर जीत सिंह वि. म.प्र. राज्य) (DB)...187

Penal Code (45 of 1860), Sections 302, 34 – Murder – Common intention or common object **– Charges u/s 149 and 302 Penal Code – It is clear that the respondent Ramswaroop was jointly tried with the respondent**

Maiyadeen and his joint criminal actions were duly put to him in his examination u/s 313 of Cr.P.C. – Instead of charge u/s 149 of the Cr.P.C., if he is convicted with help of Section 34 of I.P.C. then, no prejudice would be caused to him – Appeal accepted against the respondents Maiyadeen and Ramswaroop – Convicted of offence u/s 302 I.P.C. and Section 302 r/w Section 34 of I.P.C. respectively and sentenced to life imprisonment. [State of M.P. Vs. Maiyadeen] (DB)...200

दण्ड संहिता (1860 का 45), धाराऐं 302, 34 – हत्या – सामान्य आशय या सामान्य उद्धेश्य – दण्ड संहिता की धारा 149 एवं 302 के अंतर्गत आरोप – यह स्पष्ट है कि प्रत्यर्थी रामस्वरुप का प्रत्यर्थी मैयादीन के साथ संयुक्त रुप से विचारण किया गया और उनकी संयुक्त आपराधिक कार्यवाही का दंड प्रक्रिया संहिता की धारा 313 के अंतर्गत सम्यक रुप से परीक्षण किया गया – यदि उसे दंड प्रक्रिया संहिता की धारा 149 के अंतर्गत आरोप के स्थान पर, भारतीय दंड संहिता की धारा 34 की सहायता से दोषसिद्ध किया जाता है, तब उस पर कोई विपरीत प्रभाव कारित नहीं होगा – प्रत्यर्थी मैयादीन एवं रामस्वरुप के विरुद्ध अपील स्वीकार की गई – क्रमशः दंड संहिता की धारा 302 के अंतर्गत एवं दंड संहिता की धारा 302 सहपठित धारा 34 के अंतर्गत अपराध के लिए दोषसिद्ध एवं आजीवन कारावास के दंड से दण्डादिष्ट। (म.प्र. राज्य वि. मैयादीन) **(DB)...200**

Penal Code (45 of 1860), Section 302/34 – Murder – Conviction and Sentence – Appeal **– Offence proved by direct evidence – Medical evidence completely corroborates the evidence of prosecution witnesses – Offence made out – Conviction proper. [Ram Kumar Vs. State of M.P.] (SC)...299**

दण्ड संहिता (1860 का 45), धारा 302/34 – हत्या – दोषसिद्धि और दण्डादेश – अपील – प्रत्यक्ष साक्ष्य से अपराध सिद्ध – चिकित्सीय साक्ष्य अभियोजन साक्षियों की साक्ष्य से पूर्णतः संपुष्ठ – अपराध बनता है – दोषसिद्धि उचित। (राम कुमार वि. म.प्र. राज्य) **(SC)...299**

Penal Code (45 of 1860), Section 302/34 – Murder **– Death of the deceased took place on account of septicaemia due to injury caused by axe by appellant before 30 days – There is direct evidence – Challenge is made on the ground that there is only one injury that too was caused without premeditation as such the case falls under exception 4 of Section 300 of IPC – Held – Testimony of eye-witness as well as evidence of doctor prove that the injuries were caused by appellant – Ultimate effect of injuries which led to infection can be co-related with injuries caused by appellant – Considering over all facts and evidence,**

conviction of appellant u/s 302 IPC is converted in section 304 Part-I of IPC – Sentence of life imprisonment is reduced to 10 years R.I. – However fine amount is increased from Rs. 500 to 5000. [Harji Vs. State of M.P.] **(DB)...772**

दण्ड संहिता (1860 का 45), धारा 302/34 – हत्या – मृतक की मृत्यु अपीलार्थी द्वारा उसे 30 दिवस पूर्व कुल्हाड़ी से कारित क्षति के कारण सेप्टीसेमिया से हुई – प्रत्यक्ष साक्ष्य है – चुनौती इस आधार पर दी गई कि केवल एक क्षति वह भी बिना किसी पूर्व चिंतन के कारित की गई थी इस तरह प्रकरण भा.द.सं. की धारा 300 के अपवाद 4 के अंतर्गत आयेगा – अभिनिर्धारित – चक्षुदर्शी साक्षी की परिसाक्ष्य के साथ ही चिकित्सक की साक्ष्य से यह सिद्ध होता है कि क्षतियां अपीलार्थी द्वारा कारित की गई – वह क्षतियां जिनके समुचित प्रभाव से संकमण हुआ था, उन्हें अपीलार्थी द्वारा कारित क्षतियों से परस्पर संबंधित किया जा सकता है – सभी तथ्यों एवं साक्ष्य पर विचार करते हुए भा.द.सं. की धारा 302 के अंतर्गत अपीलार्थी की दोष सिद्धि भा.द.सं. की धारा 304 भाग–I में परिवर्तित की गई – आजीवन कारावास के दण्डादेश को 10 वर्ष के कठोर कारावास तक घटाया गया – अपितु अर्थदण्ड की राशि को 500 रूपये से बढ़ाकर 5000 किया गया। (हरजी वि. म.प्र. राज्य) **(DB)...772**

Penal Code (45 of 1860), Sections 302, 34 – Murder **– Name of accused Bandoo not mentioned in F.I.R. – No overt act attributed to him – It cannot be said beyond reasonable doubt that he participated in assault on deceased. [State of M.P. Vs. Maiyadeen]** **(DB)...200**

दण्ड संहिता (1860 का 45), धाराऐं 302, 34 – हत्या – प्रथम सूचना प्रतिवेदन में अभियुक्त बंडू के नाम का उल्लेख नहीं – उसका कोई प्रत्यक्ष कृत्य नहीं दर्शाया गया – इसे युक्तियुक्त संदेह से परे नहीं कहा जा सकता कि वह मृतक पर हमले में शामिल था। (म.प्र. राज्य वि. मैयादीन) **(DB)...200**

Penal Code (45 of 1860), Sections 302, 34 **– No over act attributed to Sitaram for assaulting the deceased – Rightly acquitted for 302. [State of M.P. Vs. Maiyadeen]** **(DB)...200**

दण्ड संहिता (1860 का 45), धाराऐं 302, 34 – मृतक पर हमले में सीताराम का प्रत्यक्ष कृत्य नहीं दर्शाया गया – 302 के लिए उचित रुप से दोषमुक्त। (म.प्र. राज्य वि. मैयादीन) **(DB)...200**

Penal Code (45 of 1860), Sections 302, 34 **– P.W. 2 stated that Tulsidas assaulted the deceased whereas no other eye witnesses alleged assault by Tulsidas on deceased – If P.W. 2 could see Tulsidas assaulting deceased then other witnesses would have corroborated the**

fact – Cannot be said that Tulsidas had common intention. [State of M.P. Vs. Maiyadeen] (DB)...200

दण्ड संहिता (1860 का 45), धाराऐं 302, 34 – अभियोजन साक्षी क्र. 2 ने कथन किया कि मृतक पर तुलसीदास ने हमला किया जबकि अन्य प्रत्यक्षदर्शी साक्षियों ने नहीं कहा कि तुलसीदास ने मृतक पर हमला किया – यदि अभियोजन साक्षी क्र. 2 ने तुलसीदास को मृतक पर हमला करते देखा होता, तब अन्य साक्षियों ने इस तथ्य की पुष्टि की होती – नहीं कहा जा सकता कि तुलसीदास का सामान्य आशय था। (म.प्र. राज्य वि. मैयादीन) **(DB)...200**

Penal Code (45 of 1860), Sections 302/34, 307/34 – Common intention **– Third appellant came to the spot alongwith two other appellants with tangi in his hand but there is no overt act on his part – Possibility cannot be ruled out that he would have changed his mind after his arrival at the spot – No overt act to show common intention with co-accused – Third appellant could not have been convicted for any of the offence with the help of Section 34. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धाराऐं 302/34, 307/34 – सामान्य आशय – तृतीय अपीलार्थी अन्य दो अपीलार्थियों के साथ अपने हाथ में टांगी लेकर घटनास्थल पर आया, परंतु उसकी ओर से कोई प्रत्यक्ष कृत्य नहीं है – इस संभावना से इंकार नहीं किया जा सकता कि घटनास्थल पर पहुंचने के पश्चात उसने अपना मन बदला होगा – सह-अभियुक्त के साथ सामान्य आशय दर्शाने के लिए कोई प्रत्यक्ष कृत्य नहीं – तृतीय अपीलार्थी को धारा 34 की सहायता से किसी अपराध हेतु दोषसिद्ध नहीं किया जा सकता था। (समर जीत सिंह वि. म.प्र. राज्य) **(DB)...187**

Penal Code (45 of 1860), Sections 302, 304 Part I – Murder or culpable homicide not amounting to murder **– There was a dispute regarding agricultural land between the parties- Appellant no. 1 and 4 have assaulted 3 injuries on the legs of the deceased- Doctor had also opined that in case the medical help would have been made available to injured immediately, then perhaps he could have survived – No injury on vital part of the body was caused – None of the accused intended to cause death of deceased – Case would fall under Section 304 Part I – Sentenced to R.I. of 10 years and fine of Rs. 1,000/-. [Jagannath Yadav Vs. State of M.P.] (DB)...458**

दण्ड संहिता (1860 का 45), धारा 302, 304 भाग I – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – पक्षकारों के बीच कृषि भूमि के संबंध में विवाद था – अपीलार्थी क. 1 व 4 ने मृतक के पैरों पर 3 क्षतियां पहुंचायी –

चिकित्सक ने भी अभिमत दिया कि आहत को यदि तुरंत चिकित्सीय सहायता उपलब्ध करायी गयी होती तो वह संभवतः बच सकता था – शरीर के नाजुक अंगों पर कोई चोट नहीं कारित की गयी – मृतक की मृत्यु कारित करने का आशय किसी अभियुक्त का नही था – प्रकरण धारा 304 भाग–I के अंतर्गत आयेगा – 10 वर्ष सश्रम कारावास और रू. 1000/– के अर्थदण्ड से दण्डादिष्ट किया गया। (जगन्नाथ यादव वि. म.प्र. राज्य) (DB)...458

Penal Code (45 of 1860), Sections 306 & 34 – See – Criminal Procedure Code, 1973, Sections 438 & 439 **[Praveen Dubey Vs. Ravishankar] ...518**

दण्ड संहिता (1860 का 45), धाराऐं 306 व 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराऐं 438 व 439 (प्रवीण दुबे वि. रविशंकर) ...518

Penal Code (45 of 1860), Section 307 – Attempt to murder – **Appellant No. 1 fired at complainant causing simple injury on his elbow – If overall conduct of appellant No. 1 is considered then, it would be apparent that he had intended to kill the complainant – Appellant No. 1 had committed an offence as u/s 307 of I.P.C. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयास – अपीलार्थी क्र. 1 ने गोली चलाकर शिकायतकर्ता को कोहनी पर साधारण चोट कारित की – यदि अपीलार्थी क्र. 1 का संपूर्ण आचरण विचार में लिया जाए, तब यह प्रकट होता है कि उसका आशय, शिकायतकर्ता को जान से मारने का था – अपीलार्थी क्र. 1 ने भा. द.सं. की धारा 307 के अंतर्गत अपराध कारित किया है। (समर जीत सिंह वि. म.प्र. राज्य) (DB)...187

Penal Code (45 of 1860), Section 307/34 – Common intention – **Second appellant went to the house of complainant alongwith gun and fired from the gun killing the deceased – He had intention to kill the complainant – Second appellant shared common intention to kill the complainant – He is rightly convicted u/s 307/34 of I.P.C. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 307/34 – सामान्य आशय – द्वितीय अपीलार्थी बंदूक लेकर शिकायतकर्ता के घर गया और बंदूक से गोली चलाकर मृतक को जान से मार दिया – उसका आशय शिकायतकर्ता को जान से मारना था – भा.द.सं. की धारा 307/34 के अंतर्गत उचित रुप से उसे दोषसिद्ध किया गया। (समर जीत सिंह वि. म.प्र. राज्य) (DB)...187

Penal Code (45 of 1860), Sections 395 & 307 – Dacoity – Evidence – **Identification of accused at the time of Identification parade as also in court found to be reliable at the instance of injured witness – Recovery of cash is also taken place from accused persons – MLC report, FSL report supports the prosecution case – There is seizure of fire arm – PW 2 & PW 3 fully supported the prosecution case – Held – Accused persons have rightly been convicted – However, sentence is reduced from life to R.I. 10 years. [Abid Khan Vs. State of M.P.]** **(DB)...427**

दण्ड संहिता (1860 का 45), धाराएँ 395 व 307 – डकैती – साक्ष्य – पहचान परेड के समय तथा न्यायालय में भी अभियुक्त की पहचान, आहत साक्षी की निशानदेही पर, विश्वसनीय पायी गयी – अभियुक्तगण से रकम की बरामदगी भी हुई है – एम.एल.सी. रिपोर्ट, एफ.एस.एल. रिपोर्ट, अभियोजन के प्रकरण का समर्थन करती है – अग्न्यायुध की जब्ती है – अ.सा. 2 व अ.सा. 3 ने अभियोजन प्रकरण का पूर्णतः समर्थन किया – अभिनिर्धारित – अभियुक्तगण को उचित रूप से दोषसिद्ध किया गया – किन्तु, दण्डादेश को आजीवन कारावास से घटाकर दस वर्ष सश्रम कारावास किया गया। (आबिद खान वि. म.प्र. राज्य) **(DB)...427**

Penal Code (45 of 1860), Section 420 – Cheating – **Applicant entered into agreement to sell land by pretending himself to be the owner and received advance money – In fact father of applicant was the owner of land – Prima-facie case of cheating made out – Charge u/s 420 of I.P.C. rightly framed. [Sheikh Ismail Vs. State of M.P.]** **...789**

दण्ड संहिता (1860 का 45), धारा 420 – छल – आवेदक ने स्वयं को स्वामी बताते हुए भूखंड के विक्रय का अनुबंध किया एवं अग्रिम राशि प्राप्त की – वास्तविक रूप से आवेदक का पिता भूखंड का स्वामी था – प्रथम दृष्ट्या छल का प्रकरण बनता है – भा.दं.सं. की धारा 420 के अंतर्गत आरोप उचित रूप से विरचित। (शेख इस्माइल वि. म.प्र. राज्य) **...789**

Penal Code (45 of 1860), Section 420 – See – Criminal Procedure Code, 1973, Section 482 **[Ashfaq Ahmed Quereshi Vs. Namrata Chopra]** **(SC)...537**

दण्ड संहिता (1860 का 45), धारा 420 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (अश्फाक अहमद कुरैशी वि. नम्रता चोपड़ा) **(SC)...537**

Penal Code (45 of 1860), Sections 420, 467, 468, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Forged Caste Certificate – **State Level Schedule Caste Certificate Scrutiny Committee after scrutinizing the caste certificate of applicant held caste**

certificate produced by applicant before M.P.P.S.C. for obtaining service is illegal – As caste certificate was fabricated by practicing fraud in the shape of valuable security with dishonest intention to obtain Govt. service prima facie case made out. [Usha Ajay Singh (Smt.) Vs. Shri J.L. Mishra] ...260

दण्ड संहिता (1860 का 45), धाराऐं 420, 467, 468, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – कूटरचित जाति प्रमाण पत्र – राज्य स्तरीय अनुसूचित जाति प्रमाण पत्र छानबीन समिति ने आवेदक के जाति प्रमाण पत्र की जांच पड़ताल के पश्चात यह ठहराया कि आवेदक द्वारा नौकरी प्राप्त करने के लिए एम. पी.पी.एस.सी. के समक्ष प्रस्तुत किया गया जाति प्रमाण पत्र अवैध है – चूंकि जाति प्रमाण पत्र को, मूल्यवान प्रतिभूति के रुप में, सरकारी सेवा अभिप्राप्त करने के आशय से कपट पूर्वक गढ़ा गया, प्रथम दृष्ट्या प्रकरण बनता है। (उषा अजय सिंह (श्रीमती) वि. श्री जे.एल. मिश्रा) **...260**

***Penal Code (45 of 1860), Section 450 – House Trespass* – Incident took place in a courtyard – Courtyard was covered from 4 sides from walls and rooms of the house of complainant – It had a gate and no one can enter inside if gate is closed – Place of incident is nothing but a part of house – Appellants No. 1 and 2 are guilty of offence u/s 450 of I.P.C. [Samar Jeet Singh Vs. State of M.P.] (DB)...187**

दण्ड संहिता (1860 का 45), धारा 450 – गृह अतिचार – घटना आंगन में घटी – आंगन चारों तरफ दीवार और शिकायतकर्ता के मकान के कमरों से घिरा था – उसका एक प्रवेशद्वार था और यदि प्रवेशद्वार बंद हो, कोई प्रवेश नहीं कर सकता था – घटनास्थल और कुछ नहीं बल्कि मकान का हिस्सा है – अपीलार्थी क्र. 1 व 2, भा.द.सं. की धारा 450 के अंतर्गत अपराध हेतु दोषी हैं। (समर जीत सिंह वि. म.प्र. राज्य) **(DB)...187**

***Penal Code (45 of 1860), Sections 467, 468, & Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of Charge* – No allegation that any document was forged or fabricated – No charge u/s 467, 468, I.P.C. can be framed. [Sheikh Ismail Vs. State of M.P.] ...789**

दण्ड संहिता (1860 का 45), धाराऐं 467, 468, व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किये जाना – यह अभिकथन नहीं कि कोई दस्तावेज कूटरचित थे या गढ़े गये थे – भा.दं.सं. की धारा 467, 468 के अंतर्गत आरोप विरचित नहीं किये जा सकते। (शेख इस्माइल वि. म.प्र. राज्य) **...789**

***Petroleum Act (30 of 1934), Section 3 – Allotment of Dealership* – In previous writ petition, the Writ Court had quashed the recommendations**

of the committee and had directed for re-assessment – It was nowhere directed that re-assessment was to be done by a New Committee – Re-assessment done by the same Committee not wrong. [Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan] (DB)...571

पेट्रोलियम अधिनियम (1934 का 30), धारा 3 – डीलरशिप का आवंटन – पूर्ववर्ती रिट याचिका में रिट न्यायालय ने समिति की अनुशंसाओं को अभिखंडित किया था और पुनः निर्धारण के लिये निदेशित किया था – यह कहीं भी निदेशित नहीं किया गया कि पुनः निर्धारण नई समिति द्वारा किया जाना था – उसी समिति द्वारा पुनः निर्धारण किया जाना अनुचित नहीं। (भारत पेट्रोलियम कारपोरेशन लि. वि. लक्ष्मण चौहान) **(DB)...571**

Petroleum Act (30 of 1934), Section 3 – **See** – ***Constitution – Article 19(1)(g)*** **[Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd.] ...98**

पेट्रोलियम अधिनियम (1934 का 30), धारा 3 – देखें – संविधान – अनुच्छेद 19(1)(जी) (सरोज भाटिया (श्रीमती) वि. इंडियन ऑइल कारपोरेशन लि.) **...98**

Petroleum Rules, 2002, Rules 144, 149 **–See– *Constitution – Article 19(1)(g)* [Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd.] ...98**

पेट्रोलियम नियम, 2002, नियम 144, 149 – देखें – संविधान – अनुच्छेद 19(1)(जी) (सरोज भाटिया (श्रीमती) वि. इंडियन ऑइल कारपोरेशन लि.) **...98**

Protection of Children from Sexual Offences Act, (32 of 2012), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3 (1) (xi) **–Applicant charged for various offences under Act, 2012, Act, 1989 and I.P.C. – Cognizance of the case was taken by the Court notified under POSCO Act – Sessions Judge thereafter transferred the case to the Special Judge notified under Act, 1989 – Held – By the aid of Section 9 of Cr.P.C. and giving harmonious interpretation to the Acts and Notifications issued, the offence under Act, 1989 as well as under Act 2012 and I.P.C. can be tried by a Court of Session notified under Act, 1989 and trial may not required to be split up. [Mohd. Juned Vs. State of M.P.] ...484**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3 (1)(xi) – अधिनियम 2012, अधिनियम 1989 और भा.द.सं. के अंतर्गत विभिन्न अपराधों के लिए आवेदक को आरोपित किया गया – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम के अंतर्गत अधिसूचित न्यायालय द्वारा प्रकरण का

संज्ञान लिया गया – तत्पश्चात् सत्र न्यायाधीश ने प्रकरण को अधिनियम 1989 के अंतर्गत अधिसूचित विशेष न्यायाधीश को अंतरित किया – अभिनिर्धारित – द.प्र.सं. की धारा 9 की सहायता से एवं जारी किये गये अधिनियमों तथा अधिसूचनाओं के सामंजस्यपूर्ण निर्वचन द्वारा अधिनियम 1989 के साथ ही अधिनियम 2012 एवं भा.दं.सं. के अंतर्गत अपराधों का विचारण, अधिनियम 1989 के अंतर्गत अधिसूचित सत्र न्यायालय द्वारा किया जा सकता है और विचारण को विमक्त किया जाना अपेक्षित नहीं। (मोहम्मद जुनेद वि. म.प्र. राज्य) ...484

Representation of the People Act (43 of 1951), Sections 80, 81, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice **– To prove the allegation of corrupt practice, it should be specifically pleaded as to how and from whom the petitioner has got the information but the petition is lacking of such specific pleadings – Even if the averments made in the election petition are taken on their face value and accepted in the entirety, no triable cause of action arises in absence of specific, precise and complete pleading in respect of alleged irregularities as well as corrupt practice – Election petition dismissed. [Krishna Kumar Gupta Vs. Rajendra Shukla]** ...152

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराऐं 80, 81, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – भ्रष्ट आचरण – भ्रष्ट आचरण का अभिकथन साबित करने के लिए यह विनिर्दिष्ट अभिवाक् किया जाना चाहिए कि याची को कैसे और किससे जानकारी मिली है, परंतु याचिका में उक्त विनिर्दिष्ट अभिवचनों का अभाव है – यदि निर्वाचन याचिका में किये गये प्राक्कथनों को वैसा ही मान लिया जाए जैसा प्रकट किये गये हैं और संपूर्णतः से स्वीकार किया जाए तब भी अभिकथित अनियमितता तथा भ्रष्ट आचरण से संबंधित अभिवचनों के विनिर्दिष्ट, स्पष्ट और पूर्ण होने के अभाव में कोई विचारणीय वाद कारण उत्पन्न नहीं होता – निर्वाचन याचिका खारिज। (कृष्ण कुमार गुप्ता वि. राजेन्द्र शुक्ला) ...152

Representation of the People Act (43 of 1951), Section 82, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Non-joinder of contesting candidates **– Petitioner sought declaration that he be declared as elected candidate without joining the contesting candidates as respondents – Petition liable to be dismissed u/o 7 Rule 11 CPC – Petition dismissed. [Ram Khelawan Patel Vs. Dr. Rajendra Kumar Singh]** ...749

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 82, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – प्रतिस्पर्धी प्रत्याशियों का असंयोजन – याची ने घोषणा चाही कि प्रतिस्पर्धी प्रत्याशियों को प्रत्यर्थी के रूप में जोड़े बिना

उसे निर्वाचित प्रत्याशी घोषित किया जाये – सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत याचिका खारिज किये जाने योग्य – याचिका खारिज। (राम खेलावन पटेल वि. डॉ. राजेन्द्र कुमार सिंह) ...749

Representation of the People Act (43 of 1951), Section 83(1) – Affidavit – **Non filing of affidavit in Form 25 as prescribed under Rule 94-A of Conduct of Election Rules, 1961 is a curable defect and petition cannot be rejected. [Krishna Kumar Gupta Vs. Rajendra Shukla]** ...152

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 83(1) – शपथपत्र – फॉर्म 25 में शपथपत्र प्रस्तुत नहीं किया जाना, जैसा कि निर्वाचन का संचालन नियम 1961 के नियम 94-ए के अंतर्गत विहित है, सुधार योग्य त्रुटि है और याचिका को अस्वीकार नहीं किया जा सकता। (कृष्ण कुमार गुप्ता वि. राजेन्द्र शुक्ला) ...152

Representation of the People Act (43 of 1951), Sections 86, 81(3) & 87(1), Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice – **Petitioner has substantially pleaded the material particulars with regard to corrupt practice mentioning the nature of corrupt practice, name of the persons involved – There is also no variance in the verification clause and the affidavit sworn by the petitioner – Provisions are complied with substantially. [Rahul Singh Lodhi Vs. Smt. Chanda Devi]** ...143

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराऐं 86, 81(3) व 87(1), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – भ्रष्ट आचरण – याची ने भ्रष्ट आचरण के संबंध में भ्रष्ट आचरण का स्वरुप, सम्मिलित व्यक्तियों के नाम उल्लिखित करते हुए तात्विक विशिष्टियों का सारवान रुप से अभिवाक् किया – सत्यापन खंड और याची द्वारा दिये गये शपथपत्र में भी अंतर नहीं – उपबंधों का सारभूत रुप से अनुपालन किया गया। (राहुल सिंह लोधी वि. श्रीमती चन्दा देवी) ...143

Representation of the People Act (43 of 1951), Sections 86, 81(3) & 87(1), Civil Procedure Code (5 of 1908), Order 7 Rule 11 – **Mandatory Condition prescribed in Section 81(3) – Copy supplied to the respondent bears signature of the petitioner beneath the word "true copy attested" – Petitioner has fully complied with the provisions of Section 81(3) of the Act, 1951. [Rahul Singh Lodhi Vs. Smt. Chanda Devi]** ...143

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराऐं 86, 81(3) व 87(1), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – धारा 81(3) में आज्ञापक शर्त विहित है – प्रत्यर्थी को प्रदाय की गई प्रति पर "शुद्ध प्रतिलिपि साक्ष्यांकित" शब्द के नीचे याची के हस्ताक्षर हैं – याची ने अधिनियम 1951 की धारा 81(3) के उपबंधों का पूर्णतः

अनुपालन किया है। (राहुल सिंह लोधी वि. श्रीमती चन्दा देवी) ...143

Representation of the People Act (43 of 1951), Sections 86, 81(3) & 87(1), Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Striking off the pleadings – **Petitioner has made concise statement of material facts with regard to corrupt practice with name of parties who have committed such corrupt practice with the date and place of commission of the same – None of the pleading can be said to be scandalous and frivolous. [Rahul Singh Lodhi Vs. Smt. Chanda Devi]** ...143

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराऐं 86, 81(3) व 87(1), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – अभिवचनों को खंडित किया जाना – याची ने भ्रष्ट आचरण के संबंध में पक्षकार जिन्होंने उक्त भ्रष्ट आचरण कारित किया है, के नाम के साथ, उक्त के कारित होने की तिथि और स्थान के साथ तात्विक तथ्यों का संक्षिप्त कथन किया है – किसी भी अभिवचन को कलंकात्मक एवं तुच्छ नहीं कहा जा सकता। (राहुल सिंह लोधी वि. श्रीमती चन्दा देवी) ...143

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), Section 24 – **Notifications were issued under sections 4 and 6 of Land Acquisition Act, 1894 – Award was passed on 22.04.2014 i.e., after the commencement of Act, 2013 – Proceedings do not stand lapsed but can be continued as per the provisions of Section 24(1)(a) of Act, 2013 – Proceedings which were initiated under 1894 Act are saved under 2013 Act in view of provisions of Section 114 of 2013 Act. [Jeevan Lal Mishra Vs. State of M.P.]** (DB)...731

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (2013 का 30), धारा 24 – भूमि अर्जन अधिनियम 1894 की धाराऐं 4 व 6 के अंतर्गत अधिसूचनाएं जारी की गई – 22.04.2014 को, अर्थात् अधिनियम 2013 प्रभावी होने के पश्चात् अवार्ड पारित किया गया – कार्यवाही व्यपगत नहीं होगी अपितु अधिनियम 2013 की धारा 24(1)(ए) के उपबंधों के अनुसार जारी रखी जा सकती है – अधिनियम 1894 के अंतर्गत आरंभ की गई कार्यवाही, अधिनियम 2013 की धारा 114 के उपबंधों को दृष्टिगत रखते हुए सुरक्षित है। (जीवनलाल मिश्रा वि. म.प्र. राज्य) (DB)...731

Sahakari Bank Karmchari Seva Niyam, M.P. 1982, Rule 16 – Probation period – Promotion – **Petitioner joined service on 16.03.1961 and was confirmed as Samiti Sewak – He was inducted in the newly formed cadre of Samiti Prabandhak on 13.11.1967 on probation –**

Probation period was for one year – There is nothing on record to show that the said period was extended – There is also no formal order confirming the petitioner's service on the said post – Claim of the petitioner was dismissed on the ground that since he was not confirmed in the newly formed cadre of Samiti Prabandhak he is not entitle for promotion and other benefit – Held – As per Rule 16 the period of probation can be of 12 months which can be extended for 2 years if the work of the employee is not satisfactory – It cannot be said that from 1967 to 1976 for a long period of 10 years, the petitioner was on probation – Petitioner is assumed to have been confirmed – Petition is allowed, petitioner be given all the benefits as directed vide order dated 28.06.1990 within a period of 2 months. [Rajendra Prasad Kasera Vs. Indore Premier Cooperative Bank Ltd.] ...42

सहकारी बैंक कर्मचारी सेवा नियम म.प्र., 1982, नियम 16 – परिवीक्षा अवधि – पदोन्नति – याची 16.03.1961 को सेवा में आया और उसे समिति सेवक के रुप में स्थाई किया गया – उसे 13.11.1967 को समिति प्रबंधक के नव निर्मित कॉडर में परिवीक्षा पर नियुक्त किया गया – परिवीक्षा कालावधि एक वर्ष के लिए थी – यह दर्शाने के लिए अभिलेख पर कुछ नहीं कि उक्त अवधि को बढ़ाया गया था – उक्त पद पर याची की सेवाऐं स्थाई किये जाने का कोई औपचारिक आदेश भी नहीं – याची का दावा इस आधार पर खारिज किया गया कि चूंकि उसे समिति प्रबंधक के नव निर्मित कॉडर में स्थाई नहीं किया गया था, वह पदोन्नति एवं अन्य लाभों का हकदार नहीं – अभिनिर्धारित – नियम 16 के अनुसार परिवीक्षा की कालावधि 12 माह हो सकती है, जिसे 2 वर्ष के लिए बढ़ाया जा सकता है, यदि कर्मचारी का कार्य संतोषप्रद नहीं – यह नहीं कहा जा सकता कि 1967 से 1976 की 10 वर्ष की लंबी अवधि के लिए याची परिवीक्षाधीन था – याची के स्थाई होने की धारणा की गई – याचिका मंजूर, याची को 2 माह की अवधि के भीतर सभी लाभ दिये जाये जैसा कि आदेश दि. 28.06.1990 द्वारा निदेशित किया गया है। (राजेन्द्र प्रसाद कसेरा वि. इंदौर प्रीमियर कोऑपरेटिव बैंक लि.) ...42

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3 (1) (xi) – See – Protection of Children from Sexual Offences Act, 2012 **[Mohd. Juned Vs. State of M.P.]** ...484

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3 (1)(xi) – देखें – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (मोहम्मद जुनेद वि. म.प्र. राज्य) ...484

Service Law – Charge-Sheet – Misconduct – Non furnishing

of original and certified copy of matriculation certificate – **Whether allegation amounts to misconduct in the light of Clause 26.1 and 26.9 of Certified Standing Order or not, cannot be adjudged at the initial stage. [Nawal Kishor Singh Vs. S.E.C.L.] ...622**

सेवा विधि – आरोप पत्र – अवचार – मैट्रिक प्रमाणपत्र की मूल एवं प्रमाणित प्रति प्रदाय नहीं की जाना – क्या प्रमाणित स्थाई आदेश के खण्ड 26.1 व 26.9 के आलोक में आरोप अवचार की कोटि में आता हैं अथवा नहीं, यह आरंभिक प्रक्रम पर न्यायनिर्णित नहीं किया जा सकता। (नवल किशोर सिंह वि. एस.ई.सी.एल.) ...622

Service Law – Competency of authority – Delegation of power – **Charge-sheet issued by the Staff Officer – Being nominated competent authority the CGM/GM can sub-delegate the powers for implementing/taking appropriate action including disciplinary action – Staff officer is competent to issue charge-sheet. [Nawal Kishor Singh Vs. S.E.C.L.] ...622**

सेवा विधि – प्राधिकारी की सक्षमता – शक्ति का प्रत्यायोजन – स्टाफ आफिसर द्वारा आरोप–पत्र जारी किया गया – नामनिर्देशित सक्षम प्राधिकारी होने के नाते सी.जी.एम./जी.एम., लागू करने के लिये/समुचित कार्यवाही करने के लिये जिसमें अनुशासनिक कार्यवाही शामिल है शक्तियों का उप–प्रत्यायोजन कर सकता है – स्टॉफ ऑफिसर आरोप–पत्र जारी करने के लिये सक्षम है। (नवल किशोर सिंह वि. एस.ई.सी.एल.) ...622

Service Law – Compulsory retirement – **Compulsory retirement is not treated as termination as would disentitle the employee of the pensionary benefits – Gratuity is an element of pension – Compulsory retirement of respondent and his prosecution would not disentitle him from gratuity. [Zonal Manager, Central Bank of India Vs. R.R. Das] ...80**

सेवा विधि – अनिवार्य सेवानिवृत्ति – अनिवार्य सेवानिवृत्ति को सेवा समाप्ति के रुप में नहीं माना जाएगा, जिससे कि कर्मचारी पेंशन लाभों के लिए अपात्र हो – उपदान, पेंशन का एक तत्व है – प्रत्यर्थी की अनिवार्य सेवानिवृत्ति और उसका अभियोजन उसे उपदान के लिए अपात्र नहीं करेगा। (जोनल मेनेजर, सेन्ट्रल बैंक ऑफ इंडिया वि. आर.आर. दास) ...80

Service Law – Departmental Enquiry – Acquittal in criminal case – **An acquittal in criminal proceedings does not automatically absolve the employee from charges levelled against him in departmental enquiry. [Ameen Kumar Chatarjee Vs. West Central Railway] ...618**

सेवा विधि – विभागीय जांच – अपराधिक प्रकरण में दोषमुक्ति – आपराधिक कार्यवाही में कर्मचारी की दोषमुक्ति से उसके विरूद्ध विभागीय जांच में लगाये गये आरोपों से वह अपने आप मुक्त नहीं हो सकता। (अमीन कुमार चटर्जी वि. वेस्ट सेन्ट्रल रेलवे) ...618

Service Law – Departmental Enquiry – Denovo – **Enquiry Officer submitted its report exonerating the petitioner – Disciplinary authority instead of recording dissent note directed for fresh enquiry into the charges – Denovo enquiry in the teeth of findings of exoneration for same set of charges is not permissible. [Madhukar Shyam Jha Vs. Western Coal Fields Ltd.]** ...77

सेवा विधि – विभागीय जांच – नये सिरे से – याची को विमुक्त करते हुए जांच अधिकारी ने अपना प्रतिवेदन प्रस्तुत किया – अनुशासनिक प्राधिकारी ने विसम्मति टिप्पणी अभिलिखित करने की बजाए, आरोपों की नये सिरे से जांच करने के लिए निदेशित किया – विमुक्ति के निष्कर्षों के बावजूद समान आरोपों के समूह हेतु नये सिरे से जांच अनुज्ञेय नहीं। (मधुकर श्याम झा वि. वेस्टर्न कोल फील्डस् लि.) ...77

Service Law – Merger – Promotion – **Petitioner was the employee of society which subsequently merged with M.P.S.E.B. – Such employees are placed as junior to the junior most officer of the category concerned – Denial of promotion forever cannot be comprehended under the Constitutional Scheme of Articles 14 and 16 of the Constitution of India – Petitioner is entitled for consideration for further promotions as per the rules/regulations of the MPSEB. [Panchraj Tiwari Vs. M.P. State Electricity Board]** (SC)...281

सेवा विधि – विलयन – पदोन्नति – याची एक सोसायटी का कर्मचारी था बाद मे जिसका विलयन म.प्र.राज्य विद्युत मंडल में हुआ – उक्त कर्मचारियों को संबंधित श्रेणी के कनिष्ठतम अधिकारी से कनिष्ठ स्थान पर रखा गया – भारत के संविधान के अनुच्छेद 14 व 16 की संवैधानिक योजना के अंतर्गत पदोन्नति से सदैव के लिए वंचित किया जाना नहीं माना जा सकता – म.प्र. राज्य विद्युत मंडल के नियम/विनियमन के अनुसार याची आगे पदोन्नति हेतु विचार में लिये जाने का हकदार है। (पंचराज तिवारी वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) (SC)...281

Service Law – **Participation in the counselling for appointment to the post of Samvida Shala Shikshak Grade II – Applying the principle of neutralizing the error and rounding off, the petitioner gets 90 marks which makes him eligible for selection to the post of Samvida Shala**

Shikshak Grade II – Directed to permit the petitioner to participate in the counselling for appointment to the post of Samvida Shala Shikshak Grade II. [Brij Bihari Vs. State of M.P.] ...613

सेवा विधि – संविदा शाला शिक्षक ग्रेड–II के पद पर नियुक्ति हेतु काउंसलिंग में सहभाग – त्रुटि का शिथिलिकरण और पूर्णांकित करने का सिद्धांत लागू करते हुए याची को 90 अंक प्राप्त होते है जो उसे संविदा शाला शिक्षक ग्रेड–II के पद पर चयन हेतु पात्र बनाते है – संविदा शाला शिक्षक ग्रेड–II के पद पर नियुक्ति हेतु काउंसिलिंग में सहभाग की याची को अनुमति देने के लिए निदेशित किया गया। (ब्रज बिहारी वि. म.प्र. राज्य) ...613

***Service Law – Promotion* – Promotion of petitioner on the vacancy occurred due to transfer of one employee from one place to another on the strength of circular issued by State Government on 09.06.1999, was cancelled and he was reverted back on his substantive post – Held – No restriction was put in the circular dated 09.06.1999 in respect of promotion on the post fallen vacant due to transfer of an employee from one municipality to another – In fact the object of said circular is that the vacancy so become available should not be filled in by direct recruitment as the lien of the transferred employee is always protected – The entire circular is misread and misconstrued – Petition is allowed, however, petitioner cannot be treated to be confirmed on the promotional post. [Mithlesh Giri Goswami Vs. State of M.P.] ...57**

सेवा विधि – पदोन्नति – राज्य सरकार द्वारा 09.06.1999 को जारी किये गये परिपत्र के बल पर, एक कर्मचारी का एक स्थान से दूसरे स्थान पर स्थानांतरण के कारण उत्पन्न हुई रिक्ति पर याची की पदोन्नति को निरस्त किया गया और उसे उसके मूल पद पर प्रत्यावर्तित किया गया – अभिनिर्धारित – एक नगरपालिका से दूसरी में किसी कर्मचारी के स्थानांतरण के फलस्वरुप उत्पन्न रिक्ति के पद पर पदोन्नति के संबंध में परिपत्र दि. 09.06.1999 में कोई निर्बंधन नहीं लगाया गया है – वास्तव में, उक्त परिपत्र का उद्देश्य यह है कि ऐसी उपलब्ध रिक्ति को सीधी भर्ती द्वारा ना भरा जाए, क्योंकि स्थानांतरित कर्मचारी का लियन सदैव सुरक्षित रहता है – संपूर्ण परिपत्र का गलत पठन एवं अर्थान्वयन किया गया – याचिका मंजूर, किन्तु याची को पदोन्नत पद पर स्थायी नहीं माना जा सकता। (मिथलेश गिरि गोस्वामी वि. म.प्र. राज्य) ...57

***Service Law – Revision of pay* – Petitioner has already availed of the benefit of voluntary retirement scheme, has now claimed for enhancement of pay scale and other benefits – Held – Since the petitioner had undisputedly taken voluntary retirement before filing**

the instant petition, she cannot claim higher pay scale, emoluments and benefit. [Vanita Borakar (Smt.) Vs. State of M.P.] ...137

सेवा विधि – वेतन का पुनरीक्षण – याची पहले ही स्वेच्छिक सेवा निवृत्ति योजना का लाभ ले चुकी है, वह अब वेतनमान वृद्धि एवं अन्य लाभों के लिए दावा कर रही है – अभिनिर्धारित – चूंकि वर्तमान याचिका दायर करने के पूर्व ही याची अविवादित रुप से स्वेच्छिक सेवा निवृत्ति ले चुकी है, वह उच्च वेतनमान, परिलब्धियों एवं लाभों के लिए दावा नहीं कर सकती। (वनीता बोराकर (श्रीमती) वि. म.प्र. राज्य) ...137

Service Law – Selection **– Although the petitioner possesses an equivalent qualification of class 10th and has High School Certificate issued by M.P. Open School which has been duly recognized by Board of Secondary Education by notification dt. 04.10.1996 she was denied consideration, merely because the said qualification does not find mention in the advertisement – Held – Since the petitioner possesses the qualification equivalent to the Board of Secondary Education, respondents were not justified in rejecting the petitioner's candidature – Petition is allowed. [Poonam (Ku.) Vs. State of M.P.] ...89**

सेवा विधि – चयन – यद्यपि याची के पास कक्षा 10वीं के समकक्ष अर्हता है और म.प्र. मुक्त विद्यालय द्वारा जारी किया गया हाईस्कूल प्रमाण पत्र है, जिसे माध्यमिक शिक्षा मंडल की अधिसूचना दि. 04.10.1996 द्वारा सम्यक् रुप से मान्यता प्राप्त है, उसका विचार नहीं किया गया, मात्र इसलिए कि उक्त अर्हता का उल्लेख विज्ञापन में नहीं पाया जाता – अभिनिर्धारित – चूंकि याची के पास माध्यमिक शिक्षा मंडल के समकक्ष अर्हता है, प्रत्यर्थीगण द्वारा याची की अभ्यर्थिता अस्वीकार करना न्यायोचित नहीं था – याचिका मंजूर। (पूनम (कुमारी) वि. म.प्र. राज्य) ...89

Service Law – Transfer **– Petitioners joined the services in Forest Department and were promoted as Range Officers and they have been transferred in Working Plan Unit – Held – Aspect of physical fitness of each of the petitioner has also not been examined by the respondent State while issuing the order of transfer – Since the word "retire shortly" has not been explained in the order passed in the earlier round of litigation by this Court and as per the earlier policy the cut off age was 48 years, therefore this Court is of the view that keeping in view the age of retirement is 60 years it will be appropriate to fix the cut off age of 58 years – Petition allowed. [Gend Singh Vs. State of M.P.] ...601**

सेवा विधि – स्थानांतरण – याचियों ने वन विभाग में कार्यभार ग्रहण किया

एवं रेंज ऑफीसर्स के रूप में पदोन्नत हुए और उन्हें कार्य योजना इकाई में स्थानांतरित किया गया – अभिनिर्धारित – प्रत्यर्थी राज्य ने स्थानांतरण आदेश जारी करते समय प्रत्येक याची की शारीरिक क्षमता के पहलु का भी परीक्षण नहीं किया – चूंकि न्यायालय ने मुकदमे के पूर्ववर्ती प्रक्रम में पारित आदेश में शब्द "शीघ्र सेवा निवृत्ति" की व्याख्या नहीं की है और पूर्वतर नीति के अनुसार छांटने की आयु 48 वर्ष थी इसलिये न्यायालय का यह दृष्टिकोण है कि निवृत्ति आयु 60 वर्ष को दृष्टिगत रखते हुए, छांटने की आयु 58 वर्ष निश्चित करना उचित होगा – याचिका मंजूर। (गेंद सिंह वि. म.प्र. राज्य) ...601

Specific Relief Act (47 of 1963), Section 16(1)(c) – Readiness & Willingness **– Notice was duly replied by the defendant showing willingness to execute sale deed in terms of agreement which was not replied by the plaintiff – He himself was not willing to perform the contract – As per section 16 of the Specific Relief Act he is not entitled for any relief – Finding of Trial Court is affirmed – Appeal dismissed. [Ashok Kumar Barman Vs. Smt. Kanti Gupta]** ...415

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 (1)(सी) – तैयार और रजामंद – प्रतिवादी ने करार की शर्तोंनुसार विकय विलेख के निष्पादन की रजामंदी दर्शाते हुए नोटिस का सम्यक रूप से जवाब दिया, जिसका जवाब वादी द्वारा नहीं दिया गया – वह स्वयं संविदा का पालन करने के लिए रजामंद नहीं था – विनिर्दिष्ट अनुतोष अधिनियम की धारा 16 के अनुसार वह किसी अनुतोष का हकदार नहीं – विचारण न्यायालय के निष्कर्ष की पुष्टि की गई – अपील खारिज। (अशोक कुमार बर्मन वि. श्रीमती कांती गुप्ता) ...415

Specific Relief Act (47 of 1963), Section 16(1)(c) – Specific performance of contract **– Plaintiff contended that he paid money to defendant and defendant had also made endorsement on the agreement – Plaintiff did not produce original agreement on the ground that defendant is in possession of the same – Money was not paid by cheque nor receipt thereof was obtained – Held – Plaintiff failed to prove payment of money in terms of agreement – Story put forth by plaintiff does not find place in notice – Plaintiff rightly disbelieved. [Ashok Kumar Barman Vs. Smt. Kanti Gupta]** ...415

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 (1)(सी) – संविदा का विनिर्दिष्ट पालन – वादी ने तर्क दिया कि उसने प्रतिवादी को रकम अदा की और प्रतिवादी ने करार पर पृष्ठांकन भी किया – वादी ने मूल करार इस आधार पर प्रस्तुत नहीं किया कि वह प्रतिवादी के कब्जे में है – रकम की अदायगी चेक द्वारा नहीं की गई थी और न ही उसकी रसीद प्राप्त की गई थी – अभिनिर्धारित – करार की शर्तोंनुसार

रकम का भुगतान साबित करने में वादी असफल रहा – वादी द्वारा पेश की गई कहानी का नोटिस में स्थान नहीं पाया गया – वादी पर उचित रूप से अविश्वास किया गया। (अशोक कुमार बर्मन वि. श्रीमती कांती गुप्ता) ...415

Stamp Act (2 of 1899), Article 5(d), Schedule I-A, Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – **Clause 19 of the agreement provides that if the dispute arises between the party same can be resolved by appointing one arbitrator each – The aforesaid clause is in contravention of Section 10(1) of the Act which provides that number of arbitrator shall not be an even number – Hon'ble Mr. Justice V.K. Agrawal is appointed sole arbitrator – Parties shall appear before him. [Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja]** ...239

स्टाम्प अधिनियम (1899 का 2), अनुच्छेद 5(डी), अनुसूची I-ए माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – मध्यस्थ की नियुक्ति – करार का खंड 19 उपबंधित करता है कि यदि पक्षकारों के मध्य विवाद उत्पन्न होता है, उसे दोनों के एक-एक मध्यस्थ की नियुक्ति द्वारा सुलझाया जायेगा – उपरोक्त खंड, अधिनियम की धारा 10(1) के विरुद्ध है, जो यह उपबंधित करता है कि मध्यस्थ की संख्या सम संख्या नहीं होगी – माननीय न्यायाधिपति श्री व्ही.के. अग्रवाल को एकमात्र मध्यस्थ नियुक्त किया गया – पक्षकार उनके समक्ष उपस्थित होंगे। (अल्फा कंस्ट्रक्शन (मे.) वि. विनोद कुमार थरेजा) ...239

Stamp Act (2 of 1899), Article 5(d), Schedule I-A, Arbitration and Conciliation Act (26 of 1996), Section 11(6) – **Requirement under Article 5(d) of Schedule I-A of the 1899 Act – Since there is no stipulation in the agreement that building shall be held jointly or severally by the person other than the owner and remaining part thereof shall be sold jointly or severally by them, agreement is not required to be stamped. [Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja]** ...239

स्टाम्प अधिनियम (1899 का 2), अनुच्छेद 5(डी), अनुसूची I-ए माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – अधिनियम 1899 की अनुसूची I-ए के अनुच्छेद 5(डी) के अंतर्गत अपेक्षा – चूंकि करार में कोई शर्त नहीं कि भवन को स्वामी के अलावा, व्यक्ति द्वारा संयुक्त रुप से या पृथक रुप से धारण किया जायेगा और उसका शेष भाग उनके द्वारा संयुक्त रुप से या पृथक रुप से विक्रय किया जायेगा, करार स्टाम्पित किया जाना अपेक्षित नहीं। (अल्फा कंस्ट्रक्शन (मे.) वि. विनोद कुमार थरेजा) ...239

Value Added Tax Act, M.P. (20 of 2002), Section 57(5)(6)(8)(11)

– Petitioner who is goods transporter was carrying goods to deliver – During transportation goods were stopped by Commercial Tax Officer – Due to non-compliance of Section 57(6)(b) of the Act, tankers alongwith goods were detained – Penalty was imposed which was deposited by the petitioner – However, the prayer to release the tankers alongwith the seized goods was not accepted to effect the recovery of tax assessed against seller of the goods – Held – Once the petitioner had paid the penalty imposed against it, it was incumbent upon the Check Post Officer to exercise its power conferred u/s 57(11) of the Act to release the goods seized by it, in favour of the petitioner – Goods could not have been detained for realization of tax assessed against the seller – Action is violative of Section 57(11) of the Act – Same cannot be sustained. [Kabra Bulk Transport Carrier (M/s.) Vs. The Commissioner of Commercial Tax, Indore] (DB)...66

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धारा 57(5)(6)(8)(11) – याची जो माल परिवहन का कारोबारी है, माल को ठिकाने पर पहुंचाने के लिए ले जा रहा था – परिवहन के दौरान, वाणिज्यिक कर अधिकारी द्वारा माल रोका गया – अधिनियम की धारा 57(6)(बी) के अननुपालन के कारण माल के साथ टेंकरों को निरुद्ध किया गया – दण्ड अधिरोपित किया गया, जिसे याची ने जमा किया – किन्तु जब्त माल के साथ टेंकरों को छोड़े जाने की प्रार्थना को, माल के विक्रेता के विरुद्ध निर्धारित कर की वसूली के उद्देश्य से अस्वीकार किया गया – अभिनिर्धारित – एक बार याची द्वारा अपने विरुद्ध अधिरोपित अर्थदण्ड का भुगतान करने पर, चेक पोस्ट अधिकारी, अधिनियम की धारा 57(11) के अंतर्गत प्रदत्त अपनी शक्ति का प्रयोग करते हुए उसके द्वारा जब्त माल को याची के पक्ष में मुक्त करने के लिए कर्तव्यबद्ध था – विक्रेता के विरुद्ध निर्धारित कर की वसूली हेतु माल को निरुद्ध नहीं किया जा सकता था – अधिनियम की धारा 57(11) के उल्लंघन में कार्यवाही की गई है – उक्त को कायम नहीं रखा जा सकता। (काबरा बल्क ट्रांसपोर्ट केरियर (मे.) वि. द कमिश्नर ऑफ कमर्शियल टैक्स, इंदौर) (DB)...66

Vishesh Sashastra Bal Niyam, M.P. 1973, Rule 56(3) – Out of turn promotion **– Petitioners saved the life of 30 persons from being immersed into water and life of 6 persons who were surrounded by flood for which Rs. 2,000/- was awarded and appreciation certificate was also issued – Authorities made recommendations for their out of turn promotion – Held – Petitioners have passed only High School examination – Although they appeared in the examination for promotion on the post of Head Constable but they could not succeed – Alongwith petitioners there were 26 employees who performed well and they were**

also rewarded for their best services – No case for out of turn promotion is made out. [Anokhilal Billore Vs. State of M.P.] ...47

विशेष सशस्त्र बल नियम, म.प्र. 1973, नियम 56(3) – समय पूर्व पदोन्नति– याचीगण ने पानी में डूब रहे 30 व्यक्तियों एवं 6 व्यक्ति जो बाढ़ में घिर गये थे, की जीवन रक्षा की, जिसके लिये उन्हें 2000/– का पारितोषिक एवं प्रशस्ति पत्र भी प्रदान किया गया था – प्राधिकारियों ने उनकी समय पूर्व पदोन्नति हेतु अनुशंसा की – अभिनिर्धारित – याचीगण केवल हाईस्कूल परीक्षा उत्तीर्ण है – यद्यपि वे हेड कांस्टेबल के पद पर पदोन्नति के लिए परीक्षा में सम्मिलित हुए किंतु वे सफल नहीं हुए – याचीगण के साथ 26 कर्मचारी थे, जिन्होंने अच्छा प्रदर्शन किया और उन्हें भी उनकी उत्कृष्ट सेवाओं हेतु पुरस्कृत किया गया था – समय पूर्व पदोन्नति के लिए प्रकरण नहीं बनता। (अनोखी लाल बिल्लोरे वि. म.प्र. राज्य) ...47

***Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 3(xx) – Teacher* – Petitioner working as Director, Physical Education – Cannot be treated as Teacher. [Mohd. Iqbal Quraishi (Dr.) Vs. His Excellency, The Kuladhipati of DAVV] ...641**

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 3 (xx) – शिक्षक – याची व्यायाम शिक्षा निदेशक के रूप में कार्यरत – शिक्षक के रूप में नहीं माना जा सकता। (मोहम्मद इकबाल कुरैशी (डॉ.) वि. हिज एक्सीलेन्सी, द कुलाधिपति ऑफ डी.ए.व्ही. व्ही.) ...641

***Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Sections 24 (x), 18, 20, 35, 49 – Teacher* – Petitioner was appointed as Director, Physical Education – On the recommendation of Executive Council, University passed an order treating him a teacher – Order was modified by impugned order and petitioner was once again treated as Director – Held – No statutory provision of law under Act, 1973 empowers the Chancellor to convert the post of Director to the post of Professor – Petitioner also failed to establish that he is a teacher – No straight jacket formula in respect of principles of natural justice and fair play – Petition dismissed. [Mohd. Iqbal Quraishi (Dr.) Vs. His Excellency, The Kuladhipati of DAVV] ...641**

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 24 (x), 18, 20, 35, 49 – शिक्षक – याची व्यायाम शिक्षा निदेशक के रूप में नियुक्त किया गया – कार्यकारणी परिषद की अनुशंसा पर, विश्वविद्यालय ने उसे एक शिक्षक मानते हुए आदेश पारित किया – आक्षेपित आदेश द्वारा आदेश उपांतरित एवं याची को फिर से निदेशक के रूप में माना गया – अभिनिर्धारित – अधिनियम 1973 के अंतर्गत

विधि में कानूनी उपबंध नहीं है जो निदेशक के पद को प्रोफेसर के पद में परिवर्तित करने हेतु कुलपति को सशक्त करे – याची यह भी स्थापित करने में असफल रहा कि वह एक शिक्षक है – प्राकृतिक न्याय के सिद्धांत एवं निष्पक्ष व्यवहार के संबंध में कोई निश्चित सूत्र नहीं है। (मोहम्मद इकबाल कुरैशी (डॉ.) वि. हिज एक्सीलेन्सी, द कुलाधिपति ऑफ डी.ए.व्ही. व्ही.) ...641

Workmen's Compensation Act (8 of 1923), Section 30 **– Interest awarded at the rate of 12% from the date of application – Held – It is not open to contend that the payment of compensation would fall due only after the Commissioner's order – Appeal is dismissed. [Oriental Insurance Co. Ltd. Vs. Smt. Bindiya]** ...162

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 – आवेदन की तिथि से 12 प्रतिशत की दर से ब्याज अवार्ड किया गया – अभिनिर्धारित – यह तर्क विचार में नहीं लिया जायेगा कि प्रतिकर का भुगतान केवल आयुक्त के आदेश के पश्चात ही देय होगा – अपील खारिज। (ऑरिएन्टल इंश्योरेन्स कं. लि. वि. श्रीमती बिंदिया) ...162

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THE INDIAN LAW REPORTS M.P. SERIES, 2015 (VOL-1)

JOURNAL SECTION

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

[Published in the Gazette of India (Extraordinary) Part III, Section 4, dated 13.01.2015, Page no. 13-26, regarding verification of Certificate & Place of Practice of Advocates and to repeal the Bar Council of India Certificate of Practice & Renewal Rules, 2014]

BAR COUNCIL OF INDIA

NOTIFICATION

New Delhi, the 12th January, 2015

xtracts of the minutes of the meeting of General Council of Bar Council of India held on 29th/30th November, 2014.

Item No. 330/2014

The Council considered the Draft Rules with regard to verification of Certificate and Place of Practice of Advocates and to repeal the Bar Council of India Certificate of Practice and Renewal Rules, 2014 and passed the following resolution:

Resolution No. 216/2014

(e) The Council resolves to modify the Resolution No. 169 of 2014 (Item No. 276/2014) dated 17th October, 2014. The Council further resolves that Draft Rules with regard to Verification of Certificate and Place of Practice submitted by the sub-Committee be and is hereby approved. These new Rules shall be named as Bar Council of India Certificate and place of Practice (Verification) Rules 2015 depending on the year of its publication in the Gazette

of India and it shall come into force from the date of its publication in the Gazette of India. The Council further resolves to repeal Bar Council of India Certificate of Practice and Renewal Rules, 2014, accordingly the Bar Council of India Certificate of Practice Renewal Rules, 2014 stand repealed.

(f) Bar Council of India Certificate and Place of Practice (Verification) Rules have been framed in exercise of powers conferred on Bar Council of India by section 49(1)(ag), 49(ah) and 49(i) of the Advocates Act, 1961 and in exercise of powers under Part-V Chapter 1, Rule 1(1) & 2 and Rule 2 of Bar Council of India Rules, Chapter III sub Rule 3, 4 and Part-IX Rule 17,18(h), 20,22,24 of Bar Council of India Rules.

Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015.

Statement of objects and reasons:

The legal profession is an Honorable one and it has critical role to play in protecting and promoting the Civil and Constitutional rights of the people. An independent and fearless Bar is vital and crucial for sustaining and promoting a true and healthy democracy. The Bar which is subject to manipulation and influence from extraneous powers, howsoever mighty and esteemed they may be, cannot do justice either to the Legal Profession or to the Rule of Law. Bench and Bar are the two wheels of a chariot and one cannot function without the other. Sadly, this profession has fallen under a cloud.

In the Joint Meeting of the representatives of all State Bar Councils and Bar Council of India, concerns were raised by all that trend of Advocates switching over to other professions/services/business without any information to the State Bar Council has reached alarming proportions. This trend is endangering the legal profession as a whole. It has also made a dent in its sanctity and standards. Names of such advocates continue to be included in the "Roll of advocates" being maintained by the State Bar Councils, notwithstanding the fact that they have left the legal profession or have since died. Though under section 19 of the Advocates Act, the State Bar Councils are under legal obligation to send a copy of the Roll of advocates prepared by it under section 17 of the Act and subsequent alterations/additions thereto but practically no state bar Council has observed this mandatory provision of

the Act up till now.

Under these circumstances it appears that a definite trend is visible that the control of Bar Associations and of other elected bodies under the Advocates Act is slipping out of the hands of the advocates who practice law. It is also being experienced that after certificate of enrolment is issued to an advocate, practically no communicative and continuing contact survives between him and the Council.

Under the existing state of affairs, All India Bar Examination introduced on the directions/observations of the Supreme Court of India to improve the standard of legal profession has also failed to fully achieve its objective. Advocates enrolled with the State Bar Councils obtain "Provisional Certificate of Practice" (valid for 2 years) and thereafter most of them are practicing Law without caring to appear for All India Bar Examination and to pass it.

Various welfare schemes for advocates have been floated in India both under State Legislations as well as under various welfare schemes framed by different State Bar Councils and by Bar Council of India but benefits thereunder are being enjoyed by those also who have left the profession.

There is also an urgent need for laying down some conditions for practicing law in different Courts so as to give due weightage and credence to experience. Before an advocate could practice law in higher Courts, there is need that he is exposed to real court experience in lower Courts/trial Courts. This will help in integrating the whole judicial system from the perspective of the Bar.

Therefore, in order to achieve better and effective administrative and disciplinary control of the local Bar Associations, State Bar Councils and the Bar Council of India over the advocates entered on the Rolls of advocates being maintained by different State Bar Councils under section 22 of the Advocates Act and further in order to weed out advocates who have left practice, the Bar Council of India, in the exercise of powers conferred on it by Section 49(1) (ag), 49 (ah) 49(i) of the Advocates Act, 1961 and by all other enabling and residuary powers vested in it, had brought the rules titled " Bar Council of India Certificate of Practice and Renewal Rules, 2014" for the purposes of carrying into effect the provisions and objectives of the Act:-

But in some of the places, the Advocates raised objection with regard to the word Renewal, though in fact it is not the renewal of enrolment, rather it aimed at periodical verification of the details of an Advocate already enrolled with some State Bar Council. The aim was/is only to verify the place where the Advocate normally practices, the Bar Association of which he is a member (if any), the address/email id, enrolment number/year, the Institutions from which the Advocate has passed his Graduation and LL.B. The purpose is the maintenance of record of all the Advocates of the country; two passport size photographs of Advocate was/is also required to be furnished to the State Bar Council. The other object was/is also to introduce certain electoral reforms in the Bar Council/Bar Association elections, because in recent past, the Bar Council of India and the State Bar Councils have come across the cases of rigging in the polls and the allegations of bogus voting has now become frequent, since the State Bar Councils and/or majority of Bar Associations of the country have no record of the Advocates who died after enrolment or who joined other jobs, business or professions; the Bar Council of India being the regular of Legal profession and Legal education of the country has, therefore, decided to undertake the detailed verification and then to prepare a Voters' List alongwith recent photographs of the Advocate (Voter). The Council has framed these Rules in the light of the verdict of Hon'ble Apex Court in the case of Supreme Court Bar Association. The Bar Council of India has already decided to develop the web-portal for this purpose to have full details of all the Advocates of the country, all the Institutions imparting Legal Education, details of Law students, the Law Teachers and details of all the Bar Associations. The detailed information and photograph is necessary for that purpose also. Furthermore, since some of the Bar Associations have raised baseless objection with regard to the sum of Rs. 500/- as Practice Fee (as per them it is a heavy amount); the major portion (about Rs.400/-) of this Rs. 400/- was aimed (in 2014 Rules) for providing welfare schemes (like Insurance for Advocates and their family members and improvement of infrastructure and Library of Bar Associations, Pensions etc.) But due to objection, now the Council has resolved to segregate this amount of Rs. 400/- for welfare-schemes from the process fee of verification. Now only.Rs.100/- is to be charged from the Advocates as Process fee and rest of Rs. 400/- would be optional not mandatory, depending upon the decision of concerned State Bar Council and the concerned Advocate. Even from this process fee of Rs. 100/-, besides

the expenditure incurred for undertaking the work of verification, the State Bar Council, Bar Associations and Bar Council of India are required to spend the rest of the amount for the improvement of infrastructures of Associations only. State Bar Councils shall be required to open and maintain a separate Bank Account for this purpose which would be audited every year. The report of Audit shall be sent to Bar Council of India and the Bar Association soon after the submission of report.

The Bar Council of India has also come to know that a number of fake (farzi) persons (without any Law Degree or enrolment certificate) are indulged in Legal practice and are cheating the Litigants, courts and other stake-holders; and neither the Bar Associations nor the concerned State Bar Councils have any control over such fake persons. Shockingly, it has come to the notice of the Council that at some places, the office- bearers of Bar Associations or some vote-seekers knowingly make such people members and voters of their Associations with a motive to get their votes in the elections of Bar Associations or Bar Councils. Similarly, many persons, after getting enrolled as Advocates in any State Bar Council, get involve in Property-Dealings, contract or switch over to some other business, profession or job and have no more concern with the Legal profession. Such "non-practicing Advocates" are sometimes being used by some of the office-bearers/candidates for elections of Bar Associations or Bar Councils (only for their votes). But in fact, the Council has realized that such practice is degrading the standard of Legal profession, and this mal-practice has to be stopped.

Few of the office-bearers/representatives of some of the Bar Associations had raised unnecessary objections and protests to these reformative steps. Such protests were/are only to serve their vested interests. Bar Council of India has to maintain the dignity and standard of Legal profession, we shall have to oust fake people from the court-campus and we shall have to identify the "non-practicing Advocates", (who are involved in other job, business or profession). We are to ensure that such Advocates do not involve in deciding the fate of our Associations and the Bar Councils; And such Advocates are not allowed to get any benefit of welfare schemes or to practice Legal profession so long they are in any other business, job or profession.

It is due to these reasons, the Council has decided to make provisions

for identification of such fake persons and non-practicing Advocates. And the Council has also felt it necessary to discourage those Advocates who raise unnecessary protests with an intent to keep and protect the fake and/or non-Practicing Advocates with an object to get their votes. Therefore, the Council has resolved to make suitable provisions in these Rules so that if any Advocate is found to be indulged in making deliberate effort to

(i) Protect fake people practicing legal profession illegally

(ii) to create any hurdle in identification of "non-Practicing Advocates" and

(iii) create any objection in verification of the certificate of practice, credentials, place of Practice and details of Advocates, such Advocates would be debarred from contesting any election of Bar Association or Bar Council for a period of three years from the date of order to this effect.

Under the circumstances and for the abovementioned reasons, the Council has resolved to repeal the "Bar Council of India Certificate of Practice and Renewal Rules 2014" and has made and passed the new " Bar Council of India Certificate and place of Practice (Verification) Rules 2015", and has decided to implement it.

CHAPTER I

PRELIMINARY

1. **Short Title:**

These Rules shall be called as the "Certificate and place of Practice (Verification) Rules, 2015".

2. **Extent:**

These rules will be applicable to all the advocates whose names appear on the State Rolls being maintained by the State Bar Councils under section 17 of the Advocates Act, 1961.

3. **Date of commencement:**

These rules, except Rule 7 of Chapter III, shall come into force at once from the date of publication of these Rules in the Gazette of

India. Rule 7 of Chapter III shall come into force on such date as the Bar Council of India may, by notification in the Gazette of India, appoint in this behalf.

4. **Definitions:**

(a) **Act** means the Advocates Act, 1961.

(b) **Advocate** means an advocate whose name is entered in the Roll of advocates being maintained by the State Bar Councils under section 17 of the Advocates Act, 1961.

(c) **Certificate of Enrolment** means the certificate of enrollment held by an advocate issued under section 22 of the Advocates Act, 1961.

(d) **Certificate of Practice** in relation to an advocate having obtained graduate degree in law before the academic year 2010 enrolled on the roll of Advocates shall mean Certificate of Practice issued under Rule 13 and in relation to an advocate graduating in law in academic year 2009-2010 (1st July, 2009 to 30th June, 2010) and thereafter, enrolled on or after 12th Day of June, 2010, Certificate of Practice means the "Certificate of Practice" issued under All India Bar Examination Rules or under Rule 13 of these Rules or the enrolment certificate issued by the State Bar Council.

(e) **State Bar Council** means the State Bar Councils as defined under section 3 (1) (a) of the Advocates Act, 1961.

(f) **Verification/process fee** means the amount/s payable under these rules as fee and amount for processing of Application and its verification. This amount may be varied by the Bar Council of India from time to time and on such variation, the varied amount shall mean the fee.

(g) **Bar Association** of a given area/town/city means an area/ territory and court work based association of advocates, whether registered under the Societies Registration Act (Act No.XXI of 1860) or not having its area/territory defined in

terms of the whole or part of the territorial jurisdiction of Courts/ Tribunals/Persons or any other Authorities legally competent to take evidence before which its members ordinarily practice law and it includes Bar Association exclusively dealing in specific fields of law viz. Income Tax, Corporate Law, Central/ State Excise Law etc. in relation to the authorities/tribunals/ boards etc. thereunder.

(h) **"Roll of advocates"** means "roll" as defined in the Advocates Act.

(i) "**Administrative Committee**" shall mean a committee comprising of three members of the State Council, constituted by the State Bar Council by way of election, for discharging such functions and duties as are entrusted to it under these Rules. There may be more than one such Committee depending upon the work load of a particular State Bar Council.

(j) **An non-practicing advocate** means an Advocate enrolled with any State Bar Council, but is not in actual practice of Law and is engaged in some other public or private job, business, contract etc. not related to Legal profession: and who has been so declared under Rule 13 and Rule 20.2 of these Rules and whose name stands published under Rule 20.4.

(k) **Fake Person** is a person who is involved in practicing in Courts of Law/Tribunals or other Legal forums without having a valid Degree in Law (without any enrolment in any State Bar Council) and use to appear in such Courts, Tribunals or Forums illegally posing him as an Advocate.

(l) **All terms and phrases** used in these rules shall have the same meaning as they have under the Advocates Act, 1961, unless the context in which such words and phrases are used, expressly suggest to the contrary.

5. **Necessity of "Certificate of Practice":**

An advocate shall not be entitled to practice law unless he holds a valid and verified certificate of practice issued either under All India

Bar Examination Rules or under these Rules.

This disability to practice law would come into force only when the name/names of such advocate/s is/are published under Rule 20.4.

5 (a) **Exemption of certain categories of Advocates:-**

However, it is made clear that the senior Advocates designated under Section 16 of the Act and the Advocates on Record of Supreme Court of India shall not be required to fill up the form for Verification. The senior Advocates and Advocates on Record of Supreme Court of India are simply required to send their two passport size photographs with their names and current Address to the concerned Bar Council through their respective Associations so that their names could be included in the voters–list of State Bar Council. There is a separate form '**Form E**' for that purpose.

CHAPTER II

LOCAL BAR ASSOCIATIONS

6. **Advocate to be a member of the Bar Association where he/she normally practices law:**

6.1 An advocate, after having obtained a Certificate of Enrollment under section 22 of the Advocates Act, 1961, is required to get himself registered as a member of the Bar Association where he ordinarily practices law or intends to practice law. And if any Advocate does not intend to be a member of any Bar Association duly recognized by concerned State Bar Council, then he shall be required to intimate the same to the State Bar Council and he shall have to explain as to how shall he be getting the benefits of any welfare scheme floated by the State Bar Council or the Local Bar Association. The decision of State Bar Council shall be final in this regard.

6.2 In case an advocate leaves one Bar Association and joins another by reason of change of place of practice or by reason of change of field of law, he/she shall intimate such change with all the relevant particulars to the State Bar Council, of

which he is a member. Such fact of leaving as well as of joining shall be independently intimated to the aforesaid said Bar Council within a period of one month.

6.3 Bar Associations to apply to the respective Bar Council within whose jurisdiction they are located, for being recognized under these rules. Recognition shall be accorded to such a Bar Association only which falls within the definition of Bar Association as defined in these rules.

CHAPTER III

7.1 If it comes to the notice of the Council through any source that any office-bearer of any Bar Association or any Advocate is involved in making unnecessary, baseless and deliberate protests/objections in the process of identification of fake persons (involved in Legal profession) or in the identification of non-practicing Advocates (who are doing some other job, business etc.) and/or making any attempt to mislead the Advocates of his Association or State by making irresponsible statements with ill motive to create hurdle in implementation of these reformative Rules, a Tribunal constituted by the Bar Council of India and the State Bar Council may pass an order debarring such Advocate or office-bearer from contesting the elections of Bar Association/State Bar Council for a period of three years from the date of passing of such order.

7.2 Any such order be passed only by a Tribunal consisting of one former Judge of any High Court (nominated by Bar Council of India) one senior Advocate and one Senior Member of State Bar Council (nominated by the Chairman and the Vice-Chairman of that Bar Council.) Hon'ble Former Judge of High Court shall be the Presiding Officer of the Tribunal and no adverse order can be passed by such Tribunal unless the concerned office-bearer/Advocate is given an opportunity of hearing. The decision of majority will prevail in such decision. The Tribunal shall have power to pass interim orders also. The State Bar Council or Bar Council of India may refer the

matters to such Tribunals and the Tribunal shall dispose of the matters expeditiously. There shall be a separate Tribunal for each State Bar Council.

7.3 An Appeal/Revision shall lie before the Bar Council of India against any order passed by the said Tribunal, if preferred within a period of 60 days from the date of order: However, the Council shall have the power to condone the delay in filing such Appeal/Revision beyond 60 days, if sufficient cause is shown by the appellant/petitioner.

CHAPTER IV

APPLICATIONS/ORDERS/OBJECTION PETITION WITH RESPECT TO GRANT/VERIFICATION OF CERTIFICATE AND PLACE OF PRACTICE

8. Application for verification of "Certificate to practice and place of Practice" by advocates enrolled on or before June 12, 2010:

8.1 An advocate graduating in law in academic year 2009-2010(1st July, 2009 to 30th June, 2010) and thereafter, enrolled on the "Roll of Advocates" on or after June 12, 2010, is required to apply for issuance of "Certificate of Practice" under All India Bar Examination Rules, 2010 and for verification of such "Certificate of Practice" from the State Bar Council in which he/she is enrolled as an advocate under Rule 9.

8.2 An advocate having obtained graduate degree in law before the academic year 2010 enrolled on the "Roll of Advocates", is required to apply for verification of "Certificate of Practice and place of practice" from the State Bar Council in which he/she is enrolled as an advocate under this rule within a period of 6 months of the enforcement of these Rules/date of enrolment.

8.3 Every application for issuance of verified Certificate of Practice shall be submitted in the prescribed format as given in **Form A** Column I and Column II annexed with these Rules disclosing

all the necessary informations as required thereunder to the State Bar Council, with which he/she is enrolled.

8.4 Every such application shall be accompanied by the following documents, certificates, declaration, fee etc: -

i. Verification fee/process fee in the sum of Rs.100/- (rupees one hundred only) by way of Bank Drafts/ Account payee bank cheque or cash in the name of :-

a. Secretary State Bar Council, with which the applicant is enrolled (or it may be paid in cash also);

Out of this Rs. 100/-, the Secretary, State Bar Council shall send a sum of Rs. 20/- to the concerned Bar Association and Rs. 30/- to Bar Council of India, rest Rs. 50/- is to be kept in the Account of State Bar Council.

ii. A declaration in the prescribed format as given in Column II of **Form 'A'** annexed with these Rules;

iii. Two passport size photographs duly attested by the President/Secretary of the Bar Association or by any other office bearer of the Association who is duly authorized for this purpose by the Bar Association, of which the applicant is a member, or by a member of the State Bar Council duly authorized by the State Bar Council or Bar Council of India ;

iv. Certificate in **Form A Column III** issued by the President/Secretary or by any other office bearer of the Association, who is duly authorized for this purpose by the Bar Association/ to the effect that the applicant advocate is a bona fide member of the concerned Bar Association and that he has not left law practice OR By any member of State Bar Council duly authorized by State Bar Council or by the Bar Council of India.

In case, the applicant has been a member of different

Bar Associations at different times since the issuance of certificate of enrolment under section 22 of the Advocates Act, 1961, such certificates may be obtained from the Presidents/Secretaries of the different Bar Associations, of which the applicant remained a member, at different times.

In case, the certificate of enrolment under section 22 of the Advocates Act, 1961 was granted more than five (5) years prior to the date of application, such certificate/certificates needs to be confined only to a period of five (5) years.

Provided that in case it is established at any stage that any such Authority has deliberately issued a certificate in Column III of FORM 'A' even after knowing that the Advocate is not in practice, the State Bar Council will be at Liberty to take appropriate action against such Authority issuing such certificate.

8.5. That the aforesaid application may be filed by the applicant along with all the aforesaid documents either by hand in the Office of the State Bar Council against proper receipt or send to the Secretary under registered post or through the Bar Association, of which he/she is a member.

9. **Application for Verification of Certificate of Practice issued by State Bar Council:**

9.1 The Certificate of Practice issued to an advocate under Rule 13 of these Rules or under All India Bar Examination Rules and Verification thereof, shall be valid for a period of five years (5) years only and is liable to be verified every five (5) years by filing an application for verification in advance within a period of six (6) months, before the validity period of "Certificate of Practice" or of its verification, expires.

9.2. All such applications for verification shall be filed in the format as given in **Form A** annexed with these Rules and it shall be

accompanied by such documents, certificates, declaration, fee etc as are mentioned in clauses (i), (ii) and (iv) of Rule 8.4 and the same may be submitted as per Rule 8.5.

10. Delayed application with late fee:

That all the applications for verification of "Certificate of Practice" filed after the time fixed by rule 8/rule 9.1 of these Rules shall not be received by the Office/Secretary unless it is accompanied by late fee in the sum of Rs.100/- (one hundred only) and such late applications would be entertained only for a period of six (6) months.

11. Delayed application for verification with penalty clause:

That all applications for verification of certificate of practice filed after the period fixed under rule 10 shall not be received and processed by the Office/Secretary unless it is accompanied by a penalty fee of Rs.50 (rupees fifty only) per month reckoned from the last date on which such an application ought to have been made under Rule 10 of these Rules but such late application with penalty clause attached thereto would be entertained only for a period of six (6) months.

12. Incomplete and faulty applications:

That in case, the applications so received, are found to be incomplete/ faulty, the Office of State Bar Council shall intimate the concerned advocate of such shortcomings/defects by issuing letter under registered Post and such applications shall be processed further by the Office on removal of such shortcomings/defects.

The time taken to remove such shortcomings/defects by the concerned applicant may be counted towards late fee payable by the concerned advocate at the rate of Rs.1, 00/- per month unless it is waived by the Chairman/Vice-Chairman of the State Bar Council in case sufficient cause is shown for such delay.

13. Order on the application for verification of Certificate of Practice:

That every application for verification of certificate of practice and place of practice received shall be scrutinized by the Office within a

period of one month from the date of its receipt and if found in order, it shall be placed along with the personal file of the applicant before the Administrative Committee, for passing the requisite order allowing or dismissing the application.

Such application is liable to be dismissed only in case it is found that the advocate has left law practice and that he/she has no bona fide intent and interest in continuing it in future also and such an advocate shall be treated as a non-practicing advocate under these Rules.

No adverse order can be passed under this rule unless a reasonable opportunity of being heard is afforded to the applicant.

14. **Objection Petition:**

14.1 An advocate or any person may file an objection petition before the State Bar Council seeking to add the name/names of an advocate/advocates in the List of Non-Practicing Advocates on the ground that such an advocate has left law practice and that he/she has no bona fide intent and interest in continuing it in future also.

14.2 Rule A. I (1) and rule A. I (2) of Chapter I of Part VII of the Bar Council of India Rules relating to complaints under section 35 of the Advocates Act shall, mutatis mutandis, apply to these objection petitions except that such objection petition shall be accompanied by a security amount of Rs.1, 000/- and not such fee as is prescribed in the aforesaid Rules relating to complaints under section 35 of the Advocates Act.

14.3 That in case the State Bar Council finds that there is a prima facie case in favor of the applicant; it shall refer it for decision to its Administrative Committee.

14.4 That the "Administrative Committee" of the State Bar Council shall decide and dispose of such an objection petition along with application for issuance/verification of Certificate of Practice of the concerned advocate, if any. But if no such proceedings are pending, such objection petition shall be decided independently.

Such procedure as is applicable to complaints under section 35 of the Advocates Act shall apply, mutatis mutandis, to proceedings under this rule.

14.5. That in case the complaint is found to be vexatious, frivolous and mala fide, the security amount deposited with the objection petition shall be forfeited to the State Bar Council.

14.6 The "Administrative Committee" shall be required to decide the objection petitions within a period of 15 days from the date of objection.

Explanation:- An Advocate shall be deemed to be in practice, if he is able to establish that he has appeared in any Court of law or has filed Vakalatnama even in one case before any Court of Law/other forum in a year before these Rules came into force.

CHAPTER V
FOLLOW UP ACTION

15. Follow up action of order passed under rule 13:

15.1 That immediately after the application for verification of Certificate of Practice is allowed under Rule 13 of these Rules; the Office of the State Bar Council shall prepare the verified Certificate in FORM 'B' in duplicate duly signed by the Chairman of the State Bar Council and in his absence by the Vice chairman of the State Bar Council or by such other member of the State Bar Council who is specifically authorized for the said purpose by the State Bar Council.

15.2 That one copy of such verified Certificate of Practice shall be dispatched to the advocate concerned under registered Post AD without any delay and the other copy shall be kept in the personal file of the advocate. The State Bar Council shall also make rules and issue an Identity card of such Advocates containing their photographs, which I-card shall be valid for a period of 5 years from the date of issuance and it shall be required to be produced at the time of voting election of State Bar Council or Bar Association.

15.3 That the State Bar Council shall maintain a separate Dispatch Register containing all the details as to the particulars of issuance/verification of the certificate of practice, original certificate of enrolment and full particulars of the advocate as to age, date of birth, address, email id etc.. This Register shall be maintained year wise in such manner as may be prescribed by the State Council.

15.4 Every State Bar Council shall send to the Bar Council of India an authenticated soft copy of the record maintained by it under Rule 15.3 every year.

CHAPTER VI

CONSEQUENCES OF ORDER U/R 13 AND OF FAILURE TO MAKE APPLICATIONS

16. **Consequence of dismissal of application under Rule 13**:

In the event of dismissal of application under Rule 13, such consequences as are laid down by Rule 20.4 would follow.

17. **Consequences of failure to make application as stipulated by Rule 7 to 11:**

That in case an advocate fails to make an application for verification of Certificate of Practice within such period/extended periods as provided for under Rules 8 to 11 and in case he fails to remove the shortcomings/defects in his application despite intimation under Rule 12 for a period of 6 months, it shall, prima facie, be presumed that such an advocate has left law practice and that he/she has no bona fide intent and interest in continuing it in future also.

18. **Follow up action against advocates who fail to respond and fall within the ambit of Rule 17 and publication of "list of defaulting advocates"):**

18.1 That the Office of the State Bar Council shall prepare a list of such defaulting advocate/advocates who has/have failed to apply for issuance/verification of Certificate of Practice within such period/extended period as provided for by these Rules

or have failed to remove shortcomings/defects in their applications despite intimation within the stipulated period of 6 months.

This list may be titled as the **"List of the Defaulting Advocates"**.

18.2 All such advocates whose name/names have been included in the list of "defaulting advocates" shall be given due notice of the fact that their name/names stood included in the above list and further notice of this list shall also be given in the following manner:

i. One copy of such List shall be displayed outside the Office of the Bar Council;

ii. Copies of such list shall also be sent to such District/ Taluka Bar Association/s to which such advocate/ advocates belong as per the address last disclosed by him/her and also to the concerned High Court/Supreme Court Bar Association;

iii. **A letter of intimation** that his/her name stands included in such list shall also be sent to the defaulting advocate at the address last disclosed by him/her under registered Post.

iv. This List shall also be **published** by the State Bar Council as per law.

19. <u>Late Applications after publication under Rule 18:</u>

If an application for issuance/verification of Certificate of Practice is received by the State Bar Council within a period of 6 months of the **publication** of the aforesaid list of defaulting advocates under Clause (iv) of Rule 18, it shall be accompanied by such late fee and penalties as are specified by rules 10 to 12 of these Rules.

All such applications shall be processed by the Office as per the procedure laid down by rule 10 to 12 and thereafter order on such applications shall be obtained under rule 13 and such order shall be

given effect to as per these rules.

20. <u>Consequences of failure to respond and publication of "list of non-practicing advocates":</u>

20.1 That if no application for issuance/verification of Certificate of Practice is made under these rules or if an application is filed but defects are not removed as per Rule 17, it shall be presumed for the purposes of these rules that such an advocate has left law practice and that he/she has no bona fide intent and interest in continuing it in future also.

20.2 That on the expiry of a period of 6 months of the publication of such "List of Defaulting Advocates", the State Bar Council shall pass an order directing that the name/names of such advocate/advocates appearing "List of the Defaulting Advocates" be put in the list of "Non-Practicing Advocates".

20.3 That due notice of the list of "Non-Practicing Advocates" shall be given to the followings:-

i. One copy of such List shall be sent to the Bar Council of India and to all other State Bar Councils.

ii. One copy of this list shall be sent to all the Courts situated within the territorial limits of the State Bar Council and also to the concerned High Court. Once copy shall be sent to Supreme Court of India also.

iii. Copies of such list shall also be sent to such District Bar Association/s to which such advocate/advocates belong as per the address last disclosed by him/her and also to the concerned High Court/Supreme Court Bar Association;

20.4 The List of Non-Practicing advocates and name/names of advocates whose application for issuance/verification of certificate of practice stands dismissed under Rule 13 shall also be **published** by the State Bar Council as per law after such list/name/names is/are approved by the Bar Council of

India.

List of such non-practicing Advocates is to be furnished by the concerned State Bar Council to Registrar of Supreme Court of India, Registrar of all the High Courts, Subordinate courts of the States, Bar Association of Supreme Court of India and Bar Associations of all the High Courts and Subordinate Courts.

21. **Non-practicing advocates as included in the list of "non-practicing advocates" not entitled to practice law and to other privileges and rights:**

21.1 From the date of publication of the aforesaid list of non-practicing advocates, all such advocate/s whose name/names has/have been included in the aforesaid list, shall not be entitled to appear in any Court of Law, before any Tribunal or person legally authorized to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice, notwithstanding the fact that name/names of such advocates is/are entered in the State Roll and that he is holding certificate of enrolment under section 22 of the Advocates Act.

Further, name/s of such advocate/s shall not be included in the electoral roll for the purposes of elections to the State Bar Councils. Such an advocate/s shall cease to be a member of any Bar Association and further he/she shall not be entitled to cast vote/s in any elections of the Bar Associations.

The status and rights of such advocate/s "as advocate/s entitled to participate and receive benefits" under Welfare Schemes of Bar Council of India created under Rules 40 to 44 B of Section IV-A of Chapter II contained in Part VI of the Bar Council of India Rules and other schemes floated by the State Bar Council shall come to an end w. e. f. the date of publication of the List/name/names of Non-Practicing Advocates under Rule 20.4 with the exception that such an advocate would be entitled to receive such benefits under the relevant scheme/s,

if any, which have already accrued in his/her favor.

CHAPTER VII

UPDATING OF THE RECORD OF PRACTICING AND NON-PRACTICING ADVOCATES

22. Record with respect to practicing and non-practicing Advocates:

22.1 That on culmination of the initial process of identification of Non-practicing Advocates in the aforesaid manner in the publication of the List of such advocates under Rule 20.4, the State Bar Council shall create and maintain a separate record of such Advocates with all particulars as to name, address, date of birth, date of enrolment, enrolment number, particulars of application for issuance/verification of Certificate of Practice, if any, and of its dismissal. This record shall be updated regularly.

22.2 Every State Bar Council shall send to the Bar Council of India an authenticated soft copy of the record as maintained under Rule 22.1 every year.

22.3 All the Advocates whose certificate of Practice are duly verified shall be issued a certificate of Practice affixing his photograph and mentioning the period of its validity FORM 'B'; And the State Bar Council shall also issue an Identity card to such Advocates containing a Xerox copy of his photograph and the period of its validity FORM 'D'. The Advocates would be supposed to carry it while practicing in Courts/ Tribunals or other Forums, so that in case of demand by any Law Court/ Authority or any Advocate or any Litigant or citizen one can easily establish that he is an Advocate.

22.4 An Advocate after getting the verified Certificate of Practice under these Rules can appear before any Court of Law/Tribunal or other forum in India as per Section 30 of the Advocates Act subject to fulfillment of any condition imposed by any competent or Court of Law.

23. Updating of the electoral rolls of the State Bar Council for the purposes of elections:

On the publication of list of non-practicing Advocates under rule 20.4 and after sending copy of such record to the Bar Council of India under Rule 22.2, the State Bar Councils shall start the process of preparation of electoral roll for elections to the State Bar Councils as per Chapter I, Part-III of the Bar Council of India Rules. No State Bar Council shall undertake to prepare electoral roll or to conduct elections to the State Bar Councils unless the process of verification of Certificate of Practice and of identification of non-practicing advocates is completed under these Rules by publication of their names under Rule 20.4.

Provided that the election/s of the State Bar Council/s where a special committee/committees under section 8A of the Act is/are already functioning on the date of commencement of these rules, shall continue under the existing rules as if these rules have not been enforced. In such State Bar Councils, these Rules shall come into force only after the new State Bar Council is constituted on the declaration/publication of the results of the elections.

The State Bar Councils are required to constitute various Committees for implementation of these Rules. If any State Bar Council is proved to be deliberately slack unnecessarily in verification of Certificate of Practice and identification of non-Practicing Advocates, then in that case Bar Council of India would be at Liberty to take appropriate action under the provisions of Advocates Act, 1961.

CHAPTER VIII

APPEAL, REVISION ETC.

24. Appellate Tribunal:

24.1 There shall be an Appellate Tribunal for disposal of appeals under these rules with respect to each State Bar Council and such Tribunal shall comprise of the following members:-

i. Two Members of the State Bar Council elected by the

State Bar Council under Rule 44 A(2)(i) of Bar Council of India Rules under Part VI, Chapter II, Section-(IV A).

ii. One member of the State Bar Council from amongst the members of the Executive Committee to be nominated by the Chairman of the State Bar Council and another member nominated by the Member, Bar Council of India from the concerned State Bar Council.

III. Member of the Bar Council of India from the concerned State Bar Council who shall be its Chairman;

24.2 That the quorum of the Appellate Tribunal shall be three members but no final order shall be passed unless the Chairman of the Appellate Tribunal is party thereto.

25. **Appeal against order passed under Rule 13/Rule 20.2:**

That in case the application of an Advocate for verification of Certificate of Practice is dismissed under **Rule 13** of these Rules/in case the name of an Advocate is ordered to be included in the list of "non-practicing Advocates" by the State Bar Council under Rule 20.2; the aggrieved party may, within a period of 60 days of the date of passing of the order or publication of the list of non- practicing advocates under Rule 20.4, **prefer an appeal** against such order to the Appellate Tribunal but delay in filing the appeal can be condoned, if sufficient cause is shown for such delay.

Every such appeal shall be accompanied by an attested copy of the impugned Order. The appeal shall not be received and entertained unless it is accompanied by a fee of Rs. 200/- in the form of a Bank draft/Account Payee Bank Cheque favoring Secretary, State Bar Council of the concerned State Bar Council.

Out of this amount of Rs. 200/-, the Secretary, State Bar Council shall send/ deposit remit a sum of Rs. 50/- to the Account of the Bar Council of India and a sum of Rs. 50/- shall be transferred to the fund known as " Fund for Promotion Bar Associations" under these rules.

Every such appeal shall be heard by the Appellate Tribunal, which may pass such order there on as it deems fit. Appeal is to be decided expeditiously preferably within 90 days of its filing.

26. Stay of operation of order passed under rule 13 and rule 19.2:

Mere filing of an appeal against order passed under rules 13 and 20.2 shall not operate to stay the operation of order appealed against unless its operation is stayed by the Appellate Tribunal on such conditions as it may deem fit.

27. Power of Revision:

27.1 The Bar Council of India may, at any time, call for the record of any proceeding under these Rules which has been disposed of by the State Bar Council or by the Appellate Tribunal, and from which no appeal lies, for the purpose of satisfying itself as to the legality and propriety of such order or disposal and may pass such orders in relation thereto as it may deem fit.

This revision shall be under Part-II, Chapter IX of BCI Rules viz. Section 48A of the Advocates Act, 1961.

27.2 No order which prejudicially affects any Advocate shall be passed under this Rule unless an opportunity of being heard has been afforded to him.

CHAPTER IX

RESUMPTION OF PRACTICE

28. Resumption of Practice:

28.1 If an advocate whose name has been included in the "list of non-practicing advocates" published under Rule 20.4, intends to resume law practice in the changed circumstances, he may apply to the State Bar Council that his/her name may be taken out of such list.

28.2 Application for resumption shall be made in Form C along with resumption fee of Rs.2, 000/- and declaration.

Such an application shall be supported by a certificate in

Column III of Form A issued by the President/Secretary of the Bar Association, of which the applicant intends to become member for doing practice in law.

28.3 The State Bar Council shall refer such an application for resumption to the Administrative Committee which may pass an appropriate order allowing or dismissing such application provided that such an application shall be allowed only if the Administrative Committee is satisfied that the intent of the applicant to resume law practice is bona fide.

28.4 In case application for resumption is allowed, the name of the applicant shall be taken out of the list of the "non-practicing advocates" and such exclusion shall be duly notified and published as provided by rule 20.3 qua "list of non-practicing advocates".

28.5 That from the date of publication under Rule 28.4, all disabilities suffered by the applicant under rule 21, shall not survive but he/she shall not be entitled for any benefits/privileges that were denied to him under Rule 21 for the period his/her name remained in the "list of non practicing advocates".

28.6 Out of Rs. 2000/-, a sum of Rs. 1000/- shall be utilized by State Bar Council for the purpose of welfare of Advocates and Rs.500/- shall be transferred to the concerned Bar Association and Rs. 500/- shall be utilized by Bar Council of India for the welfare of Advocates.

CHAPTER X

PROCESS FEE FUND

29. **The Verification/Process Fee Fund:**

The State Bar Council shall open a separate account for this purpose to be operated jointly by the Chairman and Secretary of the State Bar Council.

29.1 That all the payments towards application verification fee, late fee and penalties payable under these rules shall be paid by

way of bank drafts/account payee bank cheques only in the name of Secretary State Bar Council or it may also be deposited in cash to the Secretary, State Bar Council or it may also be deposited in cash to the Secretary, State Bar Council.

29.2 That the all the amount collected under these rules shall be utilized for the following purposes only:-

(a) To meet the administrative and other expenses arising in connection with these Rules; The rest of amount shall be spent.

(b) To make contributions to different Bar Associations for the following purposes only:-

i. Establishing and improving Law libraries.

ii. Improvement of infrastructure in the premises of the Bar Associations which is reserved for the common use of the advocates and to make such other contributions for promoting and strengthening the Bar Associations at the Taluka, District, High Court and Supreme Court levels as it may deem fit.

iii. To promote welfare schemes for advocates. Such welfare schemes may include insurance of all kinds with respect to the advocates and their dependent members of the family; pension schemes, stipends for junior and disabled advocates, continued legal education/training of advocates.

CHAPTER XI

MISCELLENOUS

30. Removal of difficulties:

In case of any doubt or dispute as to the meaning, interpretation, execution of these Rules arises, the Appellate Tribunal shall be the final authority to settle all such issues and its decision thereon shall be final.

31. **Regulatory Powers:**

The Bar Council of India shall have the right of issuing such regulations to the State Bar Council from time to time, as are necessary for the proper implementation and execution of these Rules and such regulations shall be complied with by the State Bar Council in letter and spirit so that uniformity is maintained in the application of these Rules throughout the Country.

32. **Power of Bar Council of India to form Ad-hoc Committees:**

In case the term of elected members of any State Bar Council is likely to expire/expires due to delay in the process of identification of non-practicing advocates under these rules or in case of delay in the preparation of the electoral roll for the elections to the State Bar Councils, the Bar Council of India shall constitute an ad-hoc Committee consisting of required number of elected members of the State Bar Council for smooth running of the State Bar Council and for expeditious execution of the aforesaid process. This ad-hoc Committee of State Bar council shall function under the Special Committee constituted under Section 8A of the Act till the process of preparation of electoral roll as per Chapter I, Part-III of the Bar Council of India Rules for the purpose of elections to the State Bar Council is completed.

33. **Saving clause.-**

The "Bar Council of India Certificate of Practice and Renewal Rules 2014" are hereby repealed. However, any certificate of the nature of Certificate of Practice as defined in those Rules and verification/renewal thereof (by whatever name/manner or form they may have been issued/ granted by the State Bar Councils) or under Bar Council of India Certificate of Practice Renewal Rules 2014 and any other action taken/ order passed by the State Bar Council in connection with any such Rule, before the enforcement of these Rules, shall continue to be valid for a period of five years from the date of its issuance/renewal, but on the expiry of period of five years, such certificate issued by the State Bar Council is required to be verified under these Rules.

34. **Repeal of all Resolutions/Rules passed/framed either by any State Bar Council or by Bar Council of India.**

Any Resolutions/Rules passed/framed by any State Bar Council or by Bar Council of India, which are inconsistent with these Rules, shall stand repealed from the date on which these Rules come into force.

35. The decision with regard to Rs. 500 or Rs. 200 (as the case may be) as paid by any Advocate as Practice fee as provided under Bar Council of India Certificate of Practice and Renewal Rules, 2014, prior to the date of commencement of these Rules of 2015, shall be taken by the concerned State Bar Council. Either after deducting Rs.100 as Process/ Verification fee the rest of Rs. 400 or Rs.100 (as the case may be) is to be refunded to the Advocate or it may be utilized for the insurance of the Advocate and his family or for the benefit and welfare of concerned Advocate. This decision is to be taken by the concerned State Bar Council only after obtaining option of concerned Advocate.

J. R. SHARMA, Secy.
[ADVT.III/4/Exty./96/14]

[Published in the Gazette of India (Extraordinary) Part II, Section 3 (ii), dated 05-02-2015, page no. 2, regarding addition in the list of psychotropic substances specified in the Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).]

MINISTRY OF FINANCE
(Department of Revenue)

NOTIFICATION
New Delhi, the 5th February, 2015

S.O. 376 (E).- Whereas, the Central Government is satisfied, on the basis of information and evidence which has become available to it with respect

to the nature and effect of, or the scope of abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material, that it is necessary or expedient to add the following substance or natural material or salt or preparation of such substance or material in the list of psychotropic substances specified in the Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) (hereinafter referred to as the said Act);

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby makes the following addition in the list of psychotropic substances specified in the Schedule of the said Act, namely:-

In the Schedule of the said Act, after serial number 110A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

S. No.	International Non-proprietary names	Other non-proprietary names	Chemical name
"110B	MEPHEDRONE	4-methylmethcathinone (4-MMC) 4-methylephedrone	(RS)-2-methylamino-I -(4-methylphenyl) propan-1-one".

[F. No. N-11011/2/2014-NC-ll (l)]

SATYA NARAYANA DASH, Under Secy.

Note: The Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) was amended vide S.O. 785(E) dated 26th October, 1992 and subsequently amended by S.O. 49(E) dated 8th January, 1993, S.O. 39(E) dated l2th January, 1996, S.O. 475(E) dated 11th June, 2003, G.S.R. 621(E) dated 1st August, 2003, G.S.R. l (E) dated 2nd January, 2004 and S.O. 311 (E) dated 10th February, 2011.

[Published in the Gazette of India (Extraordinary) Part II, Section 3 (ii), dated 20.03.2015, regarding increase in the limit of value of the property in dispute for the purpose of determining jurisdiction of permanent Lok Adalat]

MINISTRY OF LAW AND JUSTICE
(Department of Justice)

NOTIFICATION
New Delhi, the 20th March, 2015

S.O. 803(E).—In exercise of the powers conferred by the third proviso to sub-section (1) of section 22C of the Legal Services Authorities Act, 1987 (39 of 1987) and in supersession of the Government of India, Ministry of Law and Justice (Department of Legal Affairs) notification number S.O. 2083 (E), dated the 15th September, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 15th September, 2011, the Central Government, in consultation with the Central Authority, hereby increases the limit of the value of the property in dispute for the purpose of determining the jurisdiction of Permanent Lok Adalat to "one crore rupees" with effect from the date of publication of this notification in the Official Gazette.

[F. No. A-60011/37/2004-Admn.-III (LAP)-JUS]

PRAVEEN GARG, Jt. Secy.

I.L.R. [2015] M.P., 537
SUPREME COURT OF INDIA
Before Mr. Justice Dr. B.S. Chauhan & Mr. Justice S.A. Bobde
Cr.A. No. 2100/2013 decided on 17 December, 2013

ASHFAQ AHMED QUERESHI & anr. ... Appellants
Vs.
NAMRATA CHOPRA & ors. ... Respondents

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 420 - Cheating **- Respondent no. 1 & 2 entered into an agreement to sell the land in question and received Rs. 50 lacs by way of advance - Respondent no. 1 & 2 took permission from Municipal Corporation to construct a Club House showing land in question as open land and to be used for parking purposes - After the complaint was filed, the land in question was sold to another person - Held - As number of disputed questions of fact are there, High Court was not right in quashing the proceedings - Trial Court directed to proceed. (Paras 2B, 4,5 & 6)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 420 – छल – प्रत्यर्थी क.1 व 2 ने प्रश्नगत भूमि के विकय का करार किया और अग्रिम के रूप में रू. 50 लाख प्राप्त किये – प्रत्यर्थी क. 1 व 2 ने नगरपालिक निगम से क्लब हाऊस के निर्माण हेतु यह दर्शाते हुए अनुमति ली कि प्रश्नगत भूमि खुली भूमि है और पार्किंग के प्रयोजन हेतु उपयोग की जायेगी – शिकायत प्रस्तुत किये जाने के पश्चात् प्रश्नगत भूमि अन्य व्यक्ति को विकय की गई – अभिनिर्धारित – जैसा कि तथ्यों के कई विवादित प्रश्न है, उच्च न्यायालय द्वारा कार्यवाही अभिखंडित की जाना उचित नहीं था – विचारण न्यायालय को कार्यवाही आगे बढ़ाने के लिये निदेशित किया गया।

ORDER

The Order of the Court was delivered by :
DR. B.S. CHAUHAN, J. :- This appeal has been preferred against the impugned judgment and order dated 15.3.2012 passed by the High Court of Madhya Pradesh at Jabalpur in M.Cr.C. No. 8882/2011, by which the High Court has quashed the criminal proceedings against the respondent Nos. 1 and 2 in exercise of its power under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.').

2. Facts and circumstances giving rise to this appeal are that:

A. The appellants entered into an agreement for sale of land admeasuring 1.10 acres of land out of 2.20 acres of total land on 26.11.2009 which had been claimed by the said respondents 1 & 2 to be of their exclusive ownership and for that appellants paid a sum of rupees fifty lakhs to the said respondents as earnest money out of the consideration of Rs.1,50,93,540/-.

B. The sale deed could not be executed as the appellants did not make the payment for the reason that the said respondents did not complete the legal formalities for transferring the land. Later on, the appellants came to know that the said respondent Nos.1 & 2 alongwith other co-sharers had got permission dated 27.3.2006 from the Municipal Corporation of Bhopal for construction of the Club House on the part of the said land and the subject matter of agreement to sell had been shown therein as open land for parking purposes. The Club House has already been constructed on the land and the suit land is to be used only for parking purpose.

C. After realizing that the appellants got cheated, there had been claims and counter claims between the parties and ultimately several notices were exchanged between the parties. The appellants claimed a refund of rupees fifty lakhs with interest, while the respondents wanted to forfeit the earnest money for non-payment of further instalments as agreed by the parties. The appellants filed a complaint under Section 200 Cr.P.C. on 26.8.2010.

D. As the respondents came to know about filing of the complaint they sold the suit property to one Ms. Nanhi J. Walia on 23.10.2010.

E. In the complaint case, evidence of the complainant and his witnesses were recorded in November, 2010 and being satisfied, the learned Magistrate took cognizance vide order dated 6.12.2010 for the offence punishable under Section 420 of Indian Penal Code, 1860.

F. All the shares of other co-sharers of the said respondent Nos. 1 & 2 were also sold on 23.2.2011 to Ms. Nanhi J. Walia.

G Aggrieved, the respondent Nos. 1 & 2 filed a petition under Section 482 Cr.P.C. for quashing the complaint qua them on the ground that there had been a partition between the parties (co-sharers) and so far as the application for seeking permission to raise the Club House on the suit land was concerned, it had not been signed by the said respondents/applicants, rather their signatures had been forged by the co-sharers.

H. The High Court considered the case of both sides and ultimately quashed the criminal proceedings qua the said respondent Nos. 1 and 2.

Hence, this appeal

3. We have heard Shri Vikas Upadhyay, learned counsel appearing for the appellants, Shri Prashant Kumar, learned counsel for respondent Nos. 1 & 2 and Shri Arjun Garg, learned counsel for the State and have also gone through the record of the case.

4. There is sufficient evidence on record to show that the property belonged not only to the respondent Nos.1 & 2, but they were the owners alongwith respondent Nos.3 and 4. The respondent No.3 has died and respondent No.4 has been deleted from the array of parties by this court earlier. There is ample evidence on record that the permission had been sought and obtained from Municipal Corporation of Bhopal for raising the construction of a Club House and the land in dispute had been shown as vacant land for parking. It is too late for the respondent Nos.1 & 2 to say that the respondent Nos.3 and 4 might have forged their signatures for the reason that it is not their case in the counter affidavit or even before the High Court that they had ever raised any objection or filed any complaint before the police or any competent court for forging their signatures by someone else on the said application. More so, there are disputes regarding partition and demarcation of shares between the respective parties. The sale deeds are also on record that their shares have been sold not only by respondent Nos.3 & 4 but also by respondent Nos.1 & 2 subsequently and there is no land available today. No explanation could be furnished by Mr. Prashant Kumar appearing for respondent nos. 1 & 2 as to why this fact had not been brought to the notice of the court.

5. As the case raises a large number of disputed questions of fact, we are of the considered opinion that there was no occasion for the High Court to allow the petition under Section 482 Cr.P.C. and quash the criminal proceedings qua the said respondents.

6. In view of the above, we set aside the impugned judgment and order dated 15.3.2012 and allow the appeal. The learned trial court is directed to proceed against the said respondents in accordance with law.

Appeal allowed.

I.L.R. [2015] M.P., 540
SUPREME COURT OF INDIA
Before Mr. Justice Surinder Singh Nijjar & Mr. Justice A.K. Sikri
Civil Appeal No. 5529/2014 decided on 9 May, 2014

ARCHAEOLOGICAL SURVEY OF INDIA ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

(Alongwith Civil Appeal No. 5530/2014)

A. ***Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 4, Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Section 3 - Bade Baba Jain Temple -*** **Entry 40 of concurrent list covers Archaeological sites and remains - Act, 1964 has received assent of the President - Provisions of Act, 1964 qua these Jain Temples would be applicable and monuments are not covered by 1958 Act. (Para 41 & 47)**

क. प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1958 का 24), धारा 4, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 3 – बड़े बाबा जैन मंदिर – पुरातत्वीय स्थल और अवशेष समवर्ती सूची की प्रविष्टि 40 से आच्छादित हैं –अधिनियम, 1964 को राष्ट्रपति की अनुमति प्राप्त है – जहां तक जैन मंदिरों का संबंध है, अधिनियम 1964 के उपबंध इन पर लागू होंगे और अधिनियम, 1958 के द्वारा संस्मारक आच्छादित नहीं।

B. ***Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Section 19 - Construction without the permission of State Government -*** **Trust wants to raise construction as per Jain Agamas - Temple is proposed to be constructed in accordance with Nagara style of architecture - Arguments of appellant that in order to keep the sanctity of ancient monument, the construction should have been on the same pattern of structure but which existed before demolition, has not been looked into by the High Court - State Government while deciding the application for permission to construct would specifically consider the aforesaid aspect as well - It would also be open to the Trust to press the argument that Jains are declared religious minority and therefore, Jain community enjoys religious freedom as a fundamental right - Appeals dismissed with aforesaid directions. (Para 57,58)**

ख. प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 19 – राज्य सरकार की अनुमति के बिना निर्माण – ट्रस्ट जैन आगम के अनुसार निर्माण चाहती है – स्थापत्य कला की नागरा शैली के अनुसार मंदिर का निर्माण प्रस्तावित है – अपीलार्थी के यह तर्क कि प्राचीन संस्मारक की पवित्रता को बनाये रखने के लिए, संरचना के समान ढांचे पर निर्माण होना चाहिए, परन्तु वैसा ही जैसा नष्ट होने के पहले विद्यमान था, उच्च न्यायालय द्वारा विचार में नहीं लिया गया – निर्माण की अनुमति हेतु आवेदन का विनिश्चय करते समय राज्य सरकार उपरोक्त पहलू को भी विनिर्दिष्ट रुप से विचार में लेगी – ट्रस्ट का इस तर्क की ओर भी ध्यान आकर्षित करने का मार्ग खुला रहेगा कि जैनों को धार्मिक अल्पसंख्यक घोषित किया गया है और इसलिए, जैन समुदाय धार्मिक स्वतंत्रता का उपभोग मूलभूत अधिकार के रुप में करते हैं – उपरोक्त निदेशों के साथ अपील खारिज।

Cases referred :

(1997) 10 SCC 441, (2012) 2 SCC 562, (1965) 2 SCR 868, (2004) 10 SCC 779, AIR 1927 MAD 465, (1960) 1 SCR 773, (1972) 2 SCR 815.

JUDGMENT

The Judgment of the Court was delivered by : **A.K. Sikri, J. :-** Two Writ Petitions, both in the nature of Public Interest Litigation came to be filed in the High Court of Madhya Pradesh, Principal Seat at Jabalpur. In one petition Archaeological Survey of India (ASI) was the petitioner. Other petition was filed by Mr. Mohammed Azam Khan claiming himself to be a public spirited person. They were/are concerned with the Jain Temples which were constructed sometime in 6-7th Century A.D and scattered over an area of 199.45 acres in villages Kundalpur, Fatepur and Teergarh in Tehsil Hata, District Damoh (MP). This cluster of temples include most famous among them known as the temple of "Bade Baba". According to the petitioners, even when they are protected ancient monuments under the Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1958 and Rules 1959 framed thereunder, Jain Temple Trust (respondents 9 to 11) is carrying out illegal construction and thereby vandalizing the said Bade Baba Jain Temple.

2. Both these Writ Petitions are disposed of by the High Court vide common judgment dated 17.9.2012 holding that the original temple which was declared to be an ancient monument by virtue of Notification issued under Section 3 of Ancient Monuments Protection Act, 1904 (hereinafter referred to as "1904 Act") does not survive and the idol of "Bade Baba" which is an

ancient monument, alone survives. The Court has, thus, held that question of preservation and/or protecting of the monuments does not arise. In so far as idol of " Bade Baba" is concerned, the same is governed by the local Act, namely M.P.Ancient Monuments and Archaeological Sites and Remains Act 1964 (hereinafter referred to as the "1964 Act") and therefore ASI has no jurisdiction over it. At the same time, keeping in mind the provisions of Section 19 of 1964 Act which provides that there cannot be any construction or mining etc.by any person including the owner or occupier of the said protected area without permission of the State Government, the Jain Temple Trust will not proceed with the construction without obtaining the permission of the State Government. Accordingly, direction is issued to the Trust to submit an application for grant of permission to raise construction of the temple to preserve and protect idol of "Bade Baba" and a further direction is issued to the State Government to consider that application in accordance with law within a period of 2 months. It is also held that in case the State Government refuses to grant permission to raise construction of the temple the trust shall restore the construction to its position which existed on the date of the passing of the interim order by the High Court on 20th May 2006.

3. Obviously, both the writ petitioners were not satisfied with the aforesaid outcome of their Writ Petition and it is maintained that ASI is the appropriate authority as the temple and the idol of "Bade Baba" are the protected monuments of national importance under 1958 Act. The petitioners have also taken the position that the Trust has materially altered the character of the temple which was impermissible and therefore the same be directed to be restored to its original condition and in so far as the Trust is concerned, it has no right to carry out any construction thereon. Petitioners also maintain that 1964 Act does not apply and therefore State Government has no jurisdiction over the said temple. This, in nutshell, is the controversy on which we had heard counsel for the parties in detail.

4. Leave granted in both the SLPs.

5. Let us turn to the factual details at this point. We shall traverse these facts from the SLP Paper Book filed by the ASI by taking note of those facts which are admitted. Wherever there is a variance of the stand taken by the parties, we shall be indicating the same as well. Kundalpur Jain Temples, totaling 58, are located at different levels on the hills of Kundalpur starting from the foot hill. According to the Central Provinces District Gazettes, 1906,

Kundalpur is a well-known sacred place of the Jains and the temples therein are "all square blocks with domed roofs and pinnacles at the corners. They are all whitewashed and look very like Muhammdan tombs. The principal temple contains a colossal image of Mahariva which is of 12 feet". According to District Gazetters published in 1974 based on Archaeological Survey of India Volume VII, "there are 58 Digambar Jain Temples. On the circular hill range stand 30 of these temples, all gleaming white and the remaining 28 temples are situated at the foot of the hill range.. Most of the ancient temples have been renovated and reconstructed during the period of last three centuries. The oldest is.. in the middle of them. It enshrines a colossal red sandstone image of Jain Tirthankar..... Secondly on both sides of this image, images of Yaksha and Yakshni of Rishabhanatha are noticed. The main interst of place lies in the beautiful huge images of Rishabhanatha and two of Parshvanatha in standing posture. The later are installed on either side of the former. These are probably of 6th or 7th century A.D." "Kundalgiri as one of the Nirvarana Kshetras finds mention in Daska Bhakti by Swami Pujyabada of fifth or sixth century A.D. and in Prakrit Nivayukandan.... it is one of the most ancient and sacred Nivarana Kshetras of the Jains. On another samll temple date of Samvat 1505 (1444 A.D.) is given."

6. As pointed out above, the most sacred temple among these is the temple of Bade Baba. This monument was declared as protected ancient monument by Central Provinces Government vide gazette notification dated 16.7.1913/30.11.1914 under the Ancient Monuments Protection Act, 1904 (for short the Act of 1904). As per the ASI, by virtue of Section 2, read with Part I of the Ancient and Historical Monuments and Archaeological Sites and Remains Act 1951 (for short the Central Act of 1951) all ancient and historical monuments in part A and B States which before the commencement of the 1951 Act have either been declared by the Central Government to be a protected monument within the meaning of the 1904 Act or which have been taken possession by the Central Government as protected monuments were declared to be ancient and historical monuments of national importance.

7. It is also stated by the ASI that the 1958 Act, particularly Section 3, specifically declared that all ancient and historical monuments which have been declared by the Central Act of 1951 or by Section 126 of the State Reorganizations Act, 1956 to be of national importance, shall be deemed to be ancient and historical monuments declared to be of national importance for the purposes of 1958 Act. Vide S.O.No.1147 dated 15.5.1991 published

in Gazette of India dated 25.5.1991, the Central Government gave one month notice of its intention to declare areas up to 100 meters from protected limits and further beyond up to 200 meters near or adjoining protected monuments to be prohibited and regulated areas respectively for the purposes of both mining operations and construction. S.O.No.1764 dated 16.6.1992 was issued in exercise of the powers conferred under Rule 32 of 1959 Rules declaring that the area of 100 meters from the limit of protected areas as the prohibited area and 200 meters from the prohibited area as the regulated area and in such areas construction/mining activity were barred. According to ASI since Bade Baba temple and Jain Temples on the hills of Kundalpur are protected under national monuments, they would be covered by the Notification dated 16.6.1992.

8. The then Conservation Assistant, Sagor on 5 th June 1995 wrote to the Jain Temple Trust stating that no construction activities can be undertaken on the protected monuments without the permission of the competent authority. It was pointed out in this Notice that a foundation laid near Bade Baba was illegal. Since construction was still going on, the Superintendent Archaeologist Bhopal sent a telegram dated 13.6.1995 to the Collector, Damoh informing him about serious violations committed by the Jain Trust disregarding the provision of 1958 Act and 1959 Rules. Another letter dated 19.9.1995 was written by the Superintendent Archaeologist Bhopal to Jain Trust to desist from committing those violations.

9. While the ASI was pointing out these so called illegalities, Secretary Department of Revenue, M.P.(Respondent No.2) issued orders dated 5.4.1999 whereby be handed over the said Jain Temples including Bade Baba temple to respondents 9 to 11 (Jain Trust) with certain conditions. According to the ASI this Notification is issued under 1964 Act is void as the monuments is covered by 1958 Act which is the Central Act and that gives exclusive jurisdiction to ASI.

10. An extensive inspection was carried out by the Assistant Superintendent Archaeologist of the ASI on the basis of which he submitted a written report bringing out large scale violations allegedly committed by the Jain Trust. It was specifically reported that the members of the Trust ignoring the historical significance and antiquarian value of the temples, were destroying the pristine beauty and ancient ambience of the monument by cutting and adding new construction within the prohibited/protected area. In particular it was

reported that the Bade Baba Ka temple had suffered tremendous damage and more than 80% of the temple had been destroyed.

11. This provoked the then Director General, ASI to write a letter dated 1.7.1999 to the Chief Secretary of the M.P. Government highlighting, what ASI termed as the vandalism being done at Bade Baba temple by the Jain Trust. However, no response was received. After a lull of almost six and half year, the ASI approached the High Court by filing the Writ Petition, wherein impugned orders are passed.

12. This Writ Petition as well as other Writ Petition which was already filed in the year 2006, were contested by the State Government as well as the Jain Trust. The State Government maintained that the structure in question was covered by the State Act i.e. 1964 Act and therefore ASI was unnecessarily intervening in the matter. The State Government also defended its Notification dated 5.4.1999 whereby management of the temples was given to respondents 9 to 11 i.e.Jain Temple Trust.

13. The Jain Temple Trust also took the position on the same lines as was taken by the State Government. It added that if any direction is required under the law i.e. under 1964 Act, the Trust was ready to submit an application for obtaining the permission to raise construction before taking any construction work. It was also argued by the respondents that the main temple was no more existing which had crumbled due to natural decay, being a very old temple of 6-7 Century A.D. It was only the Bade Baba idol which survives and the entire effort on the part of the Trust was to restore the said idol to its original form and to build a structure of very high quality, whereby said idol could be safely kept, which will facilitate the public to worship the Bade Baba idol.

14. As stated in the beginning, the High Court while rendering the impugned judgment has accepted the case set up by the State Government as well as Jain Temple Trust and rejected the pleas raised by the appellants.

15. Mr. Paras Kuhad and Mr. Sidharth Luthra, learned Additional Solicitor Generals argued the matter on behalf of the Archaeological Survey of India. Mr. P.C.Jain, Advocate made his submissions on behalf of the appellant in the other appeal. These submissions were rebutted by Ms.Vibha Dutta Makhija, learned senior counsel appearing for the State of Madhya Pradesh as well as Mr. Gopal Subramaniam, learned senior counsel who appeared on

behalf of the Jain Temple Trust.

16. Mr. Kuhad opened his submissions by pointing out that magnificence, importance, glory and architectural grandeur of these Kundalpur Jain Temples which has already been taken note of in the beginning. Thereafter, he referred to Notification dated 20th November 1914 passed under Section 3 of the 1904 Act which was duly published in the Central Provinces District Gazette, as well as Notification dated 16.7.1913 which was issued by Public Works Department of Central Provinces. He further submitted that even as per the case set up the Jain Temples Trust these 58 temples are in the nature of one of the most important heritages of the country which was built anywhere between 6th-11th Century and Bade Baba idol between 6th to 7th Century. It was submitted by him that the Scriptures of the 6th Century contain a reference to this temple; that the said temples have withstood the vagaries of time for more than 10-14 centuries; that the temples are built in ancient Nagar Shaili and are all square blocks with domed roofs and Pinnacles at the corners and they are all white washed and look very like Muhammadan Tombs; that the idol of Bade Baba was always flanked by the idols of Parasnathji on the sides and Yaksha and Yakshi at the top and bottom; that the sculpture thus consisted of seven idols carved /placed in a certain way historically.

17. According to Mr. Kuhad, however, this sanctity of the Bade Baba idol was tempered when on 17th January 2006 this idol was removed from the ancient temple and the ancient temple ceased to exist thereafter. The sculpture now stands divided whereby idol of Bade Baba is separated from the idols of Parasnathji on the sides and Yaksha and Yakshni at the top and bottom. Currently all the seven idols stand separated and installed/stored at different locations. This according to Mr. Kuhad amounts not only to vandalizing the Bade Baba but destroying the very sanctity of the said idol and the manner in which it was placed in the temple.

18. Coming to the legal aspects of the matter, Mr. Kuhad argued that Section 2(1) of the Act of 1904 defines "Ancient Monument" as any structure, erection or monument....which is of historical, archaeological or artistic interests, or any remains thereof, and includes: (a) the site of an Ancient Monuments; and (b) a portion of land adjoining the site of an Ancient Monument as may required for fencing or otherwise preserving such monument; and (c) the means of access to Ancient Monument. Section 3 of the said Act (as originally enacted) read as under:

> "Section 3:- Protected monuments.- (1) The local Government may, by notification in the Local Official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act."

Thus, according to the learned ASG the temple in question is clearly covered by the definition of "Ancient Monuments" which is the protected monument under Section 3 of the Act by virtue of Notification 1913 and 1914 referred to above.

19. In an endeavour to show that it is the 1958 Act which applies to the temple in question, the learned ASG referred to the provisions of Government of India Act 1935 as well as Government of India (Adaptation of Indian Laws) Order, 1937 to give effect to Federalism and other constitutional changes brought about by the Government of India Act, 1935. On that basis, he argued that Notification dated 20th November 1914 was in fact of Notification of the Central Government under 1904 Act. The expression "Local Govt." was defined under Section 2 (1) of the General Clauses Act of 1868 as meaning 'the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate. Thus, at the relevant times, the expression "Local Government" did not mean Provincial Govt.(as it came to be understood 1935) but meant, the authority authorized by law to administer the Executive Govt. in that part of British India. Every such Authority, inspective of its designation, represented the same constitutional authority, namely the Crown/Her Majesty's exercising its executive powers through its different arms. The Adaptation Order 1937 added Section (8ab) to the Act of 1897 and it povided that the 'Central Government' shall mean in relation to anything done before the commencement of Part III of Act of 1935, the Governor General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor-General in Council. The Adaptation Order, 1937 also submitted to term 'Local Government' occurring under the Act of 1904 by the term 'Central Government.' Mr. Kuhad submitted that a reading of the definition of Central Government as inserted by the Adaptation Order 1937 makes it clear that the authority i.e. the Local Government, that was competent upto the year 1937, to exercise the functions that came to be subsequently exercised by the Governor General in Council, was in fact, the Central Government, at that point of time. He also referred to the definitions of 'British India' and 'Local Government' under the Act of 1868,

and pointed out that the 'Local Government' was the authority that was competent to exercise the powers under the Act prior to 1937. With the separation of powers brought about by the Act of 1935, the Governor General in Council came to be known as the Central Government, and thus the term 'Local Government' was substituted by 'Central Government.'

20. Taking this line of argument further, he submitted that under the Constitution of India the legislative powers of the Union as well as State are demarcated in the form of three separate entries in List I, List II and List III and the entries in List I are in the exclusive domain of the Union. He referred to Entry 67 of List I which pertains to "Ancient and historical monuments and records, and archaeological sites and remains, (declared by or under law made by Parliament) to be of national importance. His submission was that since the monument was in question was ancient monument of national importance and was so declared by the 1951 Act, it comes under the jurisdiction of the Central Government. He specifically drew attention to the provisions of Sections 2,3 and Item 1 of Part 1 of the Schedule to the Act of 1951 Act in this behalf. He also referred to Section 3 of the 1958 Act which provides that all ancient monuments declared under the 1951 Act to be of national importance and shall be deemed to be ancient and historical of national importance for the purpose of 1958 Act as well. According to him, this legal position clearly suggests that the Jain Temples at Kundalpur would be covered by 1958 Act and ASI has the jurisdiction to deal with these temples which are not only ancient and historical but are of national importance referring to Notification dated 16th July 1992. He submitted that no construction by any person can be raised within the prohibited/regulated area without the permission of the ASI and therefore under this Notification dated 16th June 1992, an area of 100 meter from the boundary of the Ancient Monument is declared as a Prohibited Area and an additional area of 200 m starting from the boundary of Prohibited Area is declared as a Regulated Area. Therefore the Jain Temple Trust was violating provisions of the aforesaid Notification as well as 1958 Act and 1959 Rules framed thereunder and was exposing itself to the penalties that are provided under Section 30 of the 1958 Act.

21. Apart from making the aforesaid legal submissions, the learned ASG also submitted that even the ground reality was that the ASI has been exercising consistent control over these 58 Kundalpur Jain Temples. It was for this reason that in its survey carried out by ASI under 1904 Act these were notified as ancient monument of great historical archaeological and artistic importance

and notified as protected monument under 1904 Act. However, the Central Provincial Government decided that "no agreement need be taken from the owner as these temples are well looked after by the Jain Community". On 24th September 1956, ASI supplied an abstract of the list of the Ancient Protected Monuments entered in their Central Register which includes the 58 Jain temples. In the year 1974, the ASI again carried out a survey of the Jain Temples and published the said survey in the Damo District Gazetteers. The result of the survey was also entered in Vol. VII of the ASI maintained in respect of Ancient Monuments. Several attempts were made by ASI to prevent destruction of Bade Baba Temple and raising of a new temple on the hills. The order dated 5th April 1999 issued by Government of M.P. also unequivocably state that the monuments would be subject to the regulatory control of the laws of Archaeological Survey of India.

22. Another submission of learned ASG was that in any case, protected monuments are deemed to be of national importance and once that is so, they are covered by the 1958 Act over which ASI will have the exclusive jurisdiction. Reference was made to the judgment in the case of *Rajiv Mankotia vs. Secretary to the President of India & Ors.* (1997) 10 SCC 441 wherein this Court held as under:

> "It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument or any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century and is of national importance or of State importance. In other words, either of them are required and shall be protected, preserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into the past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and

> wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the skills of our ancestors and our traditions, culture and civilization. They would have the advantage to learned our art, architecture, aesthetic tastes imbibed by the authors of the past and to continue the same tradition for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Governments concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring them to their original conditions."

23. Emphasizing on the other limb of the same arguments, Mr. Kuhad argued that the monuments in question is in any case in the nature of a protected monument having so declared specifically under 1904 Act. He submitted that 1958 Act had not repealed the earlier Act of 1904 Act as section 39 (2) of the 1958 Act merely states that the Act of 1904 would cease to have effect "in relation to" ancient and historical monuments declared by or under this Act to be of national importance. Therefore, all monuments which were not covered by 1958 Act continue to remain covered under 1904 Act. For this proposition, sustenance from the judgment of this Court in the case of *ASI vs. Narender Anand & Ors.* (2012) 2 SCC 562 was sought to be drawn which laid down that for a monument to be an ancient monument, Notification under Section 3 of the 1904 Act was sufficient without any further Notification under 1951 or 1958 Act.

24. Alternate submission of the learned ASG was that the monument in question is in any case liable to be declared as monument of national importance as was done by this Court in *National Anand* (supra). In the case of Viceregal Lodge in Shimla, in the following words:

> "such being the historic evidence furnished by the Viceregal Lodge, is it not the duty of Indians and of the Government of India to preserve the Viceregal Lodge as a monument of national importance for posterity as the historic evidence so that every Indian citizen while visiting Shimla would have glimpse of it to recall the folly of disunity, teaching us the lesson of being united so as not to destroy ourselves once over and lose democracy and liberties on account of disunity, disharmony

> on grounds of religion, region caste, language; and denial of all opportunities and facilities to our own weaker segments of the society; of equality of opportunities and of status to improve excellence in chosen facets of the respective lives. The answer is obviously "YES". If we forget the past and repeat the same mistake, we would stand to lose our nation's unity and integrity; stand to lose the opportunity to integrate into the world our great democractic Bharat Republic. Viceregal Lodge teaches us these lessons and it is for all of us, individually and collectively, to learn awake, arise and work for integration, unity and fraternity, which are our fundamental duties."

25. Summing up the arguments, Mr. Kuhad pleaded that in spite of aforesaid legal web standing as a wall in front of the Jain Temple Trust, it had the audacity to destroy the ancient monument on or after 17th January 2006 under the garb of protecting Bade Baba idol in blatant violation of 1992 Notification and without seeking permission of the ASI. It was argued that the Jain Temple Trust was going on without the expert advice of the National Monuments Authority and has constructed a new temple illegally of a punishable offence. He submitted that under the order of the High Court dated 20th May 2006, subject to undertaking to demolish the structure upon a judicial determinations, a dome was allowed to be constructed to cover the idols at the new location. No other construction has been carried out owing to the restraint imposed by the High Court. Clearly the construction raised so far is completely violative of the provisions of the Act and Rules, and in any case by virtue of the operative provisions of the Act of 1958 Act, no further construction can now be undertaken. The photograph placed on record clearly bear out that the new structure is in no manner harmonious with the existing structure either in terms of architectural style, or in terms of construction material or in terms of aesthetics involved. The photographs also bear out that all other temples on Kundalpur hills are in a pristine condition and in the original form without any change. He, thus, pleaded for issuance of necessary directions for preservation and protection of the ancient monuments with no further construction and demolition of structure, erected so far, along with suitable directions for restoration of this sculpture to its original form and its reinstallation in a structure that confirms to the artistic, historical and archaeological style, in tune and harmony of rest of the monuments.

26. Mr. Ajay Choudhary, the learned counsel appearing for the appellant

in the other appeal has filed a written submission. On a perusal thereof, one finds that it is almost on the same lines as the submission of the learned ASG, already taken note of. Mr. Choudhary has also appeared on behalf of the intervener, viz. Jain Sanskrati Raksha Manch and filed written submissions on identical lines. Additionally, however, the intervener has sought to trace out the history of Kundalpur and the Jain Temple structures which were erected some time between the 6th- 7th Century A.D.. It is sought to be emphasized that temple of Bade Baba being an ancient is not governed an ancient temple. These temples were maintained by Jain community and as such it is a public trust. Therefore, respondents 9 to 11 cannot claim ownership of the temple and at the most they may be considered to be the trustees of the temple with no title ot the trust properties which vest in them only for the purpose of administration. It is, further, argued that preservation and protection of ancient monument is the forte of the ASI; no law permits demolition of a temple; the temple of Bade Baba is a protected temple and a monument of national importance and therefore is governed by the Act of 1958 over which ASI will have the exclusive jurisdiction.

27. Ms. Vibha Dutta Makhija, learned counsel appearing for the State of Madhya Pradesh, submitted at the outset that the core issue was as to whether temple in question falls under the provision of State Archaeological Department or ASI. Her argument on this issue was that once we go into the legal history of the statutory framework regarding the ancient monument and archaeological sites in India and examine the same in juxtaposition with the State Act namely 1964 Act of M.P., it would become clear that in so far as Bade Baba is concerned, it is State Act which is the governing law. We would take detailed note of these submissions and the historical perspective which Ms. Makhija drew, at the time of our discussion on this seminal issue. It can be pointed out in brief that as per the learned senior counsel, The Madhya Pradesh Ancient Monuments and Archaeological Sites and Ramains Act, 1964 (No.12 of 1964) was enacted by the Madhya Pradesh Legislature on 16.4.1964. Section 3 gives power to State Government to declare ancient monuments to be State-protected monuments or archaeological sites and remains to be State-Protected Area. Section 5 provides for maintenance of the State protected monuments by entering into an agreement with the owner of the monuments. Section 38 of the Act repeals the Ancient Monument Preservation Act, 1904 in its application to the State of Madhya Pradesh shall cease to have effect in relation to ancient and historical monuments, archaeological sites and remains and all other matters pertaining to the Act. The said enactment has duly

been given assent by the President on 16.4.1964. The learned senior, counsel also pointed out that the Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Rules, 1976 were framed under Section 37 of the 1964 Act by the State Government. Rule 10 in Chapter III provides that no person shall undertake any construction in a State protected area without proper permission of the State Government. Rule 25 in Chapter V provides that an application may be submitted to move an antiquity. Her submission, thus, was that the Bade Baba is not declared as an ancient monument of national importance under 1951 or 1958 Act and therefore it is covered by the State Act of 1964. She also argued at length the doctrine of implied repeal of entire 1904 Act cannot be applied and the 1951 Act has not fully repealed the 1904 Act impliedly. There was only a partial repeal in relation to ancient and historical monument and archaeological sites and remains declared or under the 1958 Act to be of national importance.

28. Her further submission was that with respect to the issue regarding the applicability of the 1951 Act in case of the monument not covered the said Act, the issue has been dealt with by a 5-judge bench of this Court in *Joseph Pothen v. State of Kerala* 1965 (2) SCR 868. The question to be determined was whether the Travancore Act was repealed by the 1904 Act or by the 1951 Act or by the 1958 Act. This Court held that the 1951 Act applied to ancient and historical monuments referred to or specified in Part I of the Schedule thereto which had been declared to be of national importance, and since the monuments in question was included in the Schedule, the 1951 Act did not apply to the said monument, with the following observations:

> "For the aforesaid reasons it must be held that notwithstanding the extension of the Central Act 7 of 1904 to the Travancore area and the passing of Central Acts 71 of 1951 and 24 of 1958, the State Act continued to hold the field in respect of the monument in question. It follows that the notification issued under the State Act was valid."

29. With regard to the ownership of the land Ms. Makhija submitted that the issue of the ownership of the land has been raised by the appellant. The same has been examined by the Committee set up by the State Government which has conducted site inspection and has inspected all records. The ownership according to the land revenue records is in private ownership of the Digamber Jain Atishay Keshtra Kundalpur Public Trust and the contemporaneous record of the Archaeological Survey of India also records

the same in its Monument Register. She submitted that the record of the Revenue Department for the year 2011-12 for Village Kundalpur, Tehsil Patera, District Damoh shows the name of Shri Digamber Jain Sidh Kshetra Kundalpur as the owner of 50.72 hectares of land which is approximately 125.33 acres which includes land other than that of the temples. She also referred to the records of ASI and argued that the ASI Register entries itself establish that the temple in question was in private ownership and was not taken under the guardianship of the government. It has been held that the entries in the monument register are conclusive proof of ownership by this Court in *Karnataka Board of Wakf v. Govt. of India* (2004) 10 SCC 779.

30. Mr. Gopal Subramaniam, the learned senior counsel appeared for the Jain Temple Trust (respondents 9 to 11). He took pains in making an endeavour to demonstrate that legal position was that there was no notification issued under 1951 Act to declare the Bade Baba temple as the national monument and therefore this temple was not covered under the provisions of 1958 Act. Referring to the Entry 67 of the Union List in 7th Schedule of the Constitutions as well as Entry 12 of the List II thereof, his submission was that whereas Entry 67 of the Union List expressly covered such monuments declared by Parliamentary law to be of national importance, all other monuments would be covered by legislation to be enacted under Entry 12 of List II of the State List. 1964 Act was passed by Madhya Pradesh under Entry 12 of the State List and therefore it was the State Government which had the locus standi and jurisdiction over the Bade Baba temple. Mr. Subramaniam also pleaded reliance upon the Constitution Bench Judgment in the case of *Joseph Pothen* (supra) and submitted that the impugned judgment of the High Court was in sync with the aforesaid judgment which makes the impugned judgment of the High Court unblemished. Justifying the findings of the High Court that the original temple which was declared to be an ancient monument under 1904 Act does not survive and only the idol of Bade Baba alone survives, Mr. Subramaniam highlighted the facts that the Bade Baba temple contains the idol of Bade Baba which admeasures 12 ft x 12 ft. It is made of stone. It is an extraordinary precious idol. It was submitted that the temple which housed Bade Baba idol, itself had to be demolished and rebuilt in the year 1940. He pointed out that in the year 1976 just like in 1940, prior to the reconstruction of the temple, the dome again fell and a new dome had to be constructed. Thus, in 1976, yet another dome was made. Again extensive repairs were carried out in 1992. On account of the repeated cracks which were occurring in the temple and

having regard to the Deity itself being endangered, it was decided that a new temple must be built. Referring to the Jain Agamas (the sacred texts which govern the construction of Jain temples), his argument was that, as per these Agamas, a Deity cannot be in a dilapidated structure nor should an idol be subject to danger. An idol to which energisation rights are imparted becomes a live Deity which has to be worshipped on a continued and regular basis thereby attracting devotees who come and offer prayers and who return once again. Therefore, in order to follow the Agamas and keeping in view the height of this Deity, it was decided that a temple be constructed in accordance with the "Nagara" style of architecture. According to the Trust, the said design is completely in conformity with theAgamas and has been approved by the Acharyas of the Digamber Jain Sect. In fact, in order to ensure that the idol was correctly removed after proper ceremonies and was installed at a new place it is stated that the said installation of the Deity was also undertaken in the presence of the Acharyas and proper ceremonies were preformed. In fact, on account of the status quo order passed by this Court on 15th March 2013, further construction has not taken place.

31. Mr. Subramaniam also submitted that by looking into the statutory regime under the Central Acts as well as the State Act in right perspective the submission of the learned ASG that it was a protected monument under 1958 Act would stand refuted. He also countered the claim of the ASI that the Statue was fragmented and destroyed. According to him, Bade Baba is the main Deity. The Deities which are shown on the side of Bade Baba include two indiviual idols of Lord Parswanath. These idols on pieces of stone were placed together on the side of Bade Baba in the Old Temple. The said pieces have been dismantled and kept intact. But on account of the status quo order, they have not been placed with Bade Baba for the present. The Trust undertakes that all the Deities, namely, the two Parswanath (left and right), two of Pushpavrishtis and two of Chavardaris and two Yaksha and Yakshinis are intact. Each one of these idols/statues is available with the Trust.

32. The learned senior counsel also joined issue on the ownership of the temple, which according to him belongs to a private entity. For this purpose, he referred to the averments made in the counter affidavit filed by the Trust before the High Court as well as the counter affidavit filed in the present proceedings. He submitted that the Trust had ample evidence to the effect that the total land measuring 199.45 acres (Patwari Halka No.81, Gram Kundalpur, out of Bandobast No.337, Area being 158.65 acres; Gram

Fatehpur, out of Bandobast No.346, being 34.35 Acres; Patwari Halka No.79, Gram Teergarh, out of Bandobast No. 171, area being 6.45 acres) as mentioned in the letter dated 5.4.1999 is distinct from the land under the private ownership of the Trust. Further, it is common ground between the parties that no agreement pursuant to 5.4.1999 was ever executed. No further steps were taken even under the 1904 Act either to enter into an agreement or place any restrictive conditions. Thus, according to him, these circumstances make it clear that these temples were treated as private temples, yet they were not taken over in any way since the idols were being preserved, looked after and were being worshipped on a continued basis.

33. At the end, Mr. Subramaniam laid great stress on the religious freedom which is given to the Jain community under Art,29 of the Constitution, being a religious minority and argued that the attempt of the ASI to interfere with the religious freedom of the Jain Trust was impremissible and violative of this provision.

34. We have given our utmost consideration to each and every aspect of the matter, which it deserves as the issue is of great public importance. Though the central issue pertains to the jurisdiction of ASI over the temple in question (which depends upon the answer to the question as to whether it is State Act i.e. 1964 Act which is applicable or the Central Act i.e. 1958 Act that governs the field), few incidental facts of this issue which have also cropped up. These have factual as well as legal hues. After deliberating on this core issue, we would be providing answers to all such peripheral issues, as the outcome of the main issue will not only remove the cob webs but also lead us to the right path, showing direction to find solution to those issues. We, thus, proceed with the discussion on the central issue, which is the fulcrum, in order to construct the edifice on which main structure would be erected.

RE: APPLICABILITY OF STATE ACT OR CENTRAL ACT

35. Adverting to the aforesaid primary issue in the first instance, no doubt Notification No.99 dated 20th November 1914 was passed under Section 3 of the 1904 Act followed by the Notification dated 16th July 2013 which was issued by Public Works Department of Central Provinces. It is pertinent to note that 1904 Act was enacted by the Legislative Department of then Government of India to provide for the preservation of ancient monuments and of objects of archaeological, historical or artistic interest. Section 2(1) of this Act contained the meaning of 'ancient monument', Section 2(3) defined

the word "Commissioner" to be any officer authorized by the Local Government to perform the duties of a Commissioner under the Act. Section 3 of the Act granted the **Local Government** power to declare any ancient monument to be a protected monument by way of notification in the official Gazette. Section 4(6) provided that where there is no power of a protected monument then the Commissioner will assume the guardianship of the monument.

36. The moot question is what is the effect of these Notifications after the repeal of 1904 Act and on the enactment of 1951 Act and 1958 Act. the High Court has held that while issuing these Notifications, the then Commissioner was acting as "Local Government", as the term was then understood. The legal position in this behalf that prevailed at that time and came into being on the passing of 1919 Act, 1935 Act and the Constitution of India, is explained by the High Court in the following manner:

> "While issuing these notifications, the Chief Commissioner was acting as the "Local Government" as the term was then understood. The Government of India Act, 1919 was enacted to make further provisions with respect to Government of India. The Preamble to the Act provides that concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the large measure of independence of the Government of India which is compatible with the due discharge by the letter of its own responsibilities. Thereafter, the Government of India Act, 1935 brought about the concept of federal government with distribution of powers in the real sense for the first time. In the 1935 Act, the subject 'ancient historical monuments and archaeological sites and remains" was put in the Federal List by the Government of India. (Adaption of Indian Laws) Order 1937, the provisions of 1904 Act were adopted and it was provided that the expression "local Government" shall be read as "Central Government".

37. We agree with the aforesaid conclusion. Let us examine the scheme of these statutes in some detail to understand which will clarify the aforesaid position beyond pale of doubt. The Government of India (Adaptation of Indian Laws) Order 1937 was enacted by the then Parliament on 18.3.1937 and

came into force on 1.4.1937 wherein it was stated that the "Chief Commissioner" and "Local Government" would be within the meaning of Provincial Government. under Section 3(14) of the General Clauses Act, 1897 defines "Commissioner" to mean the chief officer in charge of the revenue administration of a division. Further Section 3 (31) of that Act defines "local authority" to mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or managment of a municipal or local fund. These provisions give a flavor as to what was understood by the Local Government. While passing Adaptation Order, 1937 significant changes were simultaneously made to the 1904 Act. In Sections 3, 4, 10A, 14, 15, 16, 17, 18 and 19 "Local Government" was substituted by "Central Government". In Section 5 "the Local Government", "the Secretary of State for India in Council", "the Government" and "Government" substitute "the Central Government" and omitted Sub-section (3) of Section 5 provided that the Collector may enter into an agreement on behalf of the Secretary of State for India in Council but the same shall not be executed until the same has been approved by the Local Government. So, it is only with these amendments, Central Government came to be substituted for the Local Government.

38. It is, therefore, not possible to accept the contention of the appellant that the expression "local Government" did not mean provincial Government but meant the authority authorized by law to administer the executive Government in that part of British India. Having regard to the clear position mentioned in the aforesaid Acts, as described by the High Court, it is clear that the concept of the Federal Government was brought by passing of Government of India Act, 1935 and not before.

39. It is noteworthy to mention here that the 1951 Act as well as the 1958 Act are the post-Constitution Acts. In both the Acts, the Parliament has used the expression "Central Government". The Parliament is deemed to be aware about the concept and meaning of the term "Central Government" under the Constitution. Therefore, the contention made by learned ASG that the expression "Central Government" should be read so as to include "local Government" cannot be accepted.

40. Let us now see as to whether, by virtue of the aforesaid notifications issued under 1904 Act, the structure in question automatically attained the tag of "National Importance" under 1951 Act or 1958 Act. Answering this aspect

in the negative, the High Court has dealt with issue in the following manner:

> "After commencement of the Constitution of India, the Parliament enacted the Ancient and Historical Monuments and Archaeological Sites and Ramains (Declaration of National Importance) Act, 1951 to declare certain ancient and historical monuments and remains in part A State and Part b States to be of National Importance and to provide for certain matters connected therewith. Section 2 of the 1951 Act inter alia states that all ancient and historical monuments and all archaeological sites and remains declared by this Act to be of "National Importance" shall be deemed to be protected monuments and protected areas respectively within the meaning of the 1904 Act. But a crucial aspect is noteworthy here that all protected monuments under the 1904 did not automatically become of "national importance". Part 1 of the Schedule of the 1951 Act states that all ancient and historical monuments which before the 1st day of April, 1956 have either been declared by the Central Government to be protected monuments within the meaning of the 1904 Act or possession of which has been taken by the Central Government as protected monuments shall be monuments of national importance. Section 2(j) of the 1958 Act defines 'protected monument' to mean an ancient monument which is declared to be of national importance by or under the 1958 Act.
>
> In order to attract the applicability of 1958 Act, declaration in respect of a monument has to be made by the Central Government under Section 4 of the 1958 Act. Section 4 of the 1958 Act provides that where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such monument to be of national importance. The Central Government neither under the provisions of 1951 Act nor under the provisions of the 1958 Act has issued ny (sic:any) notification in respect of the temple in question."

41. We are in agreement with the aforesaid approach of the High Court. It is to be kept in mind that under Article 246 of the Constitution, the power to legislate has been divided between the Parliament and the State Legislatures on the basis of the three lists in the Seventh Schedule of the Constitution. Entry 67 of the Union List covers "Ancient and historical monuments and records, and the archaeological sites and remains, declared by or under law made Parliament to be of national importance". Entry 12 of the State List covers "Ancient and historical monuments and records other than those declared by or under law made Parliament to be of national importance". Entry 40 of the Concurrent List covers "Archaeological sites and remains other than those declared by or under law made Parliament to be of national importance". 1951 Act was enacted by the Parliament to declare certain ancient and historical monuments and archaeological sites and remains in Part A and B States to be of national importance. Section 3 which is the declaratory provision declares that "all ancient and historical monument and all archaeological sites and remains declared by this Act to be of national importance shall be deemed to be protected monuments and protected areas respectively within the meaning of the Ancient Monuments Preservation Act, 1904 and the provisions of that Act shall apply accordingly to the ancient and historical monuments or archaeological sites and remains as the case may be, and shall be deemed to have so applied at all relevant times". The Schedule enumerates two categories of ancient monuments which are declared as those of national importance. Under Point I of the Schedule, "all ancient and historical monuments in Part A States which, before the commencement of this Act, have either been declared by the Central Government to be protected monuments, within the meaning of ancient monuments, the Ancient Monuments within the meaning of ancient monuments, the Ancient monuments Preservation Act, 1904; or which have been taken possession of by the Central Government as protected monuments. "Further, the ancient monuments declared to be of national importance were enumerated specifically in Part II of the Schedule. Thus, Point I of Part I of Schedule declared only those ancient and historical monuments declared by the 1951 Act as those of national importance in Part A States and Part B States which, before the commencement of the 1951 Act, were declared by the Central Government (in contradistinction to Local Government or State Government) to be protected monuments within the meaning of the 1904 Act. Since the Notifications dated 16.7.1913 and 20.11.1914 were issued prior to the 1951 Act but were not issued by the Central Government, the monument in question falls out of the ambit of the

1951 Act. The same is apparent from the definition of "Central Government" in Section 3(8) of the General Clauses Act 1897 which defines "Central Government" as (a) in relation anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General-in-Council as the case may be; and shall include, - (i) in relation to functions entrusted under sub-Section 1 of Section 124 of the Government of India Act, 1935, the Government of a Province, the provincial government acting within the scope of authority given to it under that sub-section; and (ii) in relation to the administration of a Chief-Commissioners Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section 3 of section 94 of the said Act;.....". By virtue of Section 94 of the Government of India Act, 1935, Chief Commissioners' Provinces have been delineated as British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Island, the area known as Panth Piploda. Central Province and Berar were not Chief Commissioners Province but it was a Governors Province *(see Section 46 of the 1935 Act)*. It is thus clear that the acts of the Chief Commissioner Central Provinces (who issued the 1913 & 1914 notifications) could not be deemed to be that of the Central Government and stood on a different authority and footing, and could subsequently be deemed to be that of the Provincial Government only under the 1937 Adaptation of Laws Order.

42. Argument on the learned ASG loses sight of the relevant provisions of 1951 Act. It also ignores the fact that not only there is a central legislation enacted under Entry 67 of the Union List, but State Legislation as well in the form of 1964 Act enacted by the State Legislature under Entry 12 of the State List. We may elaborate these aspects by pointed out that in order to be covered under the provisions of the 1958 Act, it was necessary that the monument in question should be declared to be of national importance as define under Section 2. The High Court rightly held that in terms of Sections 2 and 3 of the said Act, the monuments must be referable to part I of the Schedule. Part I of the Schedule clearly contemplated a declaration by the Central Government or monuments whose possession was taken over by the Central Government. However, in the present case, neither there is any notification by the Central Government nor has the possession ever been taken by the Central Government.

43. It is to be noted that 1958 Act was enacted for the preservation of ancient and historical monuments and archaeological sites. Vide section 39,

the 1958 Act repealed the Ancient & Historical Monuments & Archaeological Sites & Remains (Declaration of National Importance) Act, 1951 and Section 126 of the State Reorganization Act 1956. The enactment is a comprehensive legislation dealing with the meaning of "ancient monuments" and "owner" in Section 2 (a) and 2 (g) respectively. Under Section 2(j) "protected monument" means any monument which is declared to be of national importance under the 1958 Act. Section 3 specifically declared certain ancient monuments to be deemed to be of national importance which were so declared under the previous enactment of 1951. Further Section 4 of the Act empowered the Central Government to declare certain monuments to be of national importance. Section 9 provides that if any owner fails or refuses to enter into an agreement under Section 6 for maintenance, the Central Government may make an order on any or all matters covered under Section 6(2) of the Act and the same shall be binding on the owner. It is thus to be noted that the 1958 Act replaced the 1951 Act and covered only the ancient monuments which were declared to be of national importance. Since the Central Government has not declared the said Bade Baba Temple to be an ancient monument vide the 1913 & 1914 notifications under the 1904 Act, and nor was it declared to be of national importance even under the 1951 Act, the same fell outside the purview of the 1958 Act as well.

44. While this is the position of the Central Act, Madhya Pradesh State enacted 1964 Act on 16.4.1964 Section 3 gives power to State Government to declare ancient monuments to be State-protected monuments or archaeological sites and remains to be State-protected Area. Section 5 provides for maintenance of the State protected monuments by entering into an agreement with the owner of the monument. Section 38 of the Act repeals the Ancient Monument Preservation Act, 1904 in its application to the State of Madhya Pradesh shall cease to have effect in relation to ancient and historical monuments, archaeological sites and remains and all other matters pertaining to the Act. The said enactment has duly been given assent by the President on 16.4.1964.

45. At this juncture, we would like to discuss the Constitution Bench judgment in *Joseph Pothen* (supra) which is squarely applicable. The question to be determined in the case was whether the Travancore Act was repealed by the 1904 Act of by the 1951 Act or by the 1958 Act, the Court held that the 1951 applied to ancient and historical monuments referred to or specified in Part I of the Schedule there to which had been declared to be of national

importance, and since the monument in question was not included in the Schedule, the 1951 Act did not Act did not apply to the said monument. The Court held:

> "For the aforesaid reasons it must be held that notwithstanding the extension of the Central Act 7 of 1904 to the Travancore area and the passing of Central Acts 71 of 1951 and 24 of 1958, the State Act continued to hold the field in respect of the monument in question. It follows that notification issued under the State Act was valid."

46. There is yet another vital factual aspect regarding the temple in question, that clinches the issue. Even the Register maintained by the Archaeological Survey of India expressly records that the Temples were 'private' Temples, and also that no agreement was required to be entered and could be left to be dealt with by the State (as against being declared 'National'). The said Register is of the year 1956 and constitutes an admission that the said Temples are not covered by the 1951 Act and were not intended to be taken over as monuments of national importance.

47. The aforesaid discussion persuades us to accept the conclusion arrived at by the High Court accepting the legal position as enunciated by the High Court, i.e. qua these temple it is the 1964 Act passed by the State Legislature that would be applicable and the monuments are not covered by the 1958 Act. Once we arrive at this conclusion on law point, the argument of the learned ASG that since the temples are of national importance, they should be treated as deemed covered by 1958 Act, cannot be countenanced. After all, State Act namely 1964 Act has received the assent of President of India. It can co exist with the Central Act namely 1958 Act and there is no repugnancy between the two. Accepting the argument the learned ASG would amount to rendering the provisions of 1964 Act inapplicable even where that Act applies. It is not possible to accept such a consequence.

Having clarified the legal position, we discuss the case at hand.

RE : KUNDALPUR HILL AND BADE BABA TEMPLE

48. The Kundalpur Hill consists of three villages, namely Kundalpur, Fatehpur and Tirgarh. This is a hill of sacredness which is worshipped as a "Siddha Kshetra" by members of the Jain community as it is believed that the last disciple of Lord Mahaveera attained salvation from the hill of Kundalpur.

A total of 58 temples are located at different levels on the hills of Kundalpur starting from the foot hill. According to District Gazetters published in 1974 based on Archaeological Survey of India Volume VII, "there are 58 Digambar Jain Temples. On the circular hill range stand 30 of these temples, all gleaming white and the remaining 28 temples are situated at the foot of the hill range. Most of the ancient temples have been renovated and reconstructed during the period of last three centuries. The oldest is .. in the middle of them. It enshrines a colossal red sandstone image of Jain Tirthankar. . . Secondly on both sides of this image, images of Yaksha and Yakshni of Rishabhanatha are noticed. The main interest of place lies in the beautiful huge images of Rishabhanatha and two of Parshvanatha in standing posture. The later are installed on either side of the former. These are probably of 6th or 7th century A.D.

49. Out of the aforesaid 58 temples, Bade Baba is the main Deity. It admeasures 12 ft x 12 ft. It is made of stone. It is an extraordinary precious idol. The Deities which are shown on the side of Bade Baba include two individual idols of Lord Parswanath as well as images of Yaksha & Yakshni. These idols on pieces of stone were placed together on the side of Bade Baba in the Old Temple.

50. Since we are concerned with the construction that has taken place in Bade Baba temple, it would be necessary to narrate the condition of this temple that existed from time to time. As per the Jain Temple Trust, since the structure dates back 6th-7th Century, there has been natural wear and tear of this temple over a period of time. The version of the Trust, which is not specifically refuted, is that the temple which housed Bade Baba idol was in fact earlier demolished and rebuilt way back in the year 1940. Again in the year 1976, the dome fell and a new dome had to be constructed. Extensive repairs were carried out again in the year 1992. However, there was a recurring damage to the main temple building from time to time. Significantly, the idol of Bade Baba has remained intact.

51. There is no quarrel up to this, which means that the main temple building which houses Bade Baba idol needed repairs. It is at this juncture that the parties have joined issue as to who is to carry out the repairs and in what manner. As per the ASI, it is the ASI under whose supervision the aforesaid task is to be accomplished whereas Jain Temple Trust claims its prerogative to undertake this job. That is an aspect which we have already dealt with,

negating the claim of ASI in this behalf. Now, we would deal with other aspects, namely, whether removal of the idol was justified and whether the repairs/ construction carried out by Jain Temple Trust amounts to vandalizing the said temple or it was permissible to make the construction by the Trust in the present form.

REMOVAL OF THE MAIN IDOL

52. As per the Trust, on account of the repeated cracks which were occurring in the temple and having regard to the fear that Deity itself was endangered, it was decided that a new temple must be built. A Deity cannot be in a dilapidated structure not should an idol be subject to danger. An idol to which energisation rights are imparted becomes a live Deity which has to be worshipped on a continued and regular basis thereby attracting devotees who come and offer prayers. Therefore, in order to follow the Agamas and keeping in view the height of this Deity, it was decided that a temple be constructed in accordance with the "Nagara" style of architecture. According to the Trust, the said design in completely in conformity with the Agamas and has been approved by the Acharyas of the Digamber Jain Sect. In fact, in order to ensure that the idol was correctly removed after proper ceremonies and was installed at a new place it is stated that the said installation of the Deity was also undertaken in the presence of the Acharyas and proper ceremonies were performed. In fact, it became imperative to shift the idol so that outer structure wherein the idol is housed could be reconstructed. That step was necessary to protect the idol.

53. Having regard to the above, we would, in the first instance, like to comment that claim of the ASI that the statute was fragmented and destroyed is totally unfounded. What has happened is that on a big piece of stone there was an idol of Bade Baba. On the two sides of this main idol were two individual idols of Lord Parswanath. In order to carry out construction in the temple, without damaging the main idol or the individual idols of Lord Parswanath the said pieces were dismantled and removed from the dome to protect them from common damage while the construction in the temple is carried out. It was assured at the Bar that after the construction is completed, all the deities namely two Parswanaths (left and right), two of Pushpavrishtis and two Chavardaris and two Yaksha and Yakshinis would be placed back at the same spot and in the same form. Bade Baba idol will be reinstalled in the same manner it existed earlier. Such a course of action in the exigency of

circumstances, temporarily shifting Bade Baba idol with assurance to shifting back and installing in the same form and at the same place it existed earlier, is taken on record, making the Jain Temple Trust bound by this statement. We may add that such a course of action was upheld by the Madras High Court in *Venkatachala Mudaliar v. Sambasiva Mudaliar,* AIR 1927 Mad 465, viz. to shift an idol from an old Temple to a new one, if the same was in the beneficial interest of the worshipper community. The said view has also been approved by this Court in *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak, Gosavi,* (1960) 1 SCR 773(para 40).

RE : NATURE OF CONSTRUCTION

54. This leaves us with the issue relating to the nature of construction that is carried out. As the outside structure had become totally dilapidated and there was reasonable danger of its collapse which could damage the main deity and other deities, it became necessary to re-erect the oustside structure of the temple. May be, it would be, it have been better to construct the same in the same format in which it was existed earlier.

Admittedly, the construction which is carried out now upto by the Trust that too substantial, is not replica of the old structure. However, case of the Trust is that the construction is as per the Jain Agamas. Therefore the question that would arise as to whether it was necessary to make the construction of new temple exactly in the manner in which it existed earlier or the manner in which it is constructed is permissible, being in conformity with these Agamas.

55. There is no gain saying that Jain community claims antiquity for its religion, and rightly so for a documented commentary of Jain religion, running into Volume titled "Jainism: its history, principles and precepts, the culture heritage of India at volume 1, (page 400) it is said:

> "The Jains claim great antiquity for their religion. Their earliest prophet was Rsabhadev, who is mentioned even in the Visnu and the Bhagwata Puranas as belonging to a very remote past. In the earliest Brahmanic literature are found traces of the existence of a religious Order which ranged itself strongly against the authority of the Vedas and the institution of animal sacrifice. According to the Jaina tradition, at the time of Mahabharata war, this Order was led by Neminatha, who is

said to have belonged to the same Yadava family as Krsna and who is recognized as the twenty second Tirthankara. The Order gathered particular strength during the eight century B.C. under Parsvanatha, the twenty third Tirthnakara, who was born at Varanasi. This Order we may call the Sramana Sangha (as district from the Vedic Order), which later became divided into the Jaina and the Buddhist Orders under Mahavira and the Buddha, respectively.

While describing the history of Jain Darshana, it has been noted:

"Through out Vedic Literature we find two parallel currents of thought, opposed to each other, one enjoining animal sacrifice in the Yajanas (sacrifices), and the other condemning it, the former being represented by the Brahmanas of the Kuru-Pancala country in the west, and the later by the Ksatriyas of the eastern countries consisting of Kasi, Kosala, Videha, and Magadha. It is also noteworthy that in these areas the Ksatriyas at the head of society, whereas in the Kuru-Pancala country, the Brahmanas were leaders. And again, in the eastern countries, instead pure Sanskrit, Prakrits were prevalent, which were the canonsical language of Jainism and Buddhism. Further, the Atma-Vidya of the Upnishads is found to be cultivated by the Ksatriyas of these eastern countries, as against the sacrificial religion and the adoration of the Gods in the Kuru-Pancala country. As we find these features in Jainsim (sic:Jainism), and in Buddism, which later arose in this very area, we may conclude that Jainsim (sic:Jainism) was prevlent (sic:prevalent) in the eastern countries, and is as old as the Vedas. It is also held by the Jains that the Vedas, atleast the portions that are not lost, advocated Ahimsa, and the cleavage arose between the two schools when there was difference of opinion in the interpretation of the Vedas, as illustrated in the story of Kid Vasu found in Jaina Literature as well as in the Mahabharata.

The emphasis on Samaiya or Equality is described as follows:-

"Jainism lays great stress upon the attitude of equality. It has identified this attitude with the famous brahmanic conception of Brahman, and has designated the whole religious conduct

and philosophical thought that helps the development of the attitude of equality as Bambhacera (Brahmacarya), even as Buddhism has designated the principles of goodwill (Maitri) and the like as barhmavihara. Further, justice like the Dhammapada and the Mahabharata, the Jaina texts identity a Sramana, who embodies equality, with a Brahmana.

Agamas of the Jains are described as

"The Agamas or the scriptures of the Jains are revealed by the Sarvajana or the Omniscient being. The Jain scriptures should not be in conflict with the well-known Pramanas, the criteria of correct knowledge. They must be capable of leading men towards higher goals, toswarga and moksa, must give correct information as to the nature of reality, and must describe the four pursusarthas (ends of human life): dharma (religious merit), artha (wealth), kama (enjoyment), and moksa. The Agamas with such characteristics, revealed by sarvajana, have been handed down from generations to generations by a succession of teachers called gandharas, beginning with Sudharman, the chief disciple of the Tirthankara Vardharamana Mahavira. They are known by the following appellations: the Siddhanta, Paramagama, Krtanta, Veda, Sruti, Sastra, etc. The Agamas are grouped under three classes: Anga, Purva and Prakrima.

On Architectural Traditions and Canons, the Nagara Temples are described as follows:

"Nearly all over northern had central India one comes across a type of upright building used for religious purposes, which have a number of distinctive features. The compartment within is square in plan and so is the outside. But portions of the outer surface are progressively projected forwards as one proceeds from the outer edge of any one face of the building towards its middle. These vertical strips disposed in several planes are called pagas. They run from the base to below the crown. The planes are sometimes distinguished from one another by the nature of their decoration. But the outermost pagas on any face of the tower are very frequently divided from bottom upwards into a number of storyes, the upper ends

of which bear an ornaments moulding called bhumi-amla or bhumi-amalaka, 'the amalaka which marks the bhumi or level.

On Jaina Architecture and Traditions and Canons:

"While several words were anciently current to denote what is known as architecture, a common and appropriate word was vastu-sastra. Through the word silp-sastra has very much the same meaning, it has a distinct leaning towards sculpture and iconography. The word sthapatya has a more restricted connotation, viz. a house or school, gharana, relating to some particular type of architecture or sculpture workshop. Apart from the traditional gharanas, there are several other classes of architects. The Vaisyas, the Mewads the Gurjaras, the Pancolis, and the Pankalas, all spread over West India, include expert in wood-carving, traditional engineering etc. The Gouda-Brahmanas of Jaipur and Alwar are framed for marble carving. Some specialize in metal craft and painting. The Jangadas are known for wood-carving and traditional engineering; they are known in Madhya Pradesh, Uttar Pradesh and Delhi.

While the Gharanas are hereditary bearers of the ancient architectural tradition, such tradition is also recorded in a vast number of available texts. These treaties generally follow one and the same canon throughout, but they differ considerably inter-se, both object-wise, leading tot he Gharanas mentioned above, and subject-wise, by putting architecture into various types of sails like nagara vesara, dravida, etc.

While some of these texts, like the Diparnava of Visvakarman, the Rupa-Mandana and Prasad-Mandana, both of Mandana, the Vastu-Manjari of Nathji, etc. deal inter-alia with Jain architecture perhaps the only book independently written on Jaina architecture is the Vatthusara Payarana in Prakrt, with three chapters devoted respectively to residential houses, iconography and temple architecture.

56. Relying upon the aforesaid scriptures, it is argued that when the new structure is in accordance with the Jain Agamas and is in tune with the Jain Architectural on which basis Nagara temples are constructed, it would be unwise to direct demolition of these structures and to carry out fresh construction as per the earlier existing design.

57. Mr. Gopal Subramanium had also referred to the judgment in the case of *Seshammal v. State of Tamil Nadu* (1972) 3 SCR 815, wherein this Court upheld the importance of Agamas. Although this court upheld the validity of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, it was observed in paragraph 11 as follows:-

> ".....The authority of these Agamas is recognized in several decided cases and by this Court in *Sri Venkataramana Devaru v. The State of Mysore*, Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity....."

Thus, we find that on the one hand, the Jain Temple Trust justified the construction which is being undertaken in the present manner with the submission that once the existing dome and outer structure decayed to such an extent that the repairs were not possible and it needed reconstruction, while doing so, the tenets of the Jain religion are kept in mind and new structure follows agamas. It is explained that the temple is being constructed in accordance with 'Nagara' style of architecture, which is approved by the Acharyas and Digamber Jain sect. To this extent, the stand of the Trust appears to be correct, viz. the new construction is as per established Jain culture, as described in Agamas. However, it is argued by the appellants that in order to keep the sanctity of ancient monument, the construction should have been on the same pattern of structure but which existed before demolition. It is also their case that the construction of Bade Baba temple should be in sync with other 57 temples and this sanctity has not been maintained. We find that this respect is not specifically looked into by the High Court.

58. We have already held that ASI has no jurisdiction in the matter and the archaeological site in question in governed by the 1964 Act, over which it is State Government authorities who are competent to play their statutory role in accordance with the provisions of the 1964 Act. The High Court, in the impugned judgment, has directed the Trust to submit an application for grant of permission to raise construction of the Temple to preserve and protect idol of Bade Baba. Direction is also issued to the State Government to consider the application, in accordance with law, within a period of two months. We are of the opinion that while considering this application, the competent authority under the 1964 Act would specifically consider the aforesaid issue/aspect as well. We are leaving the matter to the experts/

public functionaries under the 1964 Act with a hope that they would weigh the positions taken by both sides on this limited aspect about the nature of construction and to find an appropriate solution. In case the State Government has already taken a decision on the application of the Jain Temple Trust, but the aforesaid aspect is not dealt with, we direct the State Government to take decision in this behalf within a period of two months. It would also be open to the Trust to press the argument that Jains are declared religious minority and therefore, Jain community enjoys the religious freedom, as a fundamental right, guaranteed under Article 29 of the Constitution. It is their case that the Temple Trust had performed all necessary rituals as required under the Jain religion and followed at the time of temporary shifting of the idol and also before deciding to have the outer structure of the temple as per Agamas while performing these rituals are performed of Agamas by Suri Mantras. Their plea shall also be kept in mind taking the decision. We further make it clear that if the Government functionaries approve of the contruction the appellants shall not be allowed to challenge it again.

59. Subject to the aforesaid observations/directions, the appeals of the appellants are dismissed. There shall, however, be no order as to costs.

Appeal dismissed.

I.L.R. [2015] M.P., 571
WRIT APPEAL

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

W.A. No. 422/2010 (Indore) decided on 11 July, 2013

BHARAT PETROLEUM CORPORATION LTD. & ors. ... Appellants

Vs.

LAXMAN CHOUHAN & anr. ... Respondennts

(Alongwith W.A. No. 399/2010)

***A. Petroleum Act (30 of 1934), Section 3 - Allotment of Dealership* - In previous writ petition, the Writ Court had quashed the recommendations of the committee and had directed for re-assessment - It was nowhere directed that re-assessment was to be done by a New Committee - Re-assessment done by the same Committee not wrong. (Para 16)**

क. पेट्रोलियम अधिनियम (1934 का 30), धारा 3 – डीलरशिप का आवंटन – पूर्ववर्ती रिट याचिका में रिट न्यायालय ने समिति की अनुशंसाओं को अभिखंडित

किया था और पुनः निर्धारण के लिये निदेशित किया था – यह कहीं भी निदेशित नहीं किया गया कि पुनः निर्धारण नई समिति द्वारा किया जाना था – उसी समिति द्वारा पुनः निर्धारण किया जाना अनुचित नहीं।

B. Constitution - Article 226 - Recommendations of Selection Committee - Tied Up Volumes - **Affidavits of residents of close vicinity cannot be considered for assessment with regard to tied up volume to which the capability to generate business. (Para 17)**

ख. संविधान – अनुच्छेद 226 – चयन समिति की अनुशंसाऐं – संबद्ध परिमाण – कारोबार करने की क्षमता के निर्धारण हेतु, संबद्ध परिमाण के लिये आसपास के क्षेत्र के निवासियों के शपथ पत्रों को विचार में नहीं लिया जा सकता।

C. Constitution - Article 226 - Recommendations of Selection Committee - Malafides - Scope of Judicial Review - **Merely because there was some delay in communication of decision would not prove malafide or malice in law - Judicial Review is limited only to the decision making process and does not extend the merits of the decision taken. (Para 27,28)**

ग. संविधान – अनुच्छेद 226 – चयन समिति की अनुशंसाऐं – कदाशय – न्यायिक पुनर्विलोकन की व्याप्ति – मात्र इसलिये कि निर्णय की संसूचना में कुछ विलंब हुआ था, यह विधि अंतर्गत कदाशय या विद्वेष साबित नहीं होगा – न्यायिक पुनर्विलोकन केवल निर्णय की प्रकिया तक सीमित है और दिये गये निर्णय के गुणदोषों को प्रभावित नहीं करता।

Cases referred :

(2003) 10 SCC 681, (2009) 3 SCC 439, (2013) 1 SCC 524, (2009) 3 SCC 439.

B.L. Pavecha with *Dilip Kshirsagar*, for the appellants/BPCL
Vandana Kasrekar, for the appellant Uday Singh.
Vijay Assudani, for the respondent No.1.

ORDER

The Order of the Court was delivered by :
M.C. GARG, J. :- This common order shall dispose of the aforementioned two writ appeals one filed by Udaisingh who has been allotted the petrol pump in this case and the other one filed by M/s Bharat Petroleum Corporation Limited who has allotted the petrol pump outlet to Udaisingh. Both these writ appeals arises out of a judgment delivered by the learned Single Judge in

W.P.No.3913/2009, whereby the decision taken by the Selection Committee pursuant to the order dated 15.09.2008 passed by the learned Single Judge in W.P.No.3171/2005 has been quashed and further directions have been given to the Bharat Petroleum Corporation Limited (hereinafter referred to as Corporation).

2. After an advertisement was published in the Dainik Bhaskar inviting applications for allotment of a petrol pump outlet on 07.01.2005 at Badwani, interviews were held at Mangliya Terminal, Indore on 23.08.2005. A panel of three persons was prepared out of which Shri Udaisingh was placed at no.1 and the outlet was allotted to Shri Udaisingh, the petitioner in W.A.No.399/2010 and placing the respondent-Laxman Chouhan at no.2. It may be added here that both Laxman Chouhan and Udaisingh belongs to SC/ST Community and on that aspect there is no dispute.

3. Aggrieved of the aforesaid allotment, respondent Laxman filed a writ petition which was listed as W.P.No.3171/2005 whereby he challenged the selection of Udaisingh and claimed himself to be placed at serial no.1. The writ petition was allowed by the learned Single Judge of this Court vide order dated 15.09.2008 thereby directing the Corporation, the appellants in W.A.No.422/2010 to reconsider the entire matter vis-a-vis the applications submitted by respondents no.1,2 and Rajan Mandloi the third person who was one of the incumbent and was shortlisted. The relevant observations which also contains directions in the said writ petition by the learned Single Judge are reproduced hereunder:-

> "I have duly considered the contentions raised by the learned counsel for the parties and have also gone through the record.
>
> At the outset, it may be noted that a Division Bench of this Court in **Writ Appeal No.2/2007** decided on February 20, 2008, *(Smt. Shobha Jaiswal Vs. Hindustan Petroleum Corporation Limited)* has struck off certain conditions which were originally incorporated in the brochure for the selection process. On that basis, it is apparent that the marks awarded by the Selection Committee, to the three applicants, who had been shortlisted, and qua whom result had been declared by the Committee, was required to be reappraised. Question would also arise as to whether a project report having not

seen by the respondent No.3, he was entitled to be awarded any marks under heads No.4, 5, 8 and 9. Question of the petitioner being ineligible or otherwise, having submitted an experience certificate, which was not found to be correct qua the factual position, would also be a matter to be examined by the Committee. The petitioner can always show to the Committee the authenticity of the aforesaid certificate.

In these circumstances, it would be appropriate to require the Selection Committee of the respondent-corporation to look into the aforesaid questions all over gone, more so, since the very criteria to be now adopted by the corporation has apparently gone a sea change in view of the judgment of the Division Bench of this Court in *Smt. Shobha Jaiswal's* case (supra), rendered during the pendency of the present petition. Reconsideration of the matter by the Selection Committee would also not cause any prejudice to respondent No.3 since, as noticed above, he has not been allotted the retail outlet so far, which is being run by an ad hoc arrangement by the respondent-corporation itself.

However, it would not be appropriate to any other further comments on the controversy in question, since the matter is to be re-examined by the Committee.

Consequently, the present petition is disposed of with a direction to the respondent-corporation to reconsider the entire matter with regard to the allotment of retail outlet in question at Barwani vis-a-vis the applications submitted by the three applicants, who had been shortlisted in the result Annexure P/6.

It is further made clear that no fresh papers would be permitted to be submitted by any of the applicants, and it would be open to the respondent-corporation to select any one of the aforesaid applicants, if found eligible, or reject all the aforesaid applications and call for fresh applications, in accordance with law."

4. In short the learned Single Judge of this Court in the process of

selection noted various deficiencies and observed as under:-

a. Reappraisal necessary in view of judgment in Shobha Jaiswal's case.

b. Whether respondent no.2 Udaising who had not submitted any project report could be awarded any marks under heads 4,5,8 and 9.

c. Genuineness of the experience certificate submitted by respondent no.1 Laxman Chouhan.

d. No fresh paper to be submitted. Corporation is free to select any one of the applicant.

5. Pursuant to the aforesaid directions the Selection Committee comprising of Shri V.S.Shgal, Shri M.M.Khan and Shri V.R.Nage who were the members of the earlier selection committee also, considered the matter afresh and gave fresh recommendation on 2.04.2009. Thereafter, license was obtained by Shri Udaisingh. The results of the selection of Shri Udaisingh was informed to the respondent on June 1, 2009. The said order reads as under :-

Bharat Petroleum Corporation Limited
(A Govt. of India Enterprise)
Indore Retail Territory

By Regd.A.D/Hand

Ref No.IND.NRO. Badwani Date 01.06.09

To
Mr. Laxman Chauhan
Badwani

Dear Sir,

Sub: Re-examination of Selection of Retail Outlet Dealership at Badwani City District Badwani, M.P. in compliance of High Court Direction vide order dated 15-09-2008.

We have appointed a team of 3 Officers who have gone into all relevant details pertaining to selection of Dealership.

Upon re-assessment and re-examination of relevant paper the Committee observed that marks obtained by various candidates are reflected correctly in line with the prevailing guidelines. Thus Mr. Udaysingh Mandloi has reightly been declared as selected and accordingly LOI has been issued in his favour.

We enclose copy of our examination record of the Committee so appointed.

Thanking you,

Yours faithfully

For Bharat Petroleum Corpn.Ltd.

Milind M.Apte
Dy.Manager, Sales(Retail)-Indore

6. This re-assessment/re-evaluation was assailed by Shri Laxman Chouhan who filed a second writ petition being W.P.No.3913/2009 challenging the result of re-evaluation and seeking quashment of the order and agreement made in favour of Udaisingh on 22.06.2009 inter-alia on the following grounds:-

(i) That the appellant/BPCL intentionally failed to consider law laid by the Division Bench of this Hon'ble Court in case of Smt. Shobha Jaiswal.

(ii) That despite non submission of project report by Udaisingh, in disregard to judgment and order dated 15/09/2008 awarded marks to Udaisingh wholly dependent on submission of project report under full knowledge and admission that project report has not been submitted by him.

(iii) That no opportunity of hearing was afforded to the Respondent/Laxman Singh to produce evidence by way of affidavit of dealer of Hindustan Petroleum Badwani qua his experience.

(iv) That the re-assessment was mandated for re-evaluation of marks of Udaisingh on the basis of non-submission of project report. In such case 8.67 marks wrongly awarded under 4,6,9 heads were required to be deducted resulting in

21 marks secured by Udaisingh as against 31.17 secured by Laxmansingh.

7. The learned Single Judge while disposing of the W.P.No.3913/2009 made the following observations:-

18. It is pertinent to note that the same three persons who were the members of earlier Selection Committee were the members of the subsequent committee, which has re-examined the earlier selection in the matter, meaning thereby the Committee which has re-examined the matter was again chaired by Shri V.s. Sehgal and Shri M.M. Khan and Shri V.R. Nage were the two members of the Selection Committee. It is noteworthy to mention that the Committee has simply re-examined the earlier selection and has looked into affidavits submitted by the candidates in respect of tide up volume. The Committee has also looked into the project report and inspite of fact that there was no project report submitted by respondent no. 4, he has been awarded more marks under the business acumen / abilities. The report submitted by the Committee upholding the earlier selection reads as under:

Re-examination of the allotment of Retail Outlet by Dealer Selection Committee for the location, Barwani City, Dist, Barwani M.P.

"This has reference to letter GMR(W) DSB dated 30.03.09 on the above subject. GM (Retail), West, vide letter GMR (W) DSB dated 06/04/2009 approved the committee (Dealer Selection Committee) who had conducted the interview on 23.08.05, to re-examine the documents/allotment pertaining to the referred dealership selection. The Committee comprised following members :-

1	Shri V.S. Sehgal	:	Chairman
2	Shri M.M. Khan	:	Member
3	Shri V.R. Nage	:	Member

The High Court of Madhya Pradesh, Indore Bench

vide their order dated 15.09.08 in writ petition no. 3171/2005 directed the Corporation (RPCL) to reconsider the entire matter with regard to the allotment of the Retail Outlet in question at Barwani, vic-a-vis the applications submitted by the three appellants, who have been shortlisted in the result. Accordingly, as per directions received, the committee carried out re-examination of the relevant documents on 21.04.09 at Retail Territory Officer, Indore. Since the petitioner has primarily challenged the result prepared by the Dealer Selection Committee under heeds 4,5,8 & 9 accordingly the committee today re-examined the relevant documents and the findings are as given below :

*Head no. 4 (as per mark sheet). Tied up Volume : The marks awarded by the committed to the first three empanelled candidates are as under :-

Name of Candidate	Empanelled rank	Marks awarded
Shri Udai Singh Mandloi	I	3
Shri Laxman Chouhan	II	3
Shri Rajan Mandloi	III	2.67

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that " The committee will assess the applicant's ability to tap the sales potential for both MS & HSD through leading questions and production of documents including affidavit from prospective customers in support of claim" On re-examination the committee found that the marks awarded are in line with the guidelines :

* Head 5 (as per Mark Sheet) :- Project report : The marks awarded by the committee to the first three empanelled candidates are as under :

Name of Candidate	Empanelled rank	Marks awarded
Shri Udai Singh Mandloi	I	0

Shri Laxman Chouhan	II	1.5
Shri Rajan Mandloi	III	0.83

As per then prevailing guidelines the evaluation criteria for award of marks under this head states that " The committee Members will satisfy themselves through leading questions on the project report submitted by the candidates and assess him accordingly ". On re-examination, the committee found that the marks awarded are in line with the guidelines. Since Empanelled Candidate no. I had not submitted any project report, was not awarded any marks whereas other two candidates were awarded marks based on project report submitted and performance during the interview.

* Head no. 8 (as per Mark Sheet) :- Experience : The marks awarded by the Committee to the first three empanelled candidates are as under :-

Name of Candidate	Empanelled rank	Marks awarded
Shri Udai Singh Mandloi	I	3
Shri Laxman Chouhan	II	1
Shri Rajan Mandloi	III	1

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that " Based on furnishing of documentary evidence to establish the relevant service of minimum one year " On re-examination the committee found that as per the records available on the file/ notings recorded by the Committee Members during interview, there were few candidates who had submitted the documentary evidence towards experience but they failed to establish their experience during interview when the Committee members asked the leading questions. A few such experience are :

3. Shri Laxman Chouhan/Shri Mukam Singh Rawat/Shri Devendra Singh Tomar and Smt. Shiv Kunwar: as per records available in the file, the candidates, though furnished documentary evidence towards experience but did not answer

the leading questions to establish the relevant service of minimum one year and hence were awarded 1 out of 4 marks each.

4. Shri Udai Singh Mandloi: As per the records available this candidate was working with MPSRTC as Traffic Superintendent since 1993. Based on his experience in transport trade and the leading questions asked, he was awarded 3 out of 4 marks as per guidelines.

5 Shri Rajan Mandloi : As per records available in the file, the candidate though furnished documentary evidence toward experience, but did not answer the leading question to establish the relevant service of minimum one year and hence was awarded 1 out of 4 marks each

* Head no. 9 (As per Mark Sheet) - Business Ability / Acumen :

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that "Based on project report / leading questions with regard to earlier handling of business and specific situations."

The scrutiny of the available documents in the file reveals that the candidate who answered leading / relevant questions asked by the committee, got better marks. As per the records, there were many candidates who had submitted project report, but could not answer leading/relevant questions appropriately. Some of them may not even knowing the contents of the project reports submitted by them e.g. how much sales volume, they have considered / mentioned in the report, one of the candidate claimed during the interview that he has experience of two years at a petrol pump whereas his certificate showed experience of only one year etc. Such candidates were awarded less marks which is in accordance with the guidelines.

8. The learned Single Judge also made a reference to the stand taken by the Corporation in answer to the writ petition by Shri Laxman Chouhan in paragraph 3.7 thereof:

It is pertinent to note that, this Hon'ble Court by the said order, ordered re-appraisal of the marks awarded by the Selection Committee to the three short-listed applicants. This Hon'ble Court has not ordered to re-interview the three short listed applicants. It is denied that the respondents failed to comply with mandate of order dated 15.09.2008. Since, this Hon'ble Court by the said order has clearly ordered that no fresh papers would be permitted to be submitted by any of the applicants, the question of affording opportunity to the petitioner to produce evidence qua factual position of experience certificate by way of affidavit of dealer Hindustan Petroleum Corporation at Barwani did not arise. It is denied that there was any inaction on the part of respondents to comply with the order dated 15.09.2008 passed by this Hon'ble Court. Issuance of notices Annexure P/9 and P/10 by the petitioner to the respondents are admitted however, even after reconsideration of the matter, the falsity of the experience certificate of the petitioner remain unchanged because the same was detected on the basis of his inability to reply the simply questions regarding working and operation of Retail Outlet the question of issuance of experience certificate by the dealer of Hindustan Petroleum Corporation Ltd., Barwani was not relevant and therefore was not required to be examined.

It is also respectfully submitted that, in *Shobha Jaiswal's* case, this Hon'ble Court has not quashed or condemned the criterion for the selection of dealers as per Dealers' Selection Guideline, but, in the facts and circumstance of that case, has merely held that for evaluation

of "tide up volume" the affidavits obtained from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, a part from being a promise no credents can be given to such affidavit which do not bind the persons, who have sweared them. This apart, the affidavit produced by the candidates, would ensue the credit of the candidates as they show that there is assured sale, therefore, the selection has been made on the criteria, which cannot be sustained.

In *Shobha Jaiswal's* case, no comments were made on the other criterion of the Dealers Selection Guideline and this Hon'ble Court has merely condemned the evaluation of "tide up volume" on the basis of affidavits obtained from the residents of the area by the candidates regarding assurance to purchase certain quantity of fuel from the proposed retail outlet. Since, no such controversy is involved in the resent case, it is respectfully submitted that the ratio of judgment passed in *Shobha Jaiswal's* case does not apply to the present case.

20. The stand of the BPCL is that the judgment delivered in the case of *Smt. Shobha Jaiswal* (Supra) is not applicable in the facts and circumstances of the present case. It is really unfortunate that in spite there being a categoric direction issued by this Court in the earlier round of litigation to re-apprise the earlier process of selection in the light of judgment delivered in the case of *Smt. Shobha Jaiswal* (Supra), the Selection Committee has ignored the directions issued by this Court. The same three officers were the earlier members of the first Selection Committee have clearly observed that the judgment delivered in the case of *Smt. Shobha Jaiswal* (Supra) is not applicable in the present case. In case, if the judgment was not

applicable the only remedy available to the respondent/BPCL was to prefer a writ appeal against the order passed by learned Single Judge or should have gone before the Hon'ble Supreme Court for getting the judgment passed in the earlier round of litigation set aside. The act of the officers of the Selection Committee is infact contemptuous in nature.

21. The Division Bench of this Court in the case of *Smt. Shobha Jaiswal Vs. Hindustan Petroleum Corporation Ltd.* and one another has dealt with the guidelines framed for the selection of retail outlet dealers and paragraphs 6 to 17 of the aforesaid judgment reads as under:-

> "6. It is not disputed that the candidature of the appellant and respondent no.2 was tested on the anvil of the above guidelines, but the grievance of the appellant is that appellant has been awarded only three marks as against the respondent no.2, who has secured 14 under the caption "tide up volume" and has been awarded zero marks for "experience as against 12 marks awarded to respondent no.2.
>
> 8. The core question that falls for consideration is as to whether the method of making assessment with regard to "tide up volume" to adjudge the capability to generate business, is just and proper or it has the tendency to lead anomalous results.
>
> 9. Learned counsel have not disputed that the eligibility/suitability of a candidate seeking Retail Outlet is just for the purpose f ensuring his capability to generate business called a "tide up volume". It is also not disputed for the purposes of adjudging the suitability, "tide up volume is considered on the basis of the affidavits of the persons in the vicinity of the proposed Retail Outlet and on that basis the

Committee arrives at the conclusion about the capacity of the particular candidate to generate business. In addition to the suitability adjudged on the anvil of the other criteria. From the criteria, it is clear that capability to generate business and of sales potential is assessed on the applicants ability to tap the sales potential for both MS and HSD through interview and production of documents including affidavits from prospective customers in support of the claim.

10. According to the learned counsel for the respondent no.1, while the petitioner produced an affidavit about the estimated sale of one kiloliter, respondent no.2 produced a number of affidavits to the effect that there were buyers for 40 kiloliters of the fuel.

11. The case of the appellant and the respondent no.2 was considered on the basis of the Site Inspection, the weightage awarded by Interview Committee, in liquid cash in the form of a bank Fixed Deposit fixed and movable asset, income, letter ensuring loan/ credit worthiness, educational qualifications, capability to generate business i.e. tide up volume, project report, over all assessment age, experience, business acumen and personality. Though the other criteria for achieving the highest percentage of marks as per the bench mark fixed by the Corporation appears reasonable and proper and relevant for adjudging suitability of the affidavits produced from the inhabitants in the area in which the outlet is proposed, cannot furnish a rationale basis having nexus to the object to be achieved and, therefore, procedure of selection suffers from the irrelevant basis on which

decision is taken.

12. We may add that the affidavits filed from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and, therefore, apart from being a mere promise, no credence can be given to such affidavits which do not bind the persons when have sworn them. This apart, the affidavit produced by the candidates would ensure to the credit of all candidates as they show that there is assured sale. Therefore, the selection has been made on the criteria which cannot be sustained.

13. Accordingly, this appeal partly succeeds. Respondent/Corporation is directed to call the apellant and respondent no.2 for interview afresh and subject them to the selection criteria laid down except that no weightage shall be given to the affidavits filed byh the candidates but the documents filed in support of the claim for capability to generate business shall duly be taken into consideration.

14. We expect that the Committee shall take a decision within 45 days from the date of this order. There shall be no order as to costs."

The Division Bench of this Court has held that the affidavits filed by the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, no credence can be given to such affidavits which do not bind the persons who have sworn them. It was also held that no weightage should be given on the basis of affidavits submitted by a particular candidate, however, documents filed in support of the claim for capability to generate business should be looked into.

22. In the present case, in spite of there being a judgment on the issue in the case of Smt. Shobha Jaiswal (Supra) and in spite there being a clear direction issued by this Court in the earlier round of litigation, the respondent/BPCL has ignored the direction and the three officers who were earlier constituting the Selection Committee have acted as a Judge in their own cause by justifying the earlier selection done by them. In all fairness, the respondent/BPCL should have referred the matter to three independent officers for reviewing the reassessing the matter as directed by this court. The three officers who were the members of the earlier selection have certainly looked into affidavits filed in the mater (sic:matter) and petitioner has not been granted any opportunity at any point of time pursuant to the judgment delivered by this Court to establish the authenticity of the experience certificate submitted by the petitioner. Thus, this Court is of the considered opinion that the subsequent exercise pursuant to the judgment delivered by this Court dated 15.09.2008 on behalf of the respondent/BPCL is nothing but an eye-wash and an attempt on the part of the Selection Committee to favour respondent no.4.

9. It may be observed here that the afore mentioned observations made by the learned Single Judge in the impugned order with respect to the Corporation taking stand that *Shobha Jaiswal's judgment* was not applicable to the facts of the case or that the said judgment was not at all looked into is apparently wrong in view of the marking made by the Revised Assessment Committee in respect of Head No.4,5 and 8.

The judgment was also wrong in reading the return filed by the Corporation as mentioned in para 8 of the judgment in answer to para 3.7 inasmuch as in the aforesaid return the Corporation had submitted that in *Shobha Jaiswal's* case, this Hon'ble Court has not quashed or condemned the criterion for the selection of dealers as per Dealers' Selection Guideline, but, in the facts and circumstance of that case, has merely held that for evaluation of "tide up volume" the affidavits obtained from the residents of the

area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, a part from being a promise no credents can be given to such affidavit which do not bind the persons, who have sweared them. This apart, the affidavit produced by the candidates, would ensue the credit of the candidates as they show that there is assured sale, therefore, the selection has been made on the criteria, which cannot be sustained. In *Shobha Jaiswal's* case, no comments were made on the other criterion of the Dealers Selection Guideline and this Hon'ble Court has merely condemned the evaluation of "tide up volume" on the basis of affidavits obtained from the residents of the area by the candidates regarding assurance to purchase certain quantity of fuel from the proposed retail outlet. Since, no such controversy is involved in the present case, the ratio of judgment passed in *Shobha Jaiswal's* case does not apply to the present case.

10. The learned Single Judge failed to appreciate what was being stated in the return was the crux of the judgment in *Shobha Jaiswal's* case which even as per the observations made while quashing the said judgment are also clear in para 9 to 12 of the judgment of *Shobha Jaiswal* as incorporated by the learned Single Judge in the impugned orders that as the affidavits were filed by both sides i.e Shri Udaisingh as well as by Shri Laxman Chouhan awarded equal marks (three marks) each both to Shri Udaisingh as well as Shri Laxman Chouhan. This Selection Committee infact had taken note of the judgment delivered in the *Shobha Jaiswal's* case while revising the assessment.

11. The learned Single Judge then also made allegations of malafide against the Selection Committee and quashed the decision of the Selection Committee and also gave fresh directions. The relevant observation in this regard is available in para 23 to 26 of the judgment which are also reproduced hereunder:-

> 23. It is pertinent to note that the Selection Committee has given its finding on 21.04.2009 and the same was communicated to the petitioner by letter dated 01.06.2009. In the meanwhile, the respondent/BPCL without communicating the result of the subsequent Review Committee has issued the Letter of Intent and entered into an agreement with respondent no.4 and, therefore, the conduct of the respondent/BPCL and its officers speaks volumes about the malafides involved in the process of selection.

24. Resultantly, this Court is left with no other choice except to quash the recommendations as contained in annexure P/11 dated 21.04.2009 and the matter is remanded back to the respondents/BPCL to place it afresh before the Selection Committee for reviewing it afresh in the light of earlier order passed by this Court in W.P.No.3171/2005 dated 15.09.2008.

25. Thus, this Court is of the opinion that respondent/BPCL has not complied with the direction issued by this Court in the earlier round of litigation and the same three persons who have conducted first selection process have again reviewed the selection process and therefore, a cost of Rs.10,000/- is imposed upon respondents No.1 to 3 in the matter.

26. It is needless to mention that the matter shall be re-examined by a committee comprising three different officers and not the officers who have earlier conducted the selection who have reviewed the selection. Resultantly, the writ petition is disposed of with the following directions:-

(a) The recommendations of the Selection Committee dated 21.04.2009 is hereby quashed and the impugned letter dated 01.06.2009 is also quashed.

(b) The Letter of Intent and the agreement entered into between respondent/BPCL and respondent no.4 is also quashed.

(c) The respondent/BPCL is directed to review the matter afresh as directed by this Cort in W.p.No.3171/ of 2005 vide order datred 15.09.2008 within a period of 60 days from today.

(d) The respondent/BPCL, in case there is any doubt about the experience certificate submitted by the petitioner shall afford an opportunity of hearing to the petitioner in the matter and the respondent/BPCL shall also be free to afford an opportunity of hearing to the other candidates in the matter.

(e) As this Court has quashed the allotment of

Retail Outlet in question developed and established by the respondent/BPCL under the policy and allotted to a person belonging to Scheduled Tribe, therefore, till the fresh selection is done, the respondent/BPCL shall operate the Retail Outlet in the matter. The respondent no.4 shall not be permitted to operate the Retail Outlet in question, till the matter is reviewed afresh, as directed by this Court. No order as to costs."

12. In short the decision in the second round quashing the selection of the appellant-Udaisingh is basically on the following grounds:-

(1) inapplicability of *Shobha Jaiswal's* case recorded by Selection Committee and reiterated in the return runs counter to the directions given in order dated 15.09.2008.

(2) Reconsideration by the same committee is illegal which renders it an eye wash.

(3) Failure to grant an opportunity to the petitioner to prove authenticity of his experience certificate annexure P/4 vitiates the selection.

(4) Belated communication on 1.06.2009 of finding dated 21.04.2009 to respondent no.1 (petitioner) renders the decision malafide:-

Letter of intent was already issued on 3.10.2005.

Agreement has been entered into on 03.06.2009 intimation sent on 01.06.2009.

13. It is against the aforesaid order, these writ appeals subject matter of this order have been preferred and filed both on behalf of Shri Udaisingh on the one hand and M/s Bharat Petroleum Corporation Limited on the other hand.

14. According to the appellants, the order passed by the learned Single Judge is not sustainable for the reasons :

(i) that the learned Single Judge misdirected and erred in holding that the same three persons who were the members of earlier Selection Committee re-examined the whole issue and that this should have been done by a Committee of three new

and independent persons even though as per order dated 15.09.2008 passed in W.P.No.3171/2005, there was no such direction that a Review Selection Committee was to be constituted of a new members.

(ii) The learned Single Judge further erred in holding that the subsequent exercise pursuant to the judgment dated 15.09.2008 is nothing but an eye-wash and an attempt on the part of the Selection Committee just to favour Udaisingh. In this regard, it has been submitted that no material to indicate any favouratism on the part of the Selection committee was ever placed by anyone before the learned Single Judge.

(iii) It is also submitted that the reference made by the learned Single Judge on the Division Bench Judgment in *Shobha Jaiswal's* case was not considered is misconceived inasmuch as a bare perusal of the report of the Selection Committee would show that the said judgment has not been ignored inasmuch the said judgment required not giving any preference on the basis of affidavits for the purpose of showing that there were prospective buyers available; marks which have been assigned by the Review Selection Committee are similar to both i.e. Shri Laxman Chouhan as well as Udaisingh who have been given 3 marks each under the head of tied up volume and therefore it cannot be said that the said judgment was ignored. In any event, even if marks are taken off it would not effect the final outcome of the Selection.

(iv) In this regard it is also the case of the appellants that the learned Single Judge has also misled of the fact that, despite no project report was submitted by respondent no.2, he was awarded more marks under the head business acumen/abilities. The leanred Single Judge should have seen that the criterion business ability/acumen of a candidate had to be judged on the basis of project report and/or the answers given by him to the leading questions put in interview which is clear from the following provisions of the brochure:-

Allocation of marks on various parameters	Marks	Evaluation

(as applicant to individuals)		Based on project
Business ability/acumen	5	Report/leading questions with regard to earlier handling of business and specific situations.

(v) The learned Single Judge should have held that allotment of marks under the head of business ability/acumen on the basis of performance in interview to the respondent no.2 even in absence of project report was permissible and no error much less any malafides or favouratism could be attributed to the Selection Committee on that count.

(vi) That the Learned Single Judge has erred in criticizing the appellants and the Selection Committee for not affording opportunity to respondent no.1 for establishing the authenticity of experience certificate submitted by him. The learned Judge should have seen that no such opportunity could be given to the respondent no.1 in view of the final directions given by this Hon'ble Court in its order dated 15.09.2008 passed in W.P.No.3171/2005.

(viii) That, the learned Single Judge should have further seen that the authenticity of the experience certificate submitted by respondent no.1 was clearly rendered doubtful by its performance in interview in respect of the said certificate. In any event no malafides can be attributed to the Selection Committee for the view it has taken in respect of the said certificate in the light of the answers given by respondent no.1 during interview.

(ix) That the learned Single Judge has committed an error in making an adverse comment on the appellants for failure to given prompt intimation of their decision on the re-consideration of the matter and there was no such requirement in the guidelines or the procedure, whereas the intimation of the

decision of Selection Committee was communicated to the respondent no.1 by letter dated 01.06.2009 with the decision of the Selection committee and the same was filed by the petitioner in W.P.3913/2009 as Annexure-P/11.

15. We have heard the learned counsel for the parties and have also perused the record. In nutshell it is seen that the criteria for the Revised Selection Committee laid down in the first judgment revolved around the following i.e.:-

a. Reappraisal in view of judgment in *Shobha Jaiswal's* case.

b. Whether respondent no.2 Udaising who had not submitted any project report could be awarded any marks under heads 4,5,8 and 9.

c. Genuineness of the experience certificate submitted by respondent no.1 Laxman Chouhan.

d. No fresh paper to be submitted. Corporation is free to select any one of the applicant.

16. At the outset perusal of the first order as has been quoted in this judgment in paragraph 3 above, nowhere lays down that the re-assessment was to be done by a New Committee comprising of new members rather, the language of the order clearly shows that the reference was "the Committee" means the same Committee which Committee made assessment at the first go. In view of the aforesaid, the decision of the learned Single Judge on the point of examination of the matter by the same Committee while revising assessment being wrong is not sustainable.

17. Now coming to the question of non-application of *Shobha Jaiswal's* judgment. In this regard, the judgment of *Shobha Jaiswal* has been considered by the learned Single Judge in para 20. The basic issue which was raised in Shobha Jaiswal's judgment was that assessment with regard to tied up volume to which the capability to generate business ought not to have been done on the basis of the affidavits of the person in the vicinity of the retail outlet and on that basis the Committee if arrives at a conclusion about the capacity of a particular candidate to generate the business criteria could not be sustained. In the light of the aforesaid observations made by the Division Bench in *Shobha Jaiswal's* judgment following directions were given:-

"12. We may add that the affidavits filed from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and, therefore, apart from being a mere promise, no credence can be given to such affidavits which do not bind the persons when have sworn them. This apart, the affidavit produced by the candidates would ensure to the credit of all candidates as they show that there is assured sale. Therefore, the selection has been made on the criteria which cannot be sustained.

13. Accordingly, this appeal partly succeeds. Respondent/Corporation is directed to call the apellant and respondent no.2 for interview afresh and subject them to the selection criteria laid down except that no weightage shall be given to the affidavits filed by the candidates but the documents filed in support of the claim for capability to generate business shall duly be taken into consideration."

18. Thus what was required to be done on the part of the Revised Selection Committee while reviewing the proposal was to keep in mind the aforesaid mandate of the judgment in *Shobha Jaiswal*. The marking given by Revised Selection Committee has considered this aspect inasmuch as with respect to tied up volume while making re-assessment, the Selection Committee has given equal marks to both Shri Udaisingh as well as Shri Laxman Chouhan on Head No.4. This can be seen in the marking done under Head No.4 as has been observed by the learned Single Judge in the impugned order. The said marking is reproduced hereunder for the sake of reference:-

*Head no. 4 (as per mark sheet). Tied up Volume : The marks awarded by the committed to the first three empanelled candidates are as under :-

Name of Candidate	Empanelled rank	Marks awarded
Shri Udai Singh Mandloi	I	3

Shri Laxman Chouhan	II	3
Shri Rajan Mandloi	III	2.67

19. The second point which ought to have been considered was that the effect of not furnishing the project report should also be considered by the Revised Selection Committee against Shri Udaisingh. This aspect has also been taken note by the Revised Selection Committee while giving marks on Head No.5, inasmuch as while Shri Udaisingh has not been given any marks whereas Shri Laxman Chouhan has been given 1.5 marks. This aspect is also clear from the reading of the report of the Selection Committee as quoted in the impugned order.

20. At this juncture, it would also be appropriate to take note of other portion of the *Shobha Jaiswal's* judgment about which referene has not been made in the impugned order. In the aforesaid judgment, in para 9 the procedure for assessment has been discussed by the Division Bench. The same is reproduced hereunder:-

Capability to generate business Maximum marks 10	Tapping of Sales potential	i)Assessment by Committee on tie up of sales volumes with prospective customers.	5	i) Committee will assess the applicant's ability to tap the sales potential for both MS &HSD through leading questions & Production of documents including
	Project report	ii)Based on project report for realizing sales potential submitted by the applicant.	3	
	Assessment of committee	iii)On the overall judgment to candidate's ability to generate business including future plans.	2	Affidavit from prospective customers in support of claim.
		Note:Sales potential, as estimated by HPCL will be indicated in the		ii)The committee members will satisfy

	advertisement against each location. The candidate, while applying, will have to submit an affidavit in support of his claim with regard to his ability to tap the sales potential from the prospective customers. It will be clearly indicated in the affidavit (Appendix-A2) that such prospective customer has not given similar consent to any other applicant for the concerned location. The indicative parameters in this regard are as under: Tied up volume with transporters/ Tax/Rickshaw Operators/Transport Association/Private cars/fleet/agricultural equipment/mining/ earth moving equipment/own vehicles/Fleet/ equipments/ machinery; tie up with industries regarding requirement for power generation etc. In case the affidavit is not factual or not substantiated	themselves through leading questions on the project report submitted by the candidate and assess him accordingly. iii)As per the assessment of the Committee based on leading questions.

		during interview/at a later date, the candidature/ dealership is liable to be cancelled.	
		Sub total	10

21. A perusal of this chart shows that with respect to tied up of sales volume 5 marks were allotted and out of the balance 5 marks which were the maximum marks to be considered for on the head of capability to generate business, three were meant for project report and two were meant to be considered on the basis of assessment by way of questioning etc.

22. Thus the question which is relevant for the purpose of considering the selection process by second selection committee even in the light of *Shobha Jaiswal's* case was only with respect to 5 marks. In that regard even if project report is not submitted the other modes prescribed such as assessment on the basis of examination of candidate by putting leading questions on the project report submitted and assess him accordingly would not be taken away. Thirdly, even if the project report is not there then also the Committee can have the overall assessment of the candidate by putting leadings questions. Thus, the judgment of *Shobha Jaiswal* is to be considered in the light of the aforesaid discussion. A perusal of the report of Selection Committee shows that while for the tied up volume both the parties have been given equal marks three each for the project report 0 marks has been assigned to Udaisingh. The assessment qua the other criteria is based upon the interview which was taken at the time of first selection. Thus Shri Udai Singh was given more marks because his experience certificate was taken into consideration, whereas experience certificate of Shri Laxman Chouhan was found to be doubtful. Nothing is available on record to show that Laxman Chouhan made any effort to prove the authenticity of his experience certificate. Thus it also cannot be said that the judgment of *Shobha Jaiswal* was ignored or was not taken into consideration by the Selection Committee while reviewing the decision taken in the first round. Considering the report of the Selection Committee which has been verbatim noted by the learned Single Judge in the impugned order in paragraph 20 thereby incorporating paragraph 6 to 17 of the judgment and criticizing the Selection Committee report by holding that the Committee had not considered the effect of *Shobha Jaiswal's* judgment is again not sustainable for the reasons as stated above.

23. Now coming to the next point as urged by the learned counsel for the respondent for non-providing of opportunity to the respondent to prove the authenticity of the experience certificate. Having perused the record we find that except for the communication available as Annexure P-9 which is a communication in the form of a legal notice served upon the Corporation by the learned counsel for Shri Laxman Chouhan after the results were announced by the Selection Committee, there is nothing on record to show that there was any effort made by Shri Laxman Chouhan to prove the authenticity of his experience certificate, inasmuch as neither there is any communication as to how the authenticity shall be proved nor any document to prove the authenticity was submitted. Even if we take it as per the order passed in the first writ petition, no fresh document was required to be taken into consideration, but in this case there is nothing to show that any effort was made on the part of Laxman Chouhan to prove the authenticity of his experience certificate. As far as Annexure P-10 is concerned, it is nothing else but only a request to decide the matter expeditiously by the second Selection Committee which again does not contain anything to show that any effort was made to prove the authenticity of experience certificate by Shri Laxman Chouhan. Even in the return filed to the Writ Appeals there is nothing which may go to show that as to how respondent-Laxman Chouhan even if given an opportunity to prove the authenticity of his experience certificate will prove the same.

24. In view of the aforesaid discussion had by us, we are of the considered opinion that observations made by the learned Single Judge in the impugned order firstly regarding re-examination of the matter by different committee despite no such direction in the first order is not sustainable.

25. As far as the judgment of *Shobha Jaiswal* is concerned, the Selection Committed has considered that judgment in the sence that out of 10 marks, no special favour has been shown in favour of Udaisingh on the issue of tied up volume. Moreover, on the project report, he has been given 0 marks and rest of the marking is based upon his interview inasmuch as after the bifurcation of the marks as per the brochure on the ground of capability to generate business is concerned 5 marks has been assigned for assessment on the basis of tied up volume with prospective customers. On that head equal marks have been assigned to both Shri Laxman Chouhan and Udaisingh. Even if the marks are taken off there is no difference in the final outcome. As far as non-submission of project report is concerned, Udaisingh has been given 0 marks while Laxman Chouhan has been given 1.5 marks.

As regard general assessment, two marks have been given to Shri Udaisingh based upon the answer given by him at the time of original selection inasmuch as no second interview was held.

26. Moreover, having examined the process of reasonings given by the Selection Committee at the time of review of assessment of the allottment of the petrol-pump site in terms of the directions given by the learned Single Judge in the first Writ Petition, we find, that there is no reason for us to question the decision taken by the Selection Committee on the second occasion as we have already noticed, there was no infirmity in the decision reached by the Selection Committee.

27. We have fortified only decision in the light of the judgment of the Apex Court in the case of *K. Vinod Kumar Vs. S. Palanisamy and others* reported in (2003) 10 SCC 681; *Mahavir Singh Vs. Khiali Ram and others* reported in (2009) 3 SCC 439 as well as latest judgment delivered in the case of *Ratangiri Gas and Power Private Limited Vs. RDS Projects Limited and others* reported in (2013) 1 SCC 524.

We say so because in this case, the allegations of malafide in the second round of litigation are without any material in as much as merely because communication of the decision was sent little later to the respondent would not prove malafide or malice in law.

28. In the case *K. Vinod Kumar* (supra), concept of judicial review was examined. It has been held in that case that judicial review is limited to the decision making process and does not extend the merits of the decision taken. Reference can be made from para-7 of the aforementioned judgment which reads as under :

> 7. The proceedings of the Dealer Selection Board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no mala fides alleged against the Dealer Selection Board or the President or any Member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totaled and arranged in the order of merit. The appellant

herein topped the list. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable.

As noticed above in this case, the Selection Committee was not obliged to be constituted of different members as there was no such directions in the judgment delivered by the learned Single Judge in W.P. no. 3171/2005. As far as the observations made in *Sobha Jaiswal* case, we have already noticed that crux of the matter has been taken note of the Selection Committee while revising the assessment. As regard the proof of the authenticity of the experience certificate of the respondent, there being no effort made on his behalf to prove the authenticity, no infirmity can be found in the decision taken by the Selection Committee while revising assessment.

29. In absence of any malafide motive of the Members of the Selection Committee, the process adopted has to be taken bonafide and thus it can only be said that the powers of the Selection Committee was exercised bonafide and thus the decision of the Selection Committee does not call for any interference nor our jurisdiction of judicial review. Same is the position in the case of *Mahavir Singh Vs. Khiali Ram and others* reported in (2009) 3 SCC 439 as well as latest judgment delivered in the case of *Ratangiri Gas and Power Private Limited Vs. RDS Projects Limited and others* reported in (2013) 1 SCC 524.

30. Thus, we find that the order passed by the learned Single Judge (impugned before us) in W.P.No.3913/2009 is not sustainable and the same is hereby quashed. Consequently, both the writ appeals are allowed. The order of Selection of the petrol pump qua Shri Udaisingh is maintained. The agreement entered into between the Corporation and Shri Udaisingh is also sustained. There shall be no orders as to costs.

C.C.as per rules.

Appeal allowed.

I.L.R. [2015] M.P., 600
WRIT APPEAL

Before Mr. Justice Shantanu Kemkar & Mr. Justice Mool Chand Garg
W.A. No. 138/2007 (Indore) decided on 4 February, 2014

ANNAPURNA INDUSTRIES (M/S.) ...Appellant
Vs.
DEPUTY COMMISSIONER, COMMERCIAL TAXES, INDORE & anr. ... Respondents

***Commercial Tax Act, M.P. 1994 (5 of 1995), Item 89 of Schedule I* - Whether PVC pipes used in pumping set can be held as accessories of the pumps, and if so, whether they are exempted from payment of Commercial Tax - Held - PVC pipes are an essential part of the pumping set and can never be considered as an accessory - Therefore, the same are taxable. (Para 2 & 6)**

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुच्छेद I का मद 89 – क्या पम्पिंग सेट में प्रयुक्त पी.व्ही.सी. पाइप को पम्प के सहायक उपकरण के रूप में माना जा सकता है और यदि ऐसा है तब क्या इसे वाणिज्यिक कर के भुगतान से छूट प्राप्त है – अभिनिर्धारित – पी.व्ही.सी. पाइप पम्पिंग सेट का एक आवश्यक हिस्सा है और इसे कभी भी सहायक उपकरण के रूप में नहीं माना जा सकता – इसलिये यह कर योग्य है।

Cases referred :

2001 (34) VKN 415, (2002) 35 KVN 172, (2008) 12 STJ 750 (MP).

H.Y. Mehta, for the appellant.
Mini Ravindran, Dy. G.A. for the respondents.

ORDER

The Order of the Court was delivered by :

SHANTANU KEMKAR, J. :- By filing this intra court appeal, the appellant has assailed the order dated 29.01.2004 passed by the learned Single Judge of this Court in Writ Petition No.166/2003.

2. The question which was raised in the writ petition was "whether PVC Pipes used in pumping sets can be held as accessories of the pumps, if so, whether they are exempted from payment of commercial tax".

3. The commercial tax authorities had taken a view in the orders impugned

before the writ Court that PVC Pipes are not accessories of the pump sets, and as such, no exemption can be extended to such item. Aggrieved, the aforesaid writ petition was filed.

4. Learned Single Judge, after considering the law laid down in the case of *Gaurav Agro Plast Private Limited v. Assistant Commissioner of Sales Tax* 2001 (34) VKN 415, which was upheld later on by a Division Bench reported in (2002) 35 KVN 172, dismissed the writ petition.

5. We have considered the submissions made by the learned counsel for the parties.

6. In the case of *Gaurav Agro Plast Private Limited v. Assistant Commissioner of Sales Tax* (supra) it was held that PVC Pipe used in the pumping set cannot be held to be a spare part, but an essential part of the set. This view has been upheld by the Division Bench of this Court by dismissing the LPA and thereafter this point has again been considered and the view taken in Gaurav Agro Plast has been affirmed in the case of *Kothari Sales v. Commissioner of Commercial Tax MP* (2008) 12 STJ 750 (MP). Thus once a finding is recorded that PVC Pipe is an essential part of the pumping set, it cannot be said to be an accessory of pumping set. In the circumstances, we find no ground to take a different view than the view, which has been taken by the learned Single Judge on the basis of the judgment passed by this Court in the case of *Gaurav Agro Plast Private Limited v. Assistant Commissioner of Sales Tax* (supra) upheld by the Division Bench and also in *Kothari Sales v. Commissioner of Commercial Tax MP* (supra).

7. As a result, the writ appeal fails and is hereby dismissed.

Appeal dismissed.

I.L.R. [2015] M.P., 601
WRIT PETITION
Before Mr. Justice N.K. Mody
W.P.No. 9989/2013 (Jabalpur) decided on 10 June, 2013

GEND SINGH ... Petitioner
Vs.
STATE OF M.P. ... Respondent

***Service Law - Transfer* - Petitioners joined the services in Forest Department and were promoted as Range Officers and they have been**

transferred in Working Plan Unit - Held - Aspect of physical fitness of each of the petitioner has also not been examined by the respondent State while issuing the order of transfer - Since the word "retire shortly" has not been explained in the order passed in the earlier round of litigation by this Court and as per the earlier policy the cut off age was 48 years, therefore this Court is of the view that keeping in view the age of retirement is 60 years it will be appropriate to fix the cut off age of 58 years - Petition allowed. (Paras 1and 7)

सेवा विधि – स्थानांतरण – याचियों ने वन विभाग में कार्यभार ग्रहण किया एवं रेंज ऑफीसर्स के रूप में पदोन्नत हुए और उन्हें कार्य योजना इकाई में स्थानांतरित किया गया – अभिनिर्धारित – प्रत्यर्थी राज्य ने स्थानांतरण आदेश जारी करते समय प्रत्येक याची की शारीरिक क्षमता के पहलु का भी परीक्षण नहीं किया – चूंकि न्यायालय ने मुकदमे के पूर्ववर्ती प्रक्रम में पारित आदेश में शब्द "शीघ्र सेवा निवृत्ति" की व्याख्या नहीं की है और पूर्वतर नीति के अनुसार छांटने की आयु 48 वर्ष थी इसलिये न्यायालय का यह दृष्टिकोण है कि निवृत्ति आयु 60 वर्ष को दृष्टिगत रखते हुए, छांटने की आयु 58 वर्ष निश्चित करना उचित होगा – याचिका मंजूर।

Cases referred :

2011 (2) MPLJ 134, (1991) 4 SCC 333.

N.S. Ruprah, D.K. Tripathi, P.S. Chaturvedi, Anshuman Singh and Shailesh Tiwari, for the petitioner.

Piyush Dharmadhikari, for the respondent/State.

ORDER

N.K. Mody, J. :- This order shall also govern disposal of W.P. Nos. 9984/2013, 9990/2013, 10011/2013, 10012/2013, 10014/2013, 10015/2013, 10030/2013, 10033/2013, 10039/2013 and 10082/2013 as the question involved in all the petitions are indentical in nature and in all the petitions repondents are also one and the same and also prayer in all the petitions are for quashment of order dated 28-05-2013 whereby petitioners have been transferred from Forest Division to Working Plan Unit at different different places. In all the petitions it is alleged that the petitioners joined the services in Forest Department and were promoted as Range Officers and by the impugned order they have been transferred in Working Plan Unit.

2. Undisputed facts in all the cases are that the respondent State took a

policy decision in the year 2001 for posting of the Forest Ranger in Working Plan Unit. In the said policy, exemption was made available to the Forest Ranger in certain circumstances, however, the policy was amended in the year 2003, and thereafter the amended portion was withdrawn subsequently in the year 2005. Again new policy was made on 25-3-2011, superseding the earlier policies and the exemption from posting in the Working Plan was completely removed and withdrawn which was again reinserted by amendment dated 12.12.2011. Earlier also Forest Range Officers were transferred vide order dated 03.01.2013 in Working Plan Unit and the petitioners approached this Court by filing various writ petitions wherein the validity of the transfer order dated 03.01.2013 was challenged. This Court in W.P. No. 290/2013 passed a detailed order of which the relevant part is as under:-

> "9. Learned counsel for the petitioner had placed reliance in the case of *State of Madhya Pradesh and others Vs. Suresh Kumar Upadhyaya* [2011(2) MPLJ 134]. However, since the question considered in the said case was only the prospective or retrospective nature of amendment made in the policy, petitioner is not going to be benefited by the decision of this Court in the aforesaid case. Learned Government Advocate has heavily placed reliance in the case of *Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others* [(1991) 4 SCC 333] and has contended that in view of the law laid down by the Apex Court, a right accrued under the earlier policy will not become a right accrued in fact unless the same is conferred. There is a difference between a right existing in the earlier policy and by virtue of repeal of the said policy, it cannot be said that any accrued right has been withdrawn. With great respect to the law laid down by the Apex Court, it is to be held that the respondents themselves could not demonstrate by placing any material on record to show that no exemption whosoever was granted to the petitioner even under the deemed clause as per the prevalent policy at the relevant time. If the petitioner was not one who was in the zone of consideration for posting in the working plan at the time when the previous policy was in vogue but was not posted in working plan at that time only because of exemption provided in the said policy, the right was deemed

to be conferred on him. This fact was required to be pleaded specifically with the reasons by the respondents as they have all the records in their possession. Otherwise it has to be held that the petitioner was not posted in the working plan under the previous policy because of the exemption granted to those Forest Rangers who have crossed the age of 48 years.

10. Now the difficulty which the respondents have pointed out in posting the officers in the working plan is required to be looked into. It is contended by the respondents in their return that 16 centres of working plan have been established with at least 5 Forest Rangers in each centre and out of 80 Forest Rangers to be posted in the said working plan only 25 have been posted as all others are not willing to accept the posting in the working plan. The respondents are in fact required to examine and scrutiny the case of every Forest Ranger and if the Forest Rangers so promoted were earlier not posted in the working plan only because of crossing the age of 48 years, in view of the specific provisions of exemption made in the previous policy, they are not required to be posted now in the working plan. However, there may be others available who could be posted in working plan and, accordingly, after scrutiny of the cases of each and every Forest Rangers in this respect, the order of posting could be issued by the respondents.

11. In view of the discussions made herein above and keeping in view that this Court while entertaining the writ petitions has granted an interim stay against the order dated 03.01.2013, which has remained in operation till now, it would be appropriate to direct the respondents to re-screen the cases of each and every petitioner in all these writ petitions for the puposes of posting the said officers in working plan, and while doing so, the respondents will keep in mind the observations made herein above as also will strictly follow the policy made by the State Government. If it is found that the petitioner was not exempted from posting in working plan in terms of the then prevalent policy, till the date of its amendment and withdrawal of the said exemption from the previous policy, the respondents would be free to post the petitioner in the working

plan. This order will not come in their way to post the petitioner in such circumstances in the working plan, as per the new policy. This exercise be completed within a period of two months from the date of order. However, since the order dated 03.01.2013 was not implemented in respect of petitioner, the same will not be implemented and a fresh order of posting would be issued in respect of petitioner, in case it is found that he is not entitled to grant of exemption in posting in the working plan. As has been observed herein above, those who are going to retire shortly, will not be posted in the working plan. In cases of such persons who are to retire shortly, the order dated 03.01.2013 would stand quashed in so far as such persons are concerned in respect of their posting in the working plan.

12. The petition and all other analogous petitions stand disposed of accordingly, however, there shall be no order as to costs."

3. In compliance of order passed by this Court again the order was passed on 28.05.2013 by the respondents, whereby the petitioners who are working as Forest Rangers have been transferred in Working Plan Unit which is under challenge in the present petitions. Learned counsel for the petitioners submits that the impugned order, whereby the petitioners have been transferred is illegal and not in compliance of the order passed by this Court. It is submitted that this Court directed the respondents to re-screen the cases of the petitioners regarding the posting in the Working Plan Unit but the respondents malafidely issued the impugned order without considering each of the cases individually and also did not take into consideration the physical fitness of each of the petitioner. Learned counsel further submits that petitioners are at the verge of retirement and at this stage if the petitioners are being transferred, then no useful prupose will serve. It is submitted that petitions be allowed and the impugned order, whereby the petitioners have been transferred in Working Plan Unit be quashed.

4. Learned counsel for the respondent State submits that 16 centres of Working Plan have been established and at least 5 Forest Rangers are required in each centre for which 80 Forest Rangers are to be posted in the said Working Plan and it is only 25 Forest Rangers which have been posting as all others are not willing to accept the posting in the Working Plan. Learned counsel further submits that the transfer order is issued strictly in compliance of the order passed by this Court. Learned counsel submits that the petitions filed by the petitioner is without

any substance and deserves to be dismissed.

5. Full particulars of each of the petitions are as under:-

S. No.	W.P.No.	Name of Petitioner	Date of Birth	Date of Joining	Date of Promotion	Date of Retirement
1.	9984/13	Dilip Chand Tembhare	15.02.54	03.01.74	06.01.07	28.02.14
2.	9989/13	Gend Singh Salyam	28.06.55	26.11.74	13.12.04	30.06.15
3.	9990/13	Achhelal Verma	11.07.55	06.05.74	06.01.07	31.07.15
4.	10011/13	Onkar Prasad Tripathi	01.07.55	06.11.74	17.07.87	31.07.15
5.	10012/13	D.S. Parmar	1955	1975	1989	2015
6.	10014/13	S.K. Gautam	1954	06.11.74	28.03.98	31.01.14
7.	10015/13	Bhoopat Singh	30.06.59	17.02.78	1979	2019
8.	10030/13	Vivek Kumar Saxena	1954	1978	28.03.98	31.05.14
9.	10033/13	A.R. Maravi	08.02.55	26.02.75	28.03.98	28.02.15
10.	10039/13	Tarachand Dubey	15.03.54	15.11.73	28.03.98	31.03.14
11.	10082/13	Radheshyam Nagraj	1954	11.01.78	01.07.87	31.05.14

6. Undisputedly as per the earlier policies which were enforce the cut off age for exemption in posting in Working Plan Units to the Forest Rangers was 48 years. As per the policy in existence there is no claim of exemption on account of age. While deciding the writ petitions in earlier round of litigation, this Court has observed that the candidates who are going to retire shortly will not be posted in the Working Plan. It was further observed that in cases of such persons who are to retire shortly the order dated 03.01.2013 would stand quashed in respect of their posting in the Working Plan. The word "retire shortly" was not explained by this Court in the order dated 13.05.2013, however, it was made clear by this Court that respondent shall re-screen the cases of each and every Forest Ranger in all the writ petitions for the purpose of posting of the said officers in Working Plan Unit. It was also made clear that while doing so, the respondent State will keep in mind the observations made in the order and shall strictly follow the policy made by the State Government if it is found that petitioner was not exempted from posting in Working Plan Unit in terms of the then prevalent policy.

7. From perusal of the impugned order dated 28.05.2013 it appears that

the case of each and every petitioner has not been re-screened. It is true that in the earlier order passed by this Court the word "retire shortly" has not been explained. At the same time, it is also not clear and also not explained by the respondents that what was the object in earlier policy to fix the cut off age as 48 years for posting of Rangers in Working Plan Unit. In absence of any explanation on bahalf of respondent State, it appears that the cut off age of 48 years must be relating to the physical fitness of the employee concern as the job in Working Plan Unit is a field work. It appears that the number of petitioners are going to retire within a period of one Year. Aspect of physical fitness of each of the petitioner has also not been examined by the respondent State while issuing the order of transfer. Since the word "retire shortly" has not been explained in the order passed in the earlier round of litigation by this Court and as per the earlier policy the cut off age was 48 years, therefore this Court is of the view that keeping in view the age of retirement is 60 years it will be appropriate to fix the cut off age as 58 years.

8. In the facts and circumstances of the case, the petitions filed by the petitioner is allowed and the impugned order, whereby the petitioners have been transferred is quashed with a direction to the respondents to issue a fresh individual transfer order keeping in view the age in which consideration should be that the Forest Ranger must be having a tenure of at least two years to serve in Working Plan Unit and also after getting examine the physical fitness of each of the petitioners.

9. With the aforesaid, the petitions filed by the petitioner stands disposed of. No order as to costs. Copy of the order be placed in all the connected cases.

Petition allowed.

I.L.R. [2015] M.P., 607
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 14685/2013 (Jabalpur) decided on 3 September, 2013

DILEEP SINGH ... Petitioner
Vs.
SMT. BHARTI MEHAR ... Respondent

***Hindu Marriage Act (25 of 1955), Section 24 - Interim alimony and maintenance* - If the husband is healthy and abled body person then he could not escape from his liability to pay interim alimony or**

the maintenance to his wife on account of not having any source of income or less income. (Para 4)

हिन्दू विवाह अधिनियम (1955 का 25) – धारा 24 – अंतरिम निर्वाह व्यय एवं भरण–पोषण – यदि पति स्वस्थ एवं सक्षम शरीर का व्यक्ति है तो आय का कोई स्त्रोत न होने या कम आमदनी होने के आधार पर वह पत्नी को अंतरिम निर्वाह व्यय या भरण–पोषण प्रदाय करने के दायित्व से नहीं बच सकता।

Umesh Trivedi, for the petitioner.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J. :- He is heard on the question of admission.

2. The petitioner husband has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 19.6.2013 passed by the Principal Judge, Family Court, Bhopal in Regular Civil Suit No. 196-A/2013 whereby in a proceeding of the petitioner filed under Section 9 of the Hindu Marriage Act (in short the Act) the applicaiton of the respondent filed under Section 24 of the Act, the petitioner has been directed to pay her Rs. 2,000/- per month as interim alimony, till disposal of the suit and Rs. 8,000/- as litigation expenses.

3. Having heard counsel at length keeping in view the arguments advanced by the counsel for the petitioner, I have carefully gone through the impugned order along with the averments of the petition and other papers placed on record. It is undisputed fact from the impugned application of the petitioner filed in the Trial Court under Section 9 of the Act that the respondent is a married wife and on account of some matrimonial dispute they are residing separately at different places at Bhopal. The respondent is residing with her parental family.

4. After perusing the impugned order, I have found that taking into consideration all the circumstances, stated by the respondent as well as by the petitioner in their respective applications under Section 24 of the Act and its reply, the impugned order has been passed whereby the petitioner was directed to pay the aofresaid sum to the respondent. In the available circumstances, such approach of the Trial Court does not appear to be contrary to any law under the procedure although such order has been challenged before me, by the petitioner's counsel saying that the impugned proceeding being filed under

Section 9 of the Act for restitution of the conjugal rights by the husband no such direction to give interim alimony could be passed against the petitioner as he is ready to keep the respondent with him. He also argued that the petitioner being a labourer is not having that much income out of which he may pay amount of Rs. 2,000/- per month to the respondent as interim alimony till disposal of the suit but the argument as advanced by the learned counsel for the petitioner on both the question has not appealed me. I am of the considered view that till deciding the aforesaid principle case, as per the spirit of Section 24 of the Act, the husband like petitioner, the spouse of the respondent is duty bound to pay her the interim alimony for her maintenance by which she may fulfill her regular necessities like food and other things so in such premises the first argument of the counsel is hereby failed. So far as another argument is concerned, it is settled proposition of law that if the husband is healthy and abled body person then he could not escape from his liability to pay interim alimony or the maintenance to his wife on account of not having any source of income or less income. So argument of counsel on this question also is hereby failed. Besides this no other question is argued before me by the cousel.

5. In view of the aforesaid discussion, I do not find any illegality, irregularity, perversity or anything against the propriety of law in the impugned order which requires any interference in the superintendent jurisdiction of this Court vested under Article 227 of the Consitution of India.

6. Consequently, this petition being devoid of merits deserves to be and is hereby dismissed at the stage of motion hearing.

Petition dismissed.

I.L.R. [2015] M.P., 609
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 7501/2012 (Jabalpur) decided on 5 September, 2013

BRIJESH VISHWAKARMA ... Petitioner
Vs.
SMT. LAXMI VISHWAKARMA ... Respondent

Hindu Marriage Act (25 of 1955), Section 24 - Interim alimony and litigation cost **- Interim alimony @ Rs. 1000/- per month for respondent and school going son - Challenge is made on the ground**

that the wife is living seperately without any sufficient cause although the petitioner is ready to keep her - She is also Samvida Shala Shikshika-I and competent to maintain herself - Held - Even if the respondent is excluded to get interim alimony, petitioner is bound to pay the award amount for the welfare of school going boy despite the fact that she is also getting Rs. 1000/- per month awarded by Magistrate u/s 125 of Cr.P.C. - Petition dismissed. (Para 10)

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – अंतरिम निर्वाह व्यय एवं वाद व्यय – रू. 1000/– प्रतिमाह की दर से प्रत्यर्थी एवं स्कूल में पढ़ने वाले पुत्र हेतु अंतरिम निर्वाह व्यय – इस आधार पर चुनौती दी गई कि पत्नी बिना किसी पर्याप्त कारण के अलग रह रही है यद्यपि याची उसे रखने के लिये तैयार है – वह संविदा शाला शिक्षिका–I भी है और स्वयं का भरणपोषण करने के लिये सक्षम है – अभिनिर्धारित – यदि अंतरिम निर्वाह व्यय प्राप्त करने के लिये प्रत्यर्थी को अपवर्जित किया जाता है, तब भी याची, स्कूल में पढ़ने वाले बालक के कल्याण हेतु अवार्ड की रकम अदा करने के लिये बाध्य है, इस तथ्य के बावजूद कि प्रत्यर्थी को मजिस्ट्रेट द्वारा द.प्र.सं. की धारा 125 के अंतर्गत अवार्ड किया गया रू.1000/– प्रतिमाह भी प्राप्त हो रहा है – याचिका खारिज।

N.K. Mishra, for the petitioner.
None for the respondent.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J. :- Heard on the question of admission.

2. As no one is appeared on behalf of the respondent in response of show cause notice. Hence, notice of this admission is not required to the respondent and the same is hereby dispensed with.

3. At the request of the petitioner's counsel the petition is taken up for final hearing.

4. The petitioner-applicant-husband has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 9.2.2012 passed 1st Additional district Judge, Seoni in C. S. No.60-A/11, whereby allowing the application of the respondent filed under Section 24 of Hindu

Marriage Act (In short "the Act"), the petitioner has been directed to pay her Rs.1,000/- p. m. as interim alimony for herself and minor son residing with her so also Rs.3,000/- as litigation expenses.

5. The petitioner's counsel after taking me through the averments of the petition as well as papers placed on record and the impugned order argued that the petitioner is ready and willing to bring and keep the respondent along with son with him but she is not ready to come and reside with the petitioner that is why the petitioner has filed the impugned petition before the trial Court under Section 9 of the Act for restitution of conjugal rights. So firstly, in such a situation when the respondent herself is residing on her own choice separately from the petitioner without any sufficient cause, then neither she is entitled to get any interim alimony nor the petitioner is bound to pay the same. In continuation he said that besides the abaove (sic: above) the respondent is working as Samvida Shala Shiksha (sic:Shikshak)-I in some Government School from where she is getting the salary of Rs.17,500/- p. m., accordingly she is competent to maintain herself as well as aforesaid minor son. So, in such premises also the impugned order is not sustainable and prayed to dismissed (sic: dismiss) the application of the respondent and set aside the impugned order by admitting and allowing the petition.

6. No one is appeared on behalf of the respondent to assist the Court to adjudicate this matter or to defend the case, as stated above.

7. Having heard the petitioner's counsel keeping in view his arguments, I have carefully gone through the papers placed on record along with the impugned order.

8. Undisputedly, the petitioner and respondent got married long before and out of such wedlock they have been blessed with son, who is of the age of near about seven years residing with the respondent. As per pleadings of the parties due to their matrimonial dispute and differences they are residing separately and unless the disputed question is adjudicated by the trial Court in the available circumstances, it could not be said that respondent is residing separately from the petitioner on his own choice without any sufficient cause because both the parties have made different allegation against each other in the impugned proceeding. So, mere filing the petition under Section 9 of the Act for restitution of conjugal rights is not sufficient ground to allow the prayer

of the petitioner. So, the arguments advanced by the counsel in this regard is hereby failed.

9. So far other question is concerned, the trial Court has stated in the impugned order that the respondent although working as a Samvida Shala Shikshak-I and got the salary of Rs.4,500/- p. m. but the direction to pay Rs.1,000/- p. m. was given not taking into consideration the necessity and requirement of the respondent but also looking to the necessity and requirement of their minor son for the purpose of his education and other expenses. The father is duty bound to maintain his son and for any reason if such minor son is residing with his mother then father is bound to pay expenses to his mother to look after him.

10. I am also apprised that the petitioner is giving Rs.1,000/- p. m. to the respondent regularly in compliance of some order passed by the Judicial Magistrate in a proceeding of Section 125 of Cr. P. C. If such submission is treated to be true even then a seven years school going boy requires the expenses of more than Rs.2,000/- p. m. and his affairs could not be managed in Rs.1,000/- or 2,000/- p. m. So, in such premises for the shake (sic:sake) of argument if the respondent is excluded to get interim alimony even then in view of necessity of minor son- school going boy petitioner is bound to pay such sum to the respondent for the welfare of his child. Thus, even after taking into consideration the order of the Magistrate passed under Section 125 of Cr. P. C. directing the petitioner to pay Rs.1,000/- p. m. for his son to the respondent the impugned order directing the petitioner to pay Rs.1,000/- p. m. does not require any interference at this stage.

11. In view of aforesaid discussion, I have not found any perversity, illegality, irregularity or anything against the propriety of law in the impugned order requiring any interference. Resultantly, this petition being devoid of any merit deserves to be and is hereby dismissed. However, considering oral prayer of the petitioner's counsel and the available circumstances the trial Court is directed to take an endeavor to expedite the hearing of the impugned case and conclude the same before summer vacation of 2014.

12. There shall be no order as to costs.

Petition dismissed.

I.L.R. [2015] M.P., 613
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P.No. 17256/2012 (Jabalpur) decided on 26 September, 2013

BRIJ BIHARI ...Petitioner
Vs.
STATE OF M.P. ...Respondent

Service Law **- Participation in the counselling for appointment to the post of Samvida Shala Shikshak Grade II - Applying the principle of neutralizing the error and rounding off, the petitioner gets 90 marks which makes him eligible for selection to the post of Samvida Shala Shikshak Grade II - Directed to permit the petitioner to participate in the counselling for appointment to the post of Samvida Shala Shikshak Grade II. (Paras 1,11 & 12)**

सेवा विधि – संविदा शाला शिक्षक ग्रेड–II के पद पर नियुक्ति हेतु काउंसलिंग में सहभाग – त्रुटि का शिथिलिकरण और पूर्णांकित करने का सिद्धांत लागू करते हुए याची को 90 अंक प्राप्त होते है जो उसे संविदा शाला शिक्षक ग्रेड–II के पद पर चयन हेतु पात्र बनाते है – संविदा शाला शिक्षक ग्रेड–II के पद पर नियुक्ति हेतु काउंसिलिंग में सहभाग की याची को अनुमति देने के लिए निदेशित किया गया।

Rohit Sohgaura, for the petitioner.
Piyush Jain, for the State/respondent No. 1.
Aditya Khandekar, for the respondent No.2.

(Supplied: Paragraph numbers)

ORDER

SANJAY,YADAV, J. :- Heard.

1. Being denied to enter in the arena for appointment to the post of Samvida Shala Shikshak Grade-II being declared ineligible in the eligibility test 2011, as unable to score 90 marks, the minimum marks to be eligible, and instead awarded 89.44 marks, the petitioner has filed this petition seeking re-totaling of the marks.

2. It being not in dispute that the M.P. Professional Examination Board (VYAPAM for short) in pursuance to advertisement dated 28.9.2011

conducted eligibility test for 22,000 posts of Samvida Shala Shikshak Grade-II. The examination was conducted in accordance with the Rules of Examination 2011 known as Madhya Pradesh Shashan, Panchayat Avam Gramin Vikas Vibhag Tatha Madhya Pradesh, Nagriya Prashasan Avam Vikas Vibhag Ke Antargat Samvida Shala Shiksha (sic:Shikshak) Grade-2 Ke Liye Patrata Pariksha 2011. Pariksha Sanchalan Avam Bharti Niyam (referred to as Niyam).

3. Chapter I, Clause 16 of the Niyam provides for scheme of examination in the following terms :

संविदा शाला शिक्षक श्रेणी–2 पात्रता परीक्षा 2011 हेतु परीक्षा योजना (Scheme of Exam) :

1. पात्रता परीक्षा हेतु 150 अंकों का एक प्रश्नपत्र होगा। परीक्षा की अवधि 2:30 घंटे होगी।

2. प्रत्येक प्रश्न 1 अंक का होगा। ऋणांतमक मूल्यांकन नहीं होगा।

3. पात्रता परीक्षा के सभी प्रश्न बहुविकल्पीय MCQ – (Multiple Choice Questions) प्रकार के होगे, जिनके चार विकल्प होंगे और एक विकल्प सही होगा।

4. परीक्षा की संरचना एवं विषयवस्तु (Structure and Content) निम्नानुसार होगी–

भाग	विषयवस्तु	प्रश्नों की संख्या	कुल अंक
(i)	बाल विकास एवं शिक्षाशास्त्र (Child Development & Pedagogy)	30 MCQ	30 Marks
(ii)	भाषा–1 (Language-I) (हिन्दी, अंग्रेजी, संस्कृत या उर्दू में से कोई एक भाषा (Any one language from Hindi, English] Sanskrit or Urdu – Compulsory	30 MCQ	30 Marks
(iii)	भाषा–2 (Language-II) हिन्दी, अंग्रेजी, संस्कृत या उर्दू में से कोई एक भाषा (Any one language from	30 MCQ	30 Marks

	Hindi, English] Sanskrit or Urdu – Compulsory		
(iv)	(अ) गणित (Mathematics) गणित शिक्षक के लिए (For Mathematics Teacher)	60 MCQ	60 Marks
	(ब) विज्ञान (Science) विज्ञान शिक्षक के लिए (For Science Teacher)	60 MCQ	60 Marks
	(स) सामाजिक विज्ञान (Social Science) सामाजिक विज्ञान शिक्षक के लिए (For Social Science Teacher)	60 MCQ	60 Marks
	(द) मुख्य भाषा हिन्दी, अंग्रेजी, संस्कृत या उर्दू में से कोई एक भाषा (Any one language from Hindi, English] Sanskrit or Urdu – Compulsory - भाषा शिक्षक के लिए (For Language Teacher)	60 MCQ	60 Marks

4. Thus, though the structure and content of the examination is segregated in four Sections, of three compulsory and one inter se optional; however as per scheme, there is single question paper carrying 150 multiple choice questions carrying one mark for correct answer.

5. Clause 2.13, Chapter 2 of the Niyam provides for cancellation of wrong question and award of marks for it. The clause stipulates :-

"2.13 त्रुटिपूर्ण प्रश्न, उसका निरसतीकरण एवं बदले में दिया गया अंकः–

परीक्षा उपरांत मंडल द्वारा विषय विशषज्ञों से प्रश्नपत्र के प्रत्येक प्रश्न का परीक्षण कराया जाता है। विषय विशषज्ञ द्वारा किसी प्रश्न को त्रुटिपर्ण पाए जाने पर उस प्रश्न को निरस्त कर दिया जाता है। निम्नलिखित कारणों से प्रश्न निरस्त किए जा सकते हैः–

1. प्रश्न निर्धारित पाठयकम से बाहर का हो।

2. प्रश्न की संरचना गलत हो ।

3. उत्तर के रूप में दिये गये विकल्पों में एक से अधिक विकल्प सही हो।

4. कोई भी विकल्प सही न हों।

5. यदि प्रश्न–पत्र के किसी प्रश्न के अंग्रेजी एवं हिन्दी अनुवाद में भिन्नता हो जिस कारण दोनों के भिन्न–भिन्न अर्थ निकलते हों और सही एक भी उत्तर प्राप्त न होता हो।

6. कोई अन्य मुद्रण त्रुटि हुई हो जिससे सही उत्तर प्राप्त न हो या एक से अधिक विकल्प सही हो।

7. अन्य कोई कारण, जिसे विषय विशेषज्ञ द्वारा उचित समझा जाये।

प्रश्न पत्र विषय विशेषज्ञ समिति द्वारा की गई अनुशंसा अनुसार ऐसे निरस्त किए गए प्रश्नों के लिए सभी को इस प्रश्न–पत्र में उनके द्वारा अर्जित अंकों के अनुपात में मण्डल अंक प्रदान करता है। भले ही उसने निरस्त किए गए प्रश्नों को हल किया हो या नहीं।

उदाहरण स्वरूप यदि किसी 200 प्रश्नों के प्रश्न पत्र में 2 प्रश्न निरस्त किए जाते है और मूल्यांकन के बाद यदि अभ्यर्थी 198 प्रश्नो में 90 अंक प्राप्त करता है, तो उसके अंकों की गणना निम्नानुसार होगी, जिसमें पूर्णांक में परिवर्तन के लिए 0.5 या उससे अधिक अंकों को एक तथा 0.5 से कम अंकों को शून्य गिना जावेगा।

$\frac{90 \times 200}{(200-2)}$ = 90-91 rounded off to 91-00

नोटः–सभी गणना को दो दशमलव तक राउंड ऑफ किया जायेगा।"

6. Thus, clause 2.13 of Chapter 2 of the Niyam provides for that in case of wrong question by neutralizing, the fraction can be rounded off to two digits, meaning thereby if the fraction is 0.5 or above it can be rounded off to 1. Another aspect which is borne out from the example given in Clause 2.13 is that it is the sum total of entire question which is taken into consideration while neutralizing the wrong question.

7. The petitioner appeared in the eligibility test 2011 in Mathematics and was given Set B. The result was declared on 06.8.2012 whereon he came to know that 11 questions out of 150 questions were declared invalid. On further enquiries made by him it was informed that only 83 questions were correctly answered; therefore, was declared ineligible. On obtaining the mark sheet, petitioner found having obtained 89-44 marks. On an application under Right to Information Act, 2005, the petitioner was given the following details:

खण्ड	कुल प्रश्न	सही उत्तर	निरस्त प्रश्न	सही उत्तरों के प्राप्तांक	निरस्त प्रश्न के एवज में गणना उपरांत प्राप्तांक
अ	30	15	03	15.00	16.67
ब	30	17	–	17.00	17.00
स	30	20	–	20.00	20.00
द	60	31	08	31.00	35.77
				कुल प्राप्तांकः–	89.44

8. The controversy thus is as to whether the neutralization of error is section wise or from the total questions. And if section wise, the principle of rounding of can be ignored.

9. Plain reading of clause 2.13 of chapter indicates that it is total question which is to be taken into consideration while neutralizing the error of question and to round off by two digits. When assessed by said formula the break up, in the case at hand comes to :

$$\frac{83 \times 150}{(150-11)} = 89.56$$: rounded off to 90

10. Even if the marks are taken section wise then with the rounding off the sum total comes to 90 :

Section	Total Question	Correct Answer	Cancelled Questions	Correct Answer	Neutralizing the Error	Round Off
A	30	15	03	15.00	16-67	17.00
B	30	17	-	17.00	17.00	17.00
C	30	20	-	20.00	20.00	20.00
D	60	31	08	31.00	35.77	36.00
					89.44	90.00

11. Thus, either way, applying the principle of neutralizing the error and rounding off, the petitioner gets 90 which makes him eligible for selection to the post of Samvida Shala Shikshak Grade-II.

12. In view whereof, the petition is allowed, the respondents are directed to permit the petitioner to participate in the counselling for appointment to the post of Samvida Shala Shikshak Grade-II. No costs.

Certified copy by tomorrow.

Petition allowed.

I.L.R. [2015] M.P., 618
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 6583/2012 (Jabalpur) decided on 5 December, 2013

AMEEN KUMAR CHATARJEE ...: Petitioner
Vs.
WEST CENTRAL RAILWAY & ors. ... Respondents

***Service Law - Departmental Enquiry - Acquittal in criminal case* - An acquittal in criminal proceedings does not automatically absolve the employee from charges levelled against him in departmental enquiry. (Para11)**

सेवा विधि – विभागीय जांच – अपराधिक प्रकरण में दोषमुक्ति – अपराधिक कार्यवाही में कर्मचारी की दोषमुक्ति से उसके विरूद्ध विभागीय जांच में लगाये गये आरोपों से वह अपने आप मुक्त नहीं हो सकता।

Cases referred :

(2006) 5 SCC 446, AIR 2004 SC 4144, AIR 2005 SC 1406, (1997) 2 SCC 699, (2008) 1 SCC 650, (1981) 2 SCC 714, AIR 1992 SC 1981, AIR 2007 SC 199, AIR 2008 SC 732.

Anoop Nair, for the petitioner.
N.S. Ruprah, for the respondents no. 1 to 3.

(Supplied : Paragraph numbers)

ORDER

SANJAY YADAV, J. :- With consent of learned counsel for the parties, petition is heard finally.

2. Quashment of charge-sheet dated 27.3.2012 is being sought.

3. Vide impugned charge-sheet the petitioner, a Constable, Railway Protection Force, has been charged of dereliction of duties in as much that while on duty on 21.9.2011, in shift 16 to 24 hours (4 PM to 12 PM) at Beat No. 1, 2 and 3 petitioner entered into an altercation with one outsider Kriparam son of Ramdas R/o Nehru stadium, Harda and because of use of force by the petitioner, he succumbed to the injuries, as a result of the same an offence vide Crime No.156/2011 under Section 302 of the Indian Penal Code has been registered and the petitioner was in judicial custody from 23.9.2011 to 24.3.2012. The said act being misconduct under Rule 146.2 (i), 146.3(i), 146.4 (i), 146.8 (b) and 147.1 (ii) of the Railway Protection Force Rules, 1987.

4. Solitary ground on which present petition is filed is that the departmental enquiry on the same set of facts on which the petitioner is being prosecuted for an offence under Section 302 of the Indian Penal Code will prejudice the cause of petitioner, as his defence will get disclosed in the departmental enquiry and the same will be detrimental to criminal trial. Reliance is being placed on the decision in *G.M.Tank V. State of Gujarat and another* : (2006) 5 SCC 446.

5. That, there is further development in the matter in as much that during the pendency of present writ petition, the petitioner has been acquitted of the offence under Section 302 by order dated 31.8.2013 by Additional Sessions And Special Judge under The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 brought on record vide application dated 4.12.2013.

6. Placing reliance on the order of acquittal, it is contended on behalf of petitioner that having been acquitted, no charge now survives against the petitioner, as such the charge-sheet on the same set of charges is liable to be quashed.

7. Respondents on their turn have opposed the relief sought. It is contended by learned counsel for the respondents that the charges levelled against the petitioner is for dereliction of duty and violation of Rules 146.2 (i), 146.3(i), 146.4 (i), 146.8 (b) and 147.1 (ii) of the Railway Protection Force Rules 1987 which tantamount to misconduct. It is urged that such act of misconduct led to death of an outsider and though the petitioner is acquitted of the charge of culpable homicide

amounting to murder as the prosecution had failed to establish the charge beyond doubt; the disciplinary action being not in respect of death but conduct unbecoming of a member of disciplined force, the charge sheet cannot be quashed even with the acquittal of the petitioner. Reliance is placed on the decision in *State Bank of India and others v. R.B.Sharma :* AIR 2004 SC 4144; *Hindustan Petroleum Corporation Ltd. and others v. Sarvesh Berry* : AIR 2005 SC 1406; *Depot Manager, A.P.State Road Transport Corporation v. Mohd. Yousuf Miya and others :* (1997) 2 SCC 699; *Indian Overseas Bank, Annasalai and another v. P.Ganesan and others :* (2008) 1 SCC 650, to bring home the submission that criminal trial and departmental enquiry can simultaneously be continued and even with acquittal the departmental enquiry can be continued and if proved guilty, an employee can be punished.

8. Considered the respective submissions.

9. Since the petitioner is acquitted of the criminal charge during pendency of departmental enquiry the decision relied on by either of the parties are not of much assistance.

10. The question is as to whether after acquittal a departmental enquiry on the same set of facts is permissible.

11. The laws on the issue is settled that an acquittal in criminal proceedings does not automatically absolve the employee from charges levelled against him in departmental enquiry.

12. *In Corporation of the City of Nagpur, Civil Lines, Nagpur and another v. Ramchandra and others :* (1981) 2 SCC 714, it has been held -

> "6. ... the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered."

13. In *Nelson Motis v. Union of India and another :* AIR 1992 SC 1981; it has been held -

> "5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in

the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of.a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding..."

14. In *Suresh Pathrella v. Oriental Bank of Commerce :* AIR 2007 SC 199; it has been held -

"11. .....This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

15. In *General Manager, UCO Bank & another v. M. Venuranganath* : AIR 2008 SC 732,

"There can be no doubt that criminal proceedings and departmental proceedings operate in different fields. Even though the person may have been acquitted in a criminal trial, there is no embargo on his being departmentally proceeded against."

16. In view of the law laid down in the cases of *Ramchandra, Nelson Motis, Suresh Pathrella and M. Venuranganath* (supra), merely because the petitioner has been acquitted in a criminal case, will not absolve from the departmental enquiry initiated against him. The direction for quashing of charge sheet is negatived.

17. In the result, petition fails and is dismissed. No costs.

Petition dismissed.

I.L.R. [2015] M.P., 622
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 3122/2013 (Jabalpur) decided on 6 December, 2013

NAWAL KISHOR SINGH ... Petitioner
Vs.
S.E.C.L. & ors. ...Respondent

A. Service Law - Charge-Sheet - Misconduct - Non furnishing of original and certified copy of matriculation certificate - **Whether allegation amounts to misconduct in the light of Clause 26.1 and 26.9 of Certified Standing Order or not, cannot be adjudged at the initial stage. (Paras 3 and 10)**

क. सेवा विधि – आरोप पत्र – अवचार – मैट्रिक प्रमाणपत्र की मूल एवं प्रमाणित प्रति प्रदाय नहीं की जाना – क्या प्रमाणित स्थाई आदेश के खण्ड 26.1 व 26.9 के आलोक में आरोप अवचार की कोटि में आता हैं अथवा नहीं, यह आरंभिक प्रक्रम पर न्यायनिर्णित नहीं किया जा सकता।

B. Service Law - Competency of authority - Delegation of power - **Charge-sheet issued by the Staff Officer - Being nominated competent authority the CGM/GM can sub-delegate the powers for implementing/taking appropriate action including disciplinary action - Staff officer is competent to issue charge-sheet. (Para 13)**

ख. सेवा विधि – प्राधिकारी की सक्षमता – शक्ति का प्रत्यायोजन – स्टाफ आफिसर द्वारा आरोप–पत्र जारी किया गया – नामनिर्देशित सक्षम प्राधिकारी होने के नाते सी.जी.एम./जी.एम., लागू करने के लिये/समुचित कार्यवाही करने के लिये जिसमें अनुशासनिक कार्यवाही शामिल है शक्तियों का उप–प्रत्यायोजन कर सकता है – स्टॉफ ऑफिसर आरोप–पत्र जारी करने के लिये सक्षम है।

Cases referred :

(1985) 2 SCC 35, AIR 2012 SC 2250.

K.C. Ghildhiyal, for the petitioner.
Indira Nair with K. Rohan, for the respondents.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Heard on I.A. No. 6233/2013 an application by respondents for vacating the stay order dated 03.4.2013.

2. By order dated 03.4.2013 the respondents are restrained from proceeding further in pursuance to the charge-sheet dated 17.1.2013.

3. Petitioner, a Senior Storekeeper, clerical Special Grade Regional Store, Sohagpur Area, Amlai Colliery was served with a charge-sheet on 17.1.2013 being charged for violating Clause 26.1 and clause 26.9 of certified standing order of the company, as the petitioner despite of repeated reminders had failed to furnish original and certified copy of matriculation certificate.

4. Petitioner vide this petition besides seeking quashment of charge sheet dated 17.1.2013, challenges the order dated 08.2.2013; whereby, the Enquiry Officer has been appointed to enquire into the charges.

5. Challenge to charge sheet is on the ground that the charges levelled against the petitioner does not tantamount to misconduct even when adjudged on the touchstone of Clause 26.1 and Clause 26.9 of the Certified Standing Order and secondly, the charge sheet has been issued by Staff Officer (Mining), Sohagpur Area, who is not a Competent Authority under the Certified Standing orders.

6. That by order dated 03.4.2013 it was ordered that till next date of hearing the respondents were restrained from proceeding further in pursuance to the charge sheet dated 17.1.2013.

7. The respondents besides filing the return have also filed an application for vacating the stay order dated 03.4.2013. It is urged that the conduct of the petitioner of his not submitting the requisite document in proof of his date of birth recorded in the service record does tantamount to violation of clause 26.1 and clause 26.9 of the certified standing order and since the burden is on the employer to bring home the charges, the challenge of same in writ petition at the charge-sheet stage is premature. It is urged that the petition will get entire opportunity to demolish the charges in the departmental enquiry. As to the authority of the Staff Officer (Mining) in issuing the charge sheet, it is contended that he is being delegated with such powers vide office order No. SECL/GM(S)/Secy/1/04/4066 dated 20.1.2004 to be a Competent Authority in respect of area establishment for taking appropriate action such as issue of

charge sheet/ constitution of enquiry committee/Disciplinary action etc. under the provision of Certified Standing order. It is accordingly urged that the interim order under these facts deserves to be vacated.

8. Considered the rival submissions.

9. The issue as to whether a particular charge would be a misconduct when examined on the touchstone of clause 26.1 and Clause 26.9 of the certified standing order, could be ascertained only after the evidence is led and not at pre-evidence stage. Even the observation in *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation* : (1985) 2 SCC 35 by their lordship was only after the analysis of the evidence on record. It has been held in *The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha,* : AIR 2012 SC 2250 that :

> "11. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/ competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : *State of U.P. v. Brahm Datt Sharma,* AIR 1987 SC 943; *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors.*, (1996) 1 SCC 327 : (AIR 1996 SC 691); *Ulagappa & Ors. V.Div.Commr., Mysore & Ors.*, AIR 2000 SC 3603(2); *Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr.*, AIR 2004 SC 1467; and *Union of India & Anr. v. Kunishetty Satyanarayana,* AIR 2007 SC 906)."

10. Adjudged on the principle of law laid down in *The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha* (Supra), in the case at hand as it is too early to adjudge that the charges levelled against the petitioner are not in conformity with clause 26.1 and Clause 26.9 of the certified standing

order.

11. It is next contended that the staff officer (Mining) is not a Competent Authority to issue a charge sheet which vests with the Chief General Manager / General Managers of the Areas. It is further contended that the powers so delegated to these CGM/GM of the Areas cannot further be sub-delegated as would empower the Staff Officer (Mining) to exercise such powers. Petitioner has relied on Clause (1) of circular No. SECL : BSP: PER: CGM (P & A); 4 : 30 : 91 : 1723 dated 4th December 1991, which deals with delegation in terms of provision of the certified standing orders applicable to South Eastern Coalfield, under Clause 2.3 stipulating therein :

> "In pursuance of Clause 2.3 of Certified Standing Orders applicable to South Eastern Coalfields Limited, 'Competent Authority' for the purpose of these Standing Orders, is to be nominated by the Chariman/Managing Directors. Accordingly, the following Officers are nominated as Competent Authority for the purpose of Certified Standing Orders in respect of S.E.C.L."

12. As to competent Authority in respect of Areas of SECL, Clause (1) provides :

> "(1) In respect of Areas of SECL, The Chief General Managers/General Managers of the Areas. The Sub-Area Managers/Project Officers and Colliery Managers/ Departmental Heads will be the Competent Authority to exercise the powers, sub-delegated to them by the CGM/CM for implementation/taking appropriate action, such as, issual of charge-sheets/constitution of enquiry committee/disciplinary action etc. under the provisions of Certified Standing orders. However, the power to take the final disciplinary action, will be uested with the CGM/GM."

13. Careful reading of Clause (1) would reveal that it is in two parts. The first part states about the Authority who has been nominated as Competent Authority to sub-delegate the powers for implementation/taking appropriate action, such as, issuance of charge sheets/constitution of enquiry committed / disciplinary action etc. under the provisions of certified standing orders. In other words, being nominated as Competent Authority it is within the powers

of the CGM/GM to sub-delegate the powers, which in the case at hand is being done by the office order No. SECL/GM(S)SECY. 1/04/4066 dated 20.1.2004 by the General Manager, Sohagpur Area. In view whereof the challenge as to the competency of the Staff Officer (Mining) evaporates in thin air.

14. Having thus considered, since no *prima facie* case is made out, the stay order dated 3.4.2013 deserves to be and is hereby vacated.

15. I.A. No. 6233/2013 is allowed in above terms.

16. List the matter in due course.

Certified copy as per rule.

Order accordingly.

I.L.R. [2015] M.P., 626
WRIT PETITION

Before Mr. Justice Shantanu Kemkar & Mr. Justice Mool Chand Garg
W.P. No. 25/2014 (Indore) decided on 11 February, 2014

MD. VAKIL ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

National Security Act (65 of 1980), Section 3(2) - Detenu already in custody - **Held - Detention order can validly be passed and confirmed by the concerned authority only after recording satisfaction that they are aware of the fact that detenu is already in custody and on the basis of reliable material they have reason to believe that there is possibility that in case the detenu is released he would in all probabilities indulge in prejudicial activities - Since there is not a slightest indication in the impugned orders that the authorities were aware of the fact that the detenu is already in custody - Impugned orders are quashed. (Paras 4 & 5)**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 (2) – बंदी पहले से अभिरक्षा में है – अभिनिर्धारित – निरोध आदेश को संबंधित प्राधिकारी द्वारा केवल संतुष्टि अभिलिखित किये जाने के पश्चात् ही विधि मान्य रूप से पारित एवं अभिपुष्ट किया जा सकता है कि वे इस तथ्य से अवगत हैं कि बंदी पहले से अभिरक्षा में है और विश्वसनीय सामग्री के आधार पर उनके पास यह विश्वास करने का कारण है कि संभावना है कि बंदी को मुक्त किये जाने की स्थिति में पूरी तरह संभावित है

कि वह विपरीत कार्यकलापों में लिप्त होगा – चूंकि आक्षेपित आदेशों में जरा भी संकेत नहीं कि प्राधिकारीगण इस तथ्य से अवगत थे कि बंदी पहले से अभिरक्षा में है – आक्षेपित आदेश अभिखंडित।

Cases referred :

AIR 1982 SC 1023, AIR 1982 SC 1543, AIR 1964 SC 334, (1990) 3 SCC 309, (1989) 4 SCC 418, AIR 1990 SC 1196, AIR 1991 SC 1640, (1992) 1 SCC 1, JT 1994 (1) SC 350, 2012 (3) MPLJ 663.

Sanjay Sharma, for the petitioner.
Mini Ravindran, Dy. G.A. for the respondents.

ORDER

The Order of the Court was delivered by : **SHANTANU KEMKAR, J. :-** By filing this petition under Article 226/227 of the Constitution of India, the petitioner has challenged his detention order dated 26.09.2013 (Annexure P/1) passed by District Magistrate, Ratlam exercising his powers under Section 3 (2) of the National Security Act, 1980 (for short, the Act) as also the order dated 28.11.2013 (Annexure P/2) passed by the State Government by which the order of detention passed by the District Magistrate, Ratlam has been confirmed.

2. The District Magistrate, Ratlam passed the impugned order dated 26.09.2013 (Annexure P/1) directing detention of the petitioner. As per the said order, the District Magistrate was satisfied that with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order, it is necessary to detain him under Section 3 (2) of the Act.

3. During the course of the arguments, the only contention raised by learned counsel for the petitioner is that in view of the law laid down by the Supreme Court in the case of *Vijay Kumar v. State of J & K* (AIR 1982 SC 1023), *Merugu Satyanarayana v. State of Andhra Pradesh* (AIR 1982 SC 1543) as also in the case of *Rameshwar Shaw v. District Magistrate, Burdwan,* (AIR 1964 SC 334), that the preventive detention, which has been ordered when the petitioner was already in jail and the fact that the detaining authority has not disclosed awareness of the fact that he is in the knowledge of the said fact that the petitioner is already in jail and yet for the reasons, the preventive detention order need to be passed, the order is liable to be quashed.

4. He submits that in the various judgments passed by Supreme Court including the judgments passed in the case of *Sanjay Kumar Agarwal v. Union of India* (1990) 3 SCC 309, *N. Meera Rani v. Government of Tamil Nadu* (1989) 4 SCC 418, *Dharmendra Suganchand Chelawat v. Union of India* AIR 1990 SC 1196, *Kamarunnissa v. Union of India* AIR 1991 SC 1640, *Abdul Sathar Ibrahim Manik v. Union of India* (1992) 1 SCC 1, *Veeramani v. State of Tamil Nadu JT* 1994 (1) SC 350 and also by a Division Bench of this Court in *Chandan s/o Ramchandra Dagoriya v. State of MP & another* [2012 (3) MPLJ 663], it is clear that even in case of a person in custody, a detention order can validly be passed, if the authority passing the order is aware of the fact that he is actually in custody and if he has reason to believe on the basis of reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording such satisfaction, the same cannot be struck down. But according to him, in the present case, no such awareness in the mind of detaining authority has been brought on record and the impugned detention order does not give the slightest indication that the detaining authority was aware that the detenu was already in jail and yet on the material placed before him, he was satisfied that a detention order ought to be passed.

5. Ms. Mini Ravindran did not dispute that the detenu was in jail, when the detention order was passed. We find that there is not a slightest indication in the order that the authority passing the order was aware of the fact that the detenu is already in custody and that he had reason to believe that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities.

6. In the circumstances, in view of the law laid down by the Supreme Court referred to above, the impugned detention order and the subsequent confirmation order are liable to be and are hereby quashed. The detenu be released from custody, if he is not required in any other case.

C. c. within three days.

Order accordingly.

I.L.R. [2015] M.P., 629
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 304/2014 (Jabalpur) decided on 11 April, 2014

STATE OF M.P. ...Petitioner
Vs.
VAYAM TECHNOLOGIES LTD. ...Respondent

A. Arbitration and Conciliation Act (26 of 1996), Section 11 - Named Arbitrator - **If a party with open eyes, full knowledge and comprehension of said provision enters into a contract with Govt./ statutory body containing an arbitration clause providing that one of its Secretaries/Directors would be the arbitrator, cannot subsequently turn around and say that he is not agreeable for settlement of dispute by named arbitrator. (Para 8)**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 – नामित मध्यस्थ – यदि पक्षकार खुली आंखों से उक्त उपबंध के संपूर्ण ज्ञान एवं बोध के साथ सरकारी/कानूनी निकाय के साथ संविदा करता है जिसमें माध्यस्थम खंड इस प्रावधान के साथ समाविष्ट है कि उनके सचिव/निदेशकों में से एक मध्यस्थ होगा, तत्पश्चात् पलटकर यह नहीं कह सकता कि वह नामित मध्यस्थ द्वारा विवाद के निपटारे हेतु सहमत नहीं।

B. Arbitration and Conciliation Act (26 of 1996), Sections 13(2), 14(2) - **Petition against termination of the mandate of the Arbitrator by Court u/s 14(2) of the Act on the ground that arbitrator cannot be a judge in his own case - Held - Respondent had invoked the remedy u/s 13(2) of the Act therefore, in the facts of the case, it cannot be permitted to invoke Section 14(2) of the Act on the grounds enumerated u/s 12(3) of the Act and has to wait till an award is passed in view of Sections 13(4) & 13(5) of the Act - Further the respondent not only approached the named arbitrator but also invoked the jurisdiction of named arbitrator - Order passed by Court below terminating the mandate of arbitrator on the ground that no one can be judge of his own cause is set-aside. (Paras 10 & 11)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराऐं 13(2), 14(2) – न्यायालय द्वारा अधिनियम की धारा 14(2) के अंतर्गत मध्यस्थ की आज्ञा के पर्यवसान के विरूद्ध इस आधार पर याचिका कि मध्यस्थ अपने मामले का स्वयं

निर्णायक नहीं हो सकता – अभिनिर्धारित – प्रत्यर्थी ने अधिनियम की धारा 13(2) के अंतर्गत उपचार का अवलंब लिया इसलिए, प्रकरण के तथ्यों में, अधिनियम की धारा 12(3) के अंतर्गत, प्रमाणित आधारों पर अधिनियम की धारा 14(2) का अवलंब लेने की अनुमति नहीं दी जा सकती और अधिनियम की धारा 13(4) व 13(5) को दृष्टिगत रखते हुए अवार्ड पारित होने तक प्रतीक्षा करनी होगी – इसके अतिरिक्त, प्रत्यर्थी न केवल नामित मध्यस्थ के समक्ष गया बल्कि नामित मध्यस्थ की अधिकारिता का भी अवलंब लिया – निचले न्यायालय द्वारा पारित मध्यस्थ की आज्ञा के पर्यवसान का इस आधार पर दिया गया आदेश कि कोई भी व्यक्ति अपने मामले का स्वयं निर्णायक नहीं हो सकता, अपास्त किया गया।

Cases referred :

LAWS (DLH)-2000-9-26, LAWS (DLH)-2007-11-38, LAWS (DLH)-2011-5-66, LAWS (DLS)-2013-2-35, (1969) 2 SCC 262, (1987) 2 SCC 160, (2001) 1 SCC 182, (2003) 7 SCC 418, (2011) 8 SCC 380, (2012) 4 SCC 653, (2012) 6 SCC 384, AIR 1957 SC 425, (1974) 3 SCC 459, (2004) 8 SCC 788, (2010) 15 SCC 717, (2013) 3 SCC 1, AIR 1966 SC 828, (1988) 1 SCC 40, (1999) 8 SCC 16, (2008) 1 MPLJ 219, (2009) 8 SCC 520, (2012) 2 SCC 759, (2007) 5 SCC 304.

Naman Nagrath with *Sanjeev Mishra*, for the petitioner.

Kishore Shrivastava with *Naveen Prakash & Anshuman Shrivastava,* for the respondent.

ORDER

Alok Aradhe, J. :- In this writ petition under Article 227 of the Constitution of India the petitioner has assailed the validity of the order dated 20.11.2013 by which mandate of the Arbitrator under section 14(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been terminated.

2. Background facts leading to filing of the writ petition, briefly stated, are that a tender was invited on 17.1.2011 by the Director General of Police with a view to procure a software solution, namely, Integrated Data Management System. The respondent submitted its bid, which was accepted, and a purchase order dated 04.10.2011 was issued by the Assistant Inspector General of Police on behalf of the Inspector General of Police. Thereafter, an agreement dated 09.11.2011 was executed between the Governor of Madhya Pradesh and the respondent. The agreement was signed by the Director General of Police on behalf of the Governor of Madhya Pradesh and the

respondent. Clause 21 of the Agreement provides that any dispute between the parties to the agreement shall be referred to the arbitration of Director General of Police, Madhya Pradesh whose decision thereon shall be final and binding on the parties. A show cause notice dated 01.3.2013 was issued by the Assistant Inspector General of Police on behalf of the Director General of Police to the respondent on the ground that the Software was not found upto date and the respondent was asked to show cause as to why the contract be not cancelled and the respondent-firm be not black listed. Thereafter, by an order dated 24.4.2013 the contract was rescinded by the Director General of Police and the respondent was black listed for one year.

3. The respondent vide communication dated 01.5.2013 requested the petitioner to initiate arbitration proceeding. The respondent filed its claim before the named Arbitrator on 07.5.2013 alongwith an application under section 17 of the Act. The petitioner filed its reply before the Arbitral Tribunal. The Arbitrator vide order dated 27.5.2013 rejected the application filed by the petitioner under section 17 of the Act. The respondent thereafter on 10.6.2013 filed an application under section 13(2) of the Act. The Arbitrator vide order dated 28.9.2013 rejected the aforesaid application on the ground that the respondent itself initiated arbitration proceeding wherein it accepted the Director General of Police as an Arbitrator. Thereafter, the respondent filed an application under section 14(2) of the Act before the trial Court which was allowed vide order dated 20.11.2013 and mandate of the arbitrator was terminated on the ground that a person can not be a Judge in his own case and there is real likelihood of bias. In the aforesaid factual background the petitioner has approached this Court.

4. Learned senior counsel for the petitioner submitted that impugned order is *per se* without jurisdiction as the Court has no power to terminate the mandate of the Arbitrator under section 14(2) of the Act as situation envisaged under the aforesaid provision had not arisen. It was further submitted that after rejection of application under section 13(2) of the Act, the application under section 14(2) of the Act does not lie, as remedy is provided under section 13(5) of the Act. It was also urged that mandate of the arbitrator was sought to be terminated on the ground of bias and partiality on the part of arbitrator. The aforesaid fact was well within the knowledge of the respondent at the time when the agreement was executed and the respondent itself sought initiation of arbitration proceeding therefore, it had waived its right to raise an

objection on this ground. In this regard, the attention of this Court has been invited to sections 4 & 5 of the Act. In support of his submissions learned senior counsel has placed reliance on the decisions of *High Court of Delhi in Bharat Heavy Electronicals Limited vs. C.N.Garg,* LAWS (DLH)-2000-9-26, *Ahluwalia Contracts India Ltd. vs. Housing and Urban Development Corporation,* LAWS (DLH)-2007-11-38, *Progressive Career Academy Pvt. Ltd. vs. Fiit Jee Ltd.,* LAWS (DLH)-2011-5-66 and *Priknit Retails Ltd. vs. Aneja Agencies,* LAWS (DLS)-2013-2-35.

5. On the other hand, learned senior counsel for the respondent while inviting the attention of this Court to provisions of Sections 11(8)(b), 12(1), 12(2) and 12(3)(a) of the Act submitted that under the scheme of the Act, emphasis is on appointment of an independent and impartial arbitrator, and a combined reading of sections 12, 13, 14 & 15 of the Act makes it clear that these provisions are inter-linked and supplementary to each other. It is further submitted that nobody can be permitted to be a judge in his own cause and there is real likelihood of the bias. It is also submitted that the application under section 14(2) of the Act is maintainable after rejection of the application under section 13(2) of the Act as there is no specific bar under the Act and the misconduct of the arbitrator is not a ground of challenge under section 34 of the Act. The period of 15 days prescribed in section 14(2) of the Act is Directory as no consequences have been provided and the principles of waiver and estoppel do not apply to the facts of the case. Lastly, it was urged that this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution should not interfere and set aside the impugned order as the same would tantamount to revival of an illegality. In support of aforesaid submissions reliance has been placed on decisions in the cases of *A.K.Kraipak vs. Union of India,* (1969) 2 SCC 262, *State of Karnataka vs. Shri Rameshwar Rice Mills,* (1987) 2 SCC 160, *Kumaon Mandal Vikas Nigam vs. Girja Shankar Pant and others,* (2001) 1 SCC 182, *Bihar State Mineral Development Vs. Encon Builders,* (2003) 7 SCC 418, *P.D.Dinakaran Vs. Judges Enquiry Committee,* (2011) 8 SCC 380, *N.K.Bajpai vs. Union of India,* (2012) 4 SCC 653, *Bipromasz Bipron Trading SA vs. Bharat Electronics Ltd.,* (2012) 6 SCC 384, *Manaklal Advocate vs. Dr.Prem Chand Singhvi,* AIR 1957 SC 425, *S.Parthasarthu vs. State of A.P.,* (1974) 3 SCC 459, *M.P. Special Police Establishment vs. State of M.P.,* (2004) 8 SCC 788, *V.K.Diwan and Company vs. Delhi Jal Board,* (2010) 15 SCC 717, *State of Gujarat and others vs. Justice R.A.Mehta,* (2013) 3 SCC 1, *Gade Venkateshwara*

Rao vs. Government of A.P., AIR 1966 SC 828 *Mohammad Swalleh and others vs. IIIrd Additional District Judge, Meerut,* (1988) 1 SCC 40, *Maharaja Chintaman Sarannath vs. State of Bihar and others,* (1999) 8 SCC 16 and *Nisha Bai vs. State of M.P.,* (2008) 1 MPLJ 219.

6. I have considered the submissions made on both sides. The Act is based on United Nations Commission of International Trade Law. The statement of objects and reasons of the Act states that one of the main object of the Act is to minimize the supervisory role of the Courts in the arbitral process. The Act is divided in four parts. Part-I deals with arbitration, whereas Part-II deals with enforcement of certain foreign awards, Part-III of the Act deals with conciliation and Part-IV provides for supplemental provisions. The relevant provisions for the purpose of case in hand are to be found in Part-I which contains sections 1 to 43.

7. At this stage, it is appropriate to notice certain provisions of the Act, relevant for the purpose of controversy involved in the instant writ petition, namely, Sections 5, 12, 13, 14 and 15, which read as under:-

> *"5. **Extent of judicial intervention.**- Notwithstanding anything contained in any other law for the time bieng (sic:being) in foce (sic:force), in matters, governed by this Part, no judicial authority shall intervene except where so provided in thish (sic:this) Part.*
>
> *12. **Grounds for challenge.**- (1) When a person is approached in connection with his possible appointement as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.*
>
> *(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.*
>
> *(3) An arbitrator may be challenged only if-*
>
> *(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or*

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

*13. **Challenge procedure.**-(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.*

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after become aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agred (sic:agreed) upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbital (sic:arbitral) award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

*14. **Failure or impossibility to act.**- (1) The mandate of an arbitrator shall termiante (sic:terminate) if-*

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act withour (sic:without) undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

*15. **Termination of mandate and substitution of arbitrator.**-(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-*

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless othewise agreed by the parties, an order or ruling of the arbitral tribunal made priior (sic:prior) to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal."

8. A careful reading of Sections 12(3) and 13(2) would show that grounds

of challenge indicated in Section 12(3) are linked to section 13(2) of the Act. Sections 12 & 13 of the Act are primarily concerned with the entitlement of a person to be appointed as an Arbitrator, whereas sections 14 & 15 deal with authority of an arbitrator to continue, as such. Thus, sections 12 & 13 and 14 & 15 of the Act operate in different fields, as they stipulate the rights and the remedies. The Arbitral Tribunal is a creature of contract between the parties. In *Indian Oil Corporation Limited and others vs. Raja Transport Private Limited,* (2009) 8 SCC 520 it has been held that Arbitration is a binding voluntary alternative dispute resolution process by a private forum chosen by the parties. It is quite common for governments, statutory corporations and public sector undertakings while entering into contracts, to provide for settlement of disputes by arbitration, and further provide that the arbitrator will be one of its senior officers. If a party, with open eyes and full knowledge and comprehension of the said provision enters into a contract with a government/statutory corporations/ public sector undertakings containing an arbitration agreement providing that one of its Secretaries/Directors shall be the arbitrator, he cannot subsequently turn around and contend that he is agreeable for settlement of the dispute by arbitration, but not by the named arbitrator. It has further been held that no party can say that he will be bound by only one part of the agreement and not the other part, unless other part is impossible of performance or is void being contrary to the provisions of the Act, and such part is severable from the remaining part of the agreement. The arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what lat would govern the parties, etc. A party to the contract cannot claim the benefit of arbitration under the arbitration clause, but ignore the appointment procedure relating to the named arbitrator contained in the arbitration clause. The aforesaid decision has been quoted with approval subsequently by the Supreme Court in the case of *Denel (Proprietary) Limited vs. Ministry of Defence,* (2012) 2 SCC 759.

9. It is well settled proposition of law that where a statute provides a right and lays down a procedure for enforcement of such right, mentions the grounds available for seeking right and provides a forum where such right can be enforced and provides a remedy available to a person who fails in his attempt to enforce such right, such a provision in the statute would be treated as a complete code. If section 13 of the Act is read in its entirety, it is evident that it is a complete code in itself. If a party challenges authority of the Arbitral Tribunal on the ground of

independence and impartiality and in case such challenge fails, section 13(4) provides that arbitral tribunal shall continue with the proceeding and shall make an award. Section 13(5) of the Act provides that where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34 of the Act. The Supreme Court in the case of *ACE Pipeline Contracts (P) Ltd. vs. Bharat Petroleum Corporation Ltd.* (2007) 5 SCC 304 has held that if a party who has entered into an agreement with eyes wide open, feels that the arbitrator has not acted independently or impartially, or he has suffered from any bias, it will always be open to the party to make an application under section 34 of the Act to set aside the award on the ground that arbitrator acted with bias or malice in law or fact. Section 13(5) and Section 34 of the Act have to be read together. Sections 13(5) and 34 clearly imply that challenge is permitted even on the ground taken by the aggrieved party on which the challenge to the arbitral award was made under section 13(2) of the Act. If section 34 of the Act is interpreted to mean that challenge to arbitral award cannot be made on the ground of bias, then section 13(5) of the Act would rendered redundant and otiose. The principles of natural justice are founded on public policy. Bias and prejudice are contrary to public policy and are, therefore, included in Section 34(2)(b)(ii) of the Act. A right conferred on a aggrieved party cannot be taken away by a narrow and pendentic interpretation of section 34 of the Act. From careful scrutiny of section 13(5) of the Act, the legislative intent is clear that Parliament did not want the Court to annul the arbitration tribunal on the ground of bias at the intermediate stage.

10. In the instant case, the respondent entered into an agreement voluntarily with the petitioner on 09.11.2011. The aforesaid agreement was terminated on 24.4.2013. The respondent thereafter, in terms of clause 15 of the agreement, on 01.5.2014 sought redressal of its grievances through arbitration. On 07.5.2013 the respondent filed statement of claim alongwith an application under section 17 of the Act. The petitioner filed its statement of claim. Thereupon, named arbitrator, namely, Director General of Police rejected the prayer for interim relief under section 17 of the Act on 25.7.2013. Thereafter, on 10.6.2013 the respondent filed an application under section 13(2) of the Act which was rejected on 28.9.2013. Thus, from the above narration of facts it is graphically clear that the respondent right from the beginning was aware about the fact that Director General of Police is the named arbitrator in the agreement. The respondent not only approached the named arbitrator but invoked the jurisdiction of the arbitrator who passed an order on the

application preferred by the petitioner under section 17 of the Act. For a period 09.11.2011 till 27.5.2013 i.e. the date of rejection of application under section 17 of the Act the respondent did not make any grievance with regard to either independence or impartiality of the arbitrator.

11. From perusal of the impugned order it is evident that the respondent sought termination of the mandate of the arbitrator on the ground that arbitrator is not impartial, there is real likelihood of bias and no one can be permitted to be a Judge in his own cause. Thus, challenge to the authority of the arbitrator by way of application under section 14(2) of the Act was in substance made on the grounds enumerated under section 12(3) of the Act, which is impermissible in law as sections 13 and 14 of the Act operate in different fields. More over the respondent had invoked the remedy under section 13(2) of the Act therefore, in the facts of the case it cannot be permitted to invoke section 14(2) of the Act on the grounds enumerated under section 12(3) of the Act and has to wait till an award is passed in view of section 13(4) and section 13(5) of the Act. For the aforementioned reasons it is not necessary to decide the other contentions raised on behalf of respondent.

12. In view of preceding analysis, the order passed by the trial Court suffers from an error apparent on the face of record as well as the jurisdictional infirmity and, therefore, it cannot be sustained in the eye of law. Accordingly, the same is quashed.

13. In the result, the writ petition is allowed.

Petition allowed.

I.L.R. [2015] M.P., 638
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 1971/2014 (Indore) decided on 1 August, 2014

MAHESH ...Petitioner
Vs.
HARISINGH & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 18 Rule 3 - Stage of filing application **- Plaintiff after conclusion of his evidence filed application reserving his right to lead evidence in rebuttal of issues regarding counter claim after the evidence of defendant - Application**

has to be filed before commencement of evidence by other party - Trial Court erred in dismissing the application - Application allowed.

(Paras 7 & 8)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 3 – आवेदन प्रस्तुत करने का प्रकम – वादी ने अपना साक्ष्य समाप्त होने के पश्चात्, प्रतिवादी के साक्ष्य के पश्चात् प्रतिदावे से संबंधित विवाद्यकों के खंडन में साक्ष्य प्रस्तुत करने का अधिकार सुरक्षित रखते हुए आवेदन प्रस्तुत किया – दूसरे पक्षकार द्वारा साक्ष्य आरंभ करने से पूर्व आवेदन प्रस्तुत करना होता है – आवेदन खारिज करने में विचारण न्यायालय ने त्रुटि की – आवेदन मंजूर।

Cases referred :

1984 MPWN Note No. 483, AIR 1970 Rajasthan 278, AIR 1971 Mysore 17, AIR 1969 Andhra Pradesh 82.

Ashish Choube, for the petitioner.
M.A. Bohra, for the respondents.

ORDER

PRAKASH SHRIVASTAVA, J. :- This writ petition under Article 227 of the Constitution of India is at the instance of the plaintiff in the suit challenging the order of the trial Court dated 20.2.2014, whereby the petitioner's application under Order 18 Rule 3 of the CPC has been rejected.

2. In brief, the petitioner after concluding his evidence had filed the application under Order 18 Rule 3 of the CPC stating that on the issues framed on the counter claim filed by the respondent, the petitioner wanted to lead evidence in rebuttal after the evidence of the respondent, therefore, the petitioner had sought permission to conclude his evidence reserving the above right. The said application of the petitioner has been rejected by the trial Court by holding that the petitioner before commencement of the evidence should have reserved the right.

3. Learned counsel appearing for the petitioner submits that it was not necessary for the petitioner to file the application under Order 18 Rule 3 of the CPC at the time of commencement of the evidence but he had the option to file the application after concluding his evidence also and that the trial Court has rejected the application on erroneous premises, whereas the counsel for the respondents submits that since the petitioner did not file the application under Order 18 Rule 3 of the CPC at the time of commencement of his

evidence, therefore, no such application is maintainable at the subsequent stage.

4. I have heard the learned counsel for the parties and perused the record.

5. Trial Court has framed issue on the counter claim filed by the respondents and the petitioner wants to reserve his right to lead evidence in rebuttal on the issues relating to the counter claim. The petitioner after concluding his evidence, had filed the application under Order 18 Rule 3 of the CPC seeking permission to close the evidence reserving the right to lead the evidence in rebuttal on the issues of counter claim after conclusion of the evidence of respondents on those issues.

6. Order 18 Rule 3 of the CPC gives option to the party beginning the evidence to lead evidence on all issues or reserve his right to lead evidence in rebuttal on the issue, the burden of proof of which is on other party. Order 18 Rule 3 of the CPC reads as under :-

> **"Evidence where several issues.-** Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produce by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."

7. The above Rule 3 does not provide for any stage when the option is to be exercised by the party beginning the evidence, therefore, there is no bar in filing the application by that party after conclusion of his evidence, but keeping in view the object of the provision such an application is to be filed by the party concerned before commencement of the evidence by the other parties. Meaning thereby the party beginning the evidence has the option to file an application reserving his right either at the commencement of his evidence or latest at the stage of conclusion of his evidence and before commencement of the evidence of the other side. This view is duly supported by the judgment of this Court in the matter of *Chandrabai Vs. Rahul Kumar* reported in 1984 M.P.W.N. Note No.483, judgment of the Rajasthan High Court in the matter of *Inderjeet Singh Vs. Maharaj Raghunath Singh and others* reported in

AIR 1970 Rajasthan 278, judgment of the Mysore High Court in the matter of *S. Chandra Keerti Vs. Abdul Gaffar and others* reported in AIR 1971 Mysore 17 and judgment of the Andhra Pradesh High Court in the matter of *Illapu Nookalamma Vs. Illapu Simchachalam* reported in AIR 1969 Andhra pradesh 82.

8. In view of the above position in law the trial Court is not right in rejecting the petitioner's application under Order 18 Rule 3 of the CPC which was filed at the stage of conclusion of evidence of the petitioner-plaintiff but before the commencement of evidence of the respondent. The trial Court is not right in holding that the petitioner should have reserved the right before commencement of evidence and the prayer after conclusion of the evidence of petitioner can not be granted.

9. In view of this the impugned order of the trial Court is set aside and the application under Order 18 Rule 3 of the CPC filed by the petitioner is allowed.

10. Writ petition is accordingly disposed of.

Petition disposed of.

I.L.R. [2015] M.P., 641
WRIT PETITION
Before Mr. Justice S.C. Sharma
W.P. No. 5635/2009 (S) (Indore) decided on 4 September, 2014

MOHD. IQBAL QURAISHI (DR.) ... Petitioner
Vs.
HIS EXCELLENCY, THE KULADHIPATI OF DAVV & anr. ...Respondents

***A. Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 3(xx) - Teacher* - Petitioner working as Director, Physical Education - Cannot be treated as Teacher. (Para 7)**

क. विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 3 (xx) . शिक्षक – याची व्यायाम शिक्षा निदेशक के रूप में कार्यरत – शिक्षक के रूप में नहीं माना जा सकता।

B. Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Sections

***24 (x), 18, 20, 35, 49 - Teacher* - Petitioner was appointed as Director, Physical Education - On the recommendation of Executive Council, University passed an order treating him a teacher - Order was modified by impugned order and petitioner was once again treated as Director - Held - No statutory provision of law under Act, 1973 empowers the Chancellor to convert the post of Director to the post of Professor - Petitioner also failed to establish that he is a teacher - No straight jacket formula in respect of principles of natural justice and fair play - Petition dismissed. (Paras 7 to 11)**

ख. विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 24 (x), 18, 20, 35, 49 - शिक्षक – याची व्यायाम शिक्षा निदेशक के रूप में नियुक्त किया गया – कार्यकारणी परिषद की अनुशंसा पर, विश्वविद्यालय ने उसे एक शिक्षक मानते हुए आदेश पारित किया – आक्षेपित आदेश द्वारा आदेश उपांतरित एवं याची को फिर से निदेशक के रूप में माना गया – अभिनिर्धारित – अधिनियम 1973 के अंतर्गत विधि में कानूनी उपबंध नहीं है जो निदेशक के पद को प्रोफेसर के पद में परिवर्तित करने हेतु कुलपति को सशक्त करे – याची यह भी स्थापित करने में असफल रहा कि वह एक शिक्षक है – प्राकृतिक न्याय के सिद्धांत एवं निष्पक्ष व्यवहार के संबंध में कोई निश्चित सूत्र नहीं है।

Cases referred :

AIR 1997 SC 3433, 2010 (1) MPLJ 375, (2009) 13 SCC 635, 2011 (1) MPLJ 589 (DB), (2012) 12 SCC 666, (2013) 10 SCC 519.

S.C. Bagadia with *Anand Pathak*, for the petitioner.
Vivek Sharan, for the respondent/University.

ORDER

S.C. SHARMA, J. :- The petitioner before this Court, who is serving the Devi Ahilya Vishwavidyalaya, Indore on the post of Director, Physical Education has filed this present petition being aggrieved by an order dated 13.5.2008 (Annexure-P/1) by which he has been treated as a Director of Physical Education.

2. The facts of the case reveal that the petitioner was appointed as Director, Physical Education after following prescribed procedure as provided under the Madhya Pradesh Vishvavidyalaya Adhiniyam, 1973 on 15.6.1990. The petitioner's contention is that he has started a Yoga Centre with the financial support of UGC and in the Department of Physical Education and graduation,

post graduation, M.Phill and Ph.D courses are being conducted and therefore, he is infact a teacher and is entitled to continue in service by treating him as a teacher. The petitioner has further stated that in the gradation list published by the University in the year 1996, he has been included in the teacher category and Executive Council in its meeting on 20.5.98 has recommended the matter to the Chancellor to treat the petitioner as a teacher. The petitioner has also made a representation to the Chancellor and finally after a long drawn battle the Chancellor has passed an order on 6.8.1999 recognising the petitioner as a teacher. The University has also passed the consequential order dated 7.8.99 treating the petitioner as a teacher, however the impugned order has been issued on 13.5.2008 modifying the earlier order dated 7.8.1999, meaning thereby treating the petitioner once again as a Director of Physical Education. The petitioner has sought quashment of the order dated 13.5.2008 on the ground that he is discharging the duty of a teacher and therefore, in light of the judgment delivered by the Apex Court in the case of *P.S. Ram Mohana Rai Vs. A.P. Agriculture University,* AIR 1997 SC 3433 is entitled to continue at par in service like the teachers of the University.

3. A reply has been filed on behalf of the respondents/University and the stand of the University is that the petitioner was appointed as a Director of Physical Education keeping in view the Adhiniyam of 1973 and the statutes as well as Ordinance framed there under. The respondents have categorically stated that the petitioner is not a teacher as it defined under Section 3 of the Adhiniyam of 1973 and infact is a Director of Physical Education and therefore, he has not been included within the definition of teacher, hence the question of granting any benefit to the petitioner to continue in service at par with the teachers does not arise. The respondents have stated that the Director of Physical Education is certainly not a teacher. The process of appointing a teacher is altogether different and in the selection committee constituted for appointing a teacher, a representative of the Higher Education of State of Madhya Pradesh is a necessary member, whereas no such contingency is required while appointing a Director of Physical Education. The respondents have stated that the judgment relied upon by the learned counsel for the petitioner is distinguishable on facts and there is a subsequent judgment delivered by this Court in the case of *J.N. Vishwavidyalaya Vs. P.C. Modi,* 2010 (1) MPLJ 375, wherein in similar circumstances, the Sport Officer was not treated to be a teacher.

4. Learned counsel for the respondents has placed reliance upon a judgment delivered by the Apex Court in the case of *State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai,* (2009) 13 5CC 635, *Brejendra Kumar Vs. JNKVV,* 2011 (1) MPLJ 589 (DB), *Hukum Chand Gupta Vs. Director General, Indian Council* (2012) 12 SCC 666 and *University Grants Commission Vs. Neha Anil Bobde* (2013) 10 SCC 519 and his contention is that the Director of Physical Education by no stretch of imagination can be treated as a teacher keeping in view the statutory provisions governing the field.

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

6. The relevant statutory provisions under the Madhya Pradesh Vishvavidyalaya Adhiniyam, 1973, Statutes and Ordinances, which are necessary for adjudication of the present writ petition reads as under:-

> "(A) Section 3 (xx) of the Vishwavidyalaya Adhiniyam, 1973 defines "Teachers" as under :-
>
> "Teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research with the approval of the Academic Council in the University or any College or Institution maintained or recognized by the University."
>
> (B) Section 24(x) of the Vishwavidyalaya Adhiniyam, 1973 includes the following as one of the powers of the Executive Council (which is the apex executive body of the University), as far as appointment of 'teachers' is concerned:
>
> "Subject to the provisions of this Act, and the Statues, Ordinances and regulations made thereunder, the Executive Council shall have the following powers and perform the following duties, namely:
>
> (xx) to institute such Professorship, Readership, Lectureships or other teaching posts as may be proposed by the Academic Planning and Evaluation Board:
>
> Provided that no teaching post shall be institute without

the prior approval of the Commissioner Higher Education.

(C) Section 18 of the Vishwavidyalaya Adhiniyam: Others Officers:

"The appointment of other officers of the University referred to in Section 12, shall be made in such manner and the conditions of their services and powers and duties shall be such as may be prescribed by the Statutes, Ordinances and Regulations."

In view of Section 18, Statute No.20 had been made which reads as under:

Statute No.20: Other Officers of the University-Conditions of Service, Powers and Duties:

(1) In addition to the officers mentioned in clauses (I) to (v) of Section 11 of the Adhiniyam, the following shall be the officers of the University:

(i)to(iv)____

(v) Director of Physical Education

(2)to(4)____

(5) ____

Provided that in case of appointment to the following posts, the Selection Committee shall be constituted in accordance with the provisions contained under Section 49(2) of the M.P. Vishwavidyalaya Adhiniyam, 1973:

Physical Education-

Director

(D) Section 35 of the Vishwavidyalaya Adhiniyam: Statutes:

Subject to the provisions of this Act and the rules made thereunder, the statutes may provide for all or any of the following matters, namely:

(a) to © -

(d) powers and duties of the Registrar, and other officers and employees of the University and the conditions of their services.

(e) to(m)-

(n) the emoluments and terms and conditions of service of the officers and emoluments and terms and conditions of service other than pay scales of teachers of the University paid by the University.

In view of the powers conferred under the above mentioned Sub-clause (d) and (n) of Section 35, the following Statute No31 was made:

Statute No.31 : Conditions of Services for University Employees:

(E) Section 49 of the Vishwavidyalaya Adhiniyam, 1973: Appointment of Teaching posts:

(1) No person shall be appointed:

(i) as a Professor, Reader, Lecturer: or

(ii) to any other teaching post of the University paid by the University except on the recommendation of a committee of selection constituted in accordance with sub-section (2).

(2) The members of the Committee shall be -

(F) Section 63 of the Adhiniyam, 1973: Classification of Teachers:

(1) "Professor" and "Reader" means respectively teachers appointed by the Executive Council on the scales of pay not lower than that approved for a Professor and a Reader by the University Grants Commission and accepted by the State Government and where the scale of pay approved by the University Grants Commission is higher than that approved by the State Government in this behalf then on the scale of pay as provided by the State Government."

7. The aforesaid statutory provisions of law makes it very clear that the Director, Physical Education is not included within the meaning of the term teacher as defined Under Section 3(20) of M.P. Vishwavidyalaya Adhiniyam, 1973. Not only this, Section 18 deals with other officers of the Vishwavidyalaya and for the post of Director Physical Education, a selection committee has to be constituted under Section 49 (2) of M.P. Vishwavidyalaya Adhiniyam, 1973, meaning thereby the post of Director, Physical Education is altogether a different post, other than the teachers under the statutory provisions as stated aforesaid. The petitioner can by no stretch of imagination be designated as Professor keeping in view the statutory provisions. Merely because the name of the petitioner finds place in the gradation list of teachers, it does not mean that he has been appointed as a teacher and is a teacher of the University. It has been stated by the learned Sr. Counsel Shri Bagadia that principles of natural justice and fair play has not been followed while issuing the impugned order dated 13.5.2008 (Annexure-P/1). This Court is of the considered opinion that the Chancellor of the University does not enjoy extra powers than the powers and duties defined under the M. P. Vishwavidyala Adhiniyam, 1973. No statutory provision of law under the M. P. Vishwavidyalaya Adhiniyam, 1973 empowers the Chancellor to convert the post of Director, Physical Education to the post of Professor, meaning thereby the initial order passed by the Chancellor itself was without jurisdiction and therefore, the mistake has been rectified by issuing the impugned order dated 13th May, 2008. Not only this, the principles of natural justice and fair play have to be considered keeping in view the statutory provisions. The petitioner was given full opportunity by this Court to establish that he is a teacher, however he was failed to do so. There is no straight jacket formula in respect of principles of natural justice and fair play. This Court is of the considered opinion that the respondents were justified in passing the impugned order dated 13.5.2008. The matter relating to retirement of Sports Officer in respect of University in the State of Madhya Pradesh at par with the teachers was considered at length by this Court in the case of *J.N. Vishwavidyalaya Vs. P.C. Modi* (supra). The Division Bench of this Court has taken into account the judgment delivered by the Apex Court in the case of *P.S. Ram Mohana Rai* (supra). Paragraphs 10 to 14 of the judgment delivered in the case of *Brejendra Kumar Pathak Vs. JN KVV* (supra) reads as under :-

> "10. In view of the aforesaid discussions, it is clear that the Division Bench of this Court in the case of *P.C. Modi*

(supra) has rightly considered the judgments of the Supreme court in the case of *P.S. Ramamohan Rao* (supra) and *Ramesh Chandra Bajpai* (supra) and we fully agree with the view taken therein. We are also of the considered opinion that as the Supreme Court in the case of *Ramesh Chandra Bajpai* (supra) having explained the previous judgment in the case of *R.S. Ramamohan Rao* (supra) and having clarified that it was rendered in the light of particular rules in issue, the same was rightly considered by the Division Bench in accordance with the law laid down in the case of *Ramesh Chandra Bajpai* (supra) and therefore, the decision in the case of *P.C. Modi* (supra) does not require to be reconsidered or referred to a large Bench as submitted by the learned counsel for the appellant. We are also of the opinion that there is no conflict between the aforesaid two judgments of the Supreme Court.

11. Besides that, it appears that the judgment of the Apex Court in case of *R.S. Ramamohan Rao* (supra) was rendered on 31.7.1997 by a Bench consisting of two Hon'ble Judges, whereas the judgment in *State of M.P. Vs. Ramesh Chandra Bajpai* (supra) was rendered later, i.e. on 28.7.2009, by a Bench consisting of three Hon'ble Judges. It is a settled legal position that where there is a conflict of opinion between two decision of the Apex Court rendered by the Benches of equal strength, later decision shall prevail. Reference may be made to the judgment of the Apex Court rendered in *Dalbir Singh vs. State of MP* (2004) 5 SCC 334, wherein the Supreme Court in para 11 has approved the judgment of Punjab and Haryana High Court, relying upon the later judgment where the earlier judgment was in conflict with the later one. Thus, the judgment rendered in ? *Ramesh Chandra Bajpai* (supra), which was decided on 28.7.2009, will prevail. Besides that the judgment in *State of M.P. Vs. Ramesh Chandra Bajpai* (supra) is of larger Bench as it was headed by three Hon'ble judges whereas, the judgment in *R.S. Ramamohan Rao* (supra) was headed by two Hon'ble judges.

12. In the light of the above, we do not find any

error in the judgment/order of the learned Single Judge. At this stage, the learned counsel for the appellant submits that he was permitted to continue to work till the age of 61 years and 3 months and therefore, the respondents be directed not to recover the salary already paid to the appellant for the period of service rendered by him beyond the age of 60 years.

13. Learned counsel appearing for the University fairly submits that the salary already paid to the appellant for the period for which he has worked will not be recovered by the University.

14. In view of the above, we do not find any merit in the appeal and the same deserves to be dismissed. However, in the facts of the case, it is provided that the salary and other benefits already paid to the appellant for the period of service rendered by him beyond the age of 60 years till his continuance shall not be recovered from him. However, for all other purposes, such as fixation of pension and post retiral benefits etc., the appellant would be deemed to have retired on attaining the age of 60 years."

8. Keeping in view the aforesaid judgment, this Court is of the considered opinion that the petitioner cannot be permitted to continue in service at par with the teachers of the University.

9. The Apex Court in the case of *State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai* (supra) again in case of *Physical Training* Instructor after taking into account the judgment delivered in the case of *P.S. Ram Mohana Rai* (supra) in paragraph 25 and 26 has held as under:-

"25. We may observe that definition of 'teacher' contained in Section 2(n) of the Andhra Act was an expansive one to include those persons who were not only been imparting instructions but also were conducting and carrying on research for extension programmes. It also include those who had been declared to be a teacher within the purview of the definition thereof in terms of any Statutes framed by such State-.

26. In our view, the aforementioned decision has been

misapplied and misconstrued by the High Court. It is now well settled principles of law that a decision is an authority for what it decides and not what can logically be deduced therefrom. In *Ramamohana Rao* (supra), this Court, having regard to the nature of duties and functions of Physical Director, held that post comes within the definition of teacher as contained in Section 2(n). The proposition laid down in that case should not have been automatically extended to other case like the present one, where employees are governed by different sets of rules.

10. Keeping in view the aforesaid judgment, the petitioner cannot claim the parity in pay scale and in respect of retirement age at par with teachers. The Apex Court in the case of *Hukum Chand Gupta* (supra) again dealt with the issue of parity in pay and the paragraph 20 of the aforesaid judgment reads as under:-

"20 We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities

shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales."

11. In light of the aforesaid judgment, as the petitioner was appointed on the post of Director, Physical Education, keeping in view the statutory provisions as contained under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and the statute, ordinance framed thereunder, by no stretch of imagination can be treated as a teacher. He is holding the post of Director and has to retire as a Director not as a Teacher. The writ petition is therefore, accordingly dismissed.

12. No Order as to cost.

Petition dismissed.

I.L.R. [2015] M.P., 651
WRIT PETITION

Before Mr. A.M. Khanwilkar, Chief Justice & Mr. Justice Alok Aradhe
W.P. No. 1918/2014 (Jabalpur) decided on 24 September, 2014

NEETU SINGH MARKAM ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

(Alongwith W.P. No. 6883/2014, W.P. No. 7295/2014, W.P. No. 7523/2014, W.P.No. 7525/2014, W.P. No. 7526/2014, W.P. No. 7527/2014, W.P. No. 7529/2014, W.P. No. 7530/2014, W.P. No. 7537/2014, W.P. No. 7538/2014, W.P. No. 7539/2014, W.P. No. 7540/2014, W.P. No. 7541/2014, W.P. No. 7542/2014, W.P. No. 7576/2014, W.P. No. 7602/2014, W.P. No. 7611/2014, W.P. No. 7619/2014, W.P. No. 7682/2014, W.P.No. 7694/2014, W.P. No. 7772/2014, W.P. No. 7773/2014, W.P. No.7776/2014, W.P. No.7800/2014, W.P. No. 7856/2014, W.P. No. 7860/2014,

W.P. No. 7861/2014, W.P. No. 7876/2014, W.P. No. 7881/2014, W.P. No. 7891/2014, W.P. No. 7926/2014, W.P. No. 7982/2014, W.P. No. 8023/2014, W.P. No. 8024/2014, W.P. No. 8028/2014, W.P. No. 8030/2014, W.P. No.8048/2014, W.P.No. 8049/2014, W.P.No. 8050/2014, W.P.No. 8051/2014, W.P. No.8052/2014, W.P. No. 8068/2014, W.P. No.8069/2014, W.P. No. 8083/2014 W.P. No. 9766/2014, W.P. No. 8094/2014, W.P. No. 8095/2014, W.P.No. 8108/2014, W.P.No. 8135/2014, W.P.No. 8137/2014, W.P.No. 8144/2014, W.P.No. 8167/2014, W.P.No. 8273/2014, W.P.No. 8371/2014, W.P.No. 8412/2014, W.P.No. 8431/2014, W.P.No. 8432/2014, W.P.No. 8462/2014, W.P.No. 8488/2014, W.P.No. 8640/2014, W.P.No. 8985/2014, W.P.No. 8990/2014, W.P.No. 8993/2014, W.P.No. 9105/2014, W.P.No. 9150/2014, W.P.No. 9318/2014, W.P.No. 9321/2014, W.P.No. 9322/2014, W.P.No. 9326/2014, W.P.No. 9327/2014, W.P.No. 9340/2014, W.P.No. 9342/2014, W.P.No. 9364/2014, W.P.No. 9413/2014, W.P.No. 9415/2014, W.P.No. 9444/2014, W.P.No. 9466/2014, W.P.No. 9577/2014, W.P.No. 9583/2014, W.P.No. 9584/2014, W.P.No. 9585/2014, W.P.No. 9588/2014, W.P.No. 9589/2014, W.P.No. 9595/2014, W.P.No. 9596/2014, W.P.No. 9598/2014, W.P.No. 9624/2014, W.P.No. 9768/2014, W.P.No. 9798/2014, W.P.No. 9880/2014, W.P.No. 9963/2014, W.P.No. 9981/2014, W.P.No. 10149/2014, W.P.No. 10151/2014, W.P.No. 10153/2014, W.P.No. 10155/2014, W.P.No. 10156/2014, W.P.No. 10158/2014, W.P.No. 10159/2014, W.P.No. 10160/2014, W.P.No. 10161/2014, W.P.No. 10162/2014, W.P.No. 10163/2014, W.P.No. 10164/2014, W.P.No. 10165/2014, W.P.No. 10189/2014, W.P.No. 10221/2014, W.P.No. 10361/2014, W.P.No. 10362/2014, W.P.No. 10365/2014, W.P.No. 10390/2014, W.P.No. 10391/2014, W.P.No. 10414/2014, W.P.No. 10415/2014, W.P.No. 10418/2014, W.P.No. 10420/2014, W.P.No. 10422/2014, W.P.No. 10503/2014, W.P.No. 10507/2014, W.P.No. 10851/2014, W.P.No. 11097/2014, W.P.No. 11099/2014, W.P.No. 11106/2014, W.P.No. 11112/2014, W.P.No. 11119/2014, W.P.No. 11153/2014, W.P.No. 11491/2014, W.P.No. 11493/2014, W.P.No. 11496/2014, W.P.No. 11510/2014, W.P.No. 13936/2014, W.P.No. 14059/2014, W.P.No. 14062/2014, W.P.No. 7121/2014, W.P.No. 7825/2014, W.P.No. 14458/2014, W.P.No. 10623/2014, W.P.No. 8817/2014)

A. ***Education - Admission Test - Mass Copying*** **- Mass Copying has to be decided in the facts of each case and cannot be laid down with mathematical precision - Seating Pattern was changed and candidates were**

sitting in pairs at the end of row - Candidates sitting in pairs had secured same marks and one of the candidates of the pair was from outside the State of Madhya Pradesh and other candidates, in most of cases, did not belong to the city where examination centre was located - There is striking similarity in right match answers and wrong match answers - Candidates who were from outside the State of Madhya Pradesh and had secured good marks have neither taken admission nor challenged the cancellation of result - Decision of Committee to cancel the result as candidates were indulged in mass copying was right - Principle of Natural Justice does not apply. (Paras 49 to 56)

क. शिक्षा – प्रवेश परीक्षा – सामूहिक नकल – सामूहिक नकल का निर्णय प्रत्येक प्रकरण के तथ्यों के अनुसार होगा और गणितीय परिशुद्धता के साथ प्रतिपादित नहीं किया जा सकता – बैठने की व्यवस्था बदली गई और अभ्यर्थीगण पंक्ति के अंत में जोडियों में बैठे थे – जोड़ियों में बैठे अभ्यर्थियों ने समान अंक प्राप्त किये और जोड़ी का एक अभ्यर्थी मध्यप्रदेश राज्य के बाहर का था तथा अधिकतर मामलों में अन्य अभ्यर्थी उस शहर से नहीं थे जहां परीक्षा केंद्र स्थित था – सही अंकित उत्तरों में एवं गलत अंकित उत्तरों में बहुत स्पष्ट रूप से समानताएं हैं – अभ्यर्थीगण जो मध्यप्रदेश राज्य के बाहर से थे और जिन्होंने अच्छे अंक प्राप्त किये थे, ना तो उन्होंने प्रवेश लिया न ही परिणाम के निरस्तीकरण को चुनौती दी – सामूहिक नकल में अभ्यर्थियों के लिप्त होने के कारण परिणाम निरस्त करने का समिति का निर्णय उचित था – नैसर्गिक न्याय का सिद्धांत लागू नहीं होता।

***B. Education - Opinion of Experts* - Academic issues must be left to be decided by Expert Body which deserves great respect - Court cannot act as an appellate authority in such matters - When two views are possible and if Expert Body has taken a possible view, the same deserves acceptance. (Para 61)**

ख. शिक्षा – विशेषज्ञ का अभिमत – शैक्षिक विवाद्यकों का निराकरण विशेषज्ञ समूह पर छोड़ा जाना चाहिये जो विशेष सम्मान के पात्र हैं –न्यायालय उक्त मामलों में अपीली प्राधिकारी के रूप में कार्यवाही नहीं कर सकता – जब दो दृष्टिकोण संभावित हैं और यदि विशेषज्ञ समूह ने एक संभावित दृष्टिकोण लिया है वह स्वीकार करने योग्य है।

Cases referred :

(2010) 10 SCC 744, (2007) 12 SCC 210, (2013) 8 SCC 83, AIR 2000 SC 2587, (2002) 7 SCC 317, (2010) 7 SCC 678, (2008) 16 SCC 276, (2010) 13 SCC 255, (2010) 15 SCC 295, (2010) 13 SCC 427, W.P.

No. 20342/2013 decided on 11.04.2014, AIR 1997 Orissa 194, (1971) 2 SCC 617, AIR 1962 SC 1110, (1999) 2 SCC 21, AIR 1974 SC 2105, (1971) 3 SCC 792, AIR 2000 SC 2272, AIR 2010 SC 3714, AIR 1996 SC 11, AIR 1970 SC 1269, (1991) 2 SCC 716, (1994) 5 SCC 663, (1996) 5 SCC 365, (1999) 6 SCC 237, AIR 2000 SC 2783, (2003) 8 SCC 311, (2003) 9 SCC 731, (2007) 13 SCC 352, 2012 (1) SLJ 73, 2004(1) MPLJ 455, (2000) 3 SCC 59, (2002) 5 SCC 533, (2010) 6 SCC 614, AIR 1966 SC 875, (1973) 3 SCC 424, (1998) 9 SCC 236, (2003) 9 SCC 237, (2009)1 SCC 59, AIR 2003 Orissa 47, (2014) 3 SCC 767, (1984) 3 All ER 935, (2012) 5 SCC 443, (2013) 6 SCC 602, (2000) 2 SCC 617, (2006) 3 SCC 330.

Rajendra Tiwari with *Udyan Tiwari, T.K. Khadka,* for the petitioners in W.P. Nos. 7576/2014, 7602/2014, 7611/2014, 7694/2014, 8412/2014, 9598/2014, 10361/2014, 10362/2014, 10365/2014 & 13936/2014.

R.N. Singh with *Arpan J. Pawar,* for the petitioners in W.P. Nos. 7772/2014, 8135/2014.

Sanjay K. Agrawal, for the petitioner in W.P. No. 9768/2014.

Arpan J. Pawar, for the petitioners in W.P. Nos. 7523/2014, 7525/2014, 7526/2014, 7860/2014 & 8137/2014.

N.S. Ruprah, for the petitioner in W. P. No. 8028/2014.

R.K. Sanghi, for the petitioner in W.P. No. 9322/2014.

R.B. Patel, for the petitioner in W.P. No. 9105/2014.

Vivek Rusia, for the petitioner in W.P. No. 6883/2014.

Deep Gupta, for the petitioner in W.P. No. 9589/2014.

Aditya Sanghi, for the petitioners in W.P.Nos. 7619/2014, 8094/2014, 8371/2014, 10420/2014, 10414/2014, 10415/2014, 8108/2014, 10418/2014, 10422/2014.

Amit Khatri, for the petitioners in W.P. Nos. 7537/2014, 7540/2014, 7773/2014, 8431/2014, 8432/2014, 7538/2014, 7539/2014 & 7541/2014.

C.S. Dubey, for the petitioner in W.P. No. 8462/2014.

Anubhav Jain, for the petitioner in W.P. No. 9444/2014.

Pushpendra Yadav, for the petitioners in W.P. Nos. 9963/2014, 9150/2014, 9880/2014.

Ritwik Parashar, for the petitioner in W.P. Nos. 7542/2014 & 14458/2014.

Nishant Jain, for the petitioner in W.P. No. 7527/2014.

A.T. Faridi, for the petitioner in W.P. No. 10851/2014.

A.K. Bajpai, for the petitioner in W.P. No. 8273/2014.

Amitabh Gupta, for the petitioners in W.P. Nos. 7121/2014 & 7825/2014.

H.K. Upadhyaya, for the petitioners in W.P. No. 10189/2014, 7800/2014, 8640/2014, 8095/2014.

Nikhil Tiwari & Himanshu Mishra, for the petitioners in W.P. Nos. 14059/2014 & 14062/2014.

Anup Kumar Shukla, for the petitioner in W.P. No. 10623/2014.

Kaustabh Singh, for the petitioner in W.P. No. 8817/2014.

P.K. Kaurav & Aditya Khandekar, for the responents.

ORDER

The Order of the Court was delivered by :

ALOK ARADHE, J. :- In this batch of writ petitions, the petitioners have, inter alia, assailed the validity of the orders dated 24.4.2014, 03.5.2014, 06.5.2014, 07.5.2014, 08.5.2014 and 19.5.2014 by which the Professional Examination Board (hereinafter referred to as "the Board") has cancelled the results of the petitioners on the ground that the petitioners had resorted to unfair means during the Pre Medical Tests held between years 2008 to 2012. The petitioners also seek consequential direction to the respondents to permit them to prosecute the studies in M.B.B.S. Course. In order to appreciate the petitioners' challenge to the impugned orders, the relevant facts need mention, which are stated infra.

2. The Board was initially constituted by Notification dated 30.7.1983 and thereafter re-constituted by Notification dated 22.1.2004 in exercise of executive powers by the State Government for discharging its obligation of conducting free and fair pre-entrance examination for admission to professional courses. The Board has been conducting Pre Medical Tests every year for admission to M.B.B.S. Course in respect of various Colleges in the State of Madhya Pradesh. The Board held the Pre Medical Tests between the period from 2008 to 2013. The Pre Medical Test, 2013 was scheduled to be held on 07.7.2013. A complaint regarding commission of gross irregularities and use of unfair means by the candidates in the examination was received by the Director General of Police on 06.7.2013. Acting on the said complaint and reports published in local newspapers about the conspiracy hatched for resorting to unfair means by a large number of candidates with the assistance of the candidates coming from other States, the Indore Crime Branch arrested

about 20 suspects.

3. On 07.7.2013, First Information Report was lodged bearing Crime No.539/2013 at Police Station, Rajendra Nagar, Indore mentioning about involvement of large number of candidates having indulged in unfair means during Pre Medical Test, 2013. After registration of First Information Report, the Crime Branch made enquries and sought certain information from the officials of the Board, which was furnished to the Crime Branch on 12.7.2013. The officials of the Board, namely, Nitin Mohindra, Principal System Analyst and Ajay Kumar Sen, Senior System Analyst were interrogated and were arrested by the Police on 16.7.2013 and were suspended by the Board on 17.7.2013. During the investigation, involvement of one C.K.Mishra, Assistant Programmer of the Board was also found. The Board received a list of 317 candidates from Superintendent of Police, Indore who were named as beneficiaries of the conspiracy. The factum of involvement of one Jagdish Sagar in the conspiracy also came to the light. The Director of the Board submitted proposal to the Chairman on 30.8.2013 to permit constitution of Computer Experts Committee to examine the records and submit its opinion and recommendations. The Chairman accorded approval to the said proposal on 05.9.2013.

4. The Director of the Board by communication dated 31.8.2013 required Nitin Mohindra and Ajay Kumar Sen to furnish the logic of allotment of roll numbers for facilitating the scrutiny by the Computer Experts Committee. The said officials by communication dated 03.9.2013 expressed their inability to disclose the logic in allocation of the roll numbers to the candidates. In the absence of information divulged by the aforesaid officials, the Computer Expert Committee had to evolve its own mechanism to find out the methodology adopted in the allocation of roll numbers to the concerned candidates by method other than the stipulated or specified randomization process. The Computer Experts Committee comprising of 6 experts was constituted which convened its first meeting on 07.9.2013. The Committee submitted its report on 07.9.2013 in which, in the initial scrutiny, it found mismatch of roll numbers of 30195 out of 40086 candidates including the allocation of roll numbers of 49 candidates whose application forms were rejected by the Board in respect of Pre Medical Test, 2013. The Computer Experts Committee thereafter held its meetings on 30.9.2013 and 04.10.2013. The meeting of the Committee of the Joint Controllers was convened on 08.10.2013. From perusal of the report,

the yardstick adopted by the Committee in identifying 345 candidates, who were involved in conspiracy of change of roll numbers after their generation, is evident. The relevant extract of the report reads as under:-

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

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

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

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

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

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

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

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

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

हस्ता/–8.10.13	हस्ता/–8.10.13
(डॉ. एस.के. गांधी)	(डॉ. एस.के. जैन)
संयुक्त नियंत्रक	प्रभारी नियंत्रक

5. The reports and opinions of the Committee were placed before the Chairman of the Board with the recommendation to initiate action against 345 identified candidates. The Chairman agreed with the proposal submitted by the Director and issued directions to proceed in the matter, which is evident from the noting dated 08.10.2013 and the same is reproduced below for the facility of reference:-

पृष्ठ कमांक 60 नस्ती कमांक व्यापम /5–प–1/02/2013.

विषयः PMT – 2013 के संबंध में ।

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

यहाँ यह भी उल्लेखनीय है कि इन 345 रोल नंबरों में एक पैटर्न उभरकर आता है जिसमें मध्यप्रदेश के अभ्यर्थी को अन्य प्रदेश के अभ्यर्थी के साथ सुनियोजित ढंग से कम में रोल नंबर आवंटित किया गया है। किसी भी रेण्डम प्रकिया के पालन करने से ऐसा पैटर्न उभरना संभव नहीं है। इस बात की पुष्टि पुलिस विभाग द्वारा उपलब्ध कराये गये दस्तावेजों से भी होती है।

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

अवलोकनार्थ एवं अनुमोदनार्थ।

Sd/-08-10-2013
(Tarun Kumar Pithode)
DIRECTOR

मान. अध्यक्ष महो.

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

सही / 08.10.2013

संचालक

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

सही / 08.10.2013

Steno

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

सही / 08.10.2013

संचालक महोदय

सही / 09.10.2011

Controller"

6. In pursuance of direction issued by Chairman, the Director issued the impugned order dated 09.10.2013 by which the results of examination of 345 candidates, who had appeared in the Pre Medical Test, 2013 were cancelled on the ground that they had indulged in unfair means. The relevant extract of the order reads as under:-

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

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

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

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

संलग्न : उपरोक्तानुसार परिशिष्ट–1

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

भोपाल"

7. Thereafter, on 22.11.2013, the Board received a list from Special Task Force in respect of another 92 candidates who had allegedly indulged in unfair means as a result of which First Information Report was lodged against them. On receipt of said information, a meeting of Joint Controllers was convened on 30.11.2013, in which, on due analysis of the material and after applying the same logic, as was applied for identifying 345 candidates, the

committee opined that action must be taken against 70 additional candidates. The relevant extract of the evaluation Report dated 30.11.2013 reads as under:-

"म.प्र. व्यावसायिक परीक्षा मण्डल, भोपाल

//परीक्षण प्रतिवेदन//

"20. कार्यालय सहायक महानिरीक्षक, एस.टी.एफ. म.प्र. भोपाल के पत्र क. सम. नि./एस.टी.एफ./मुख्यालय/2013/(एम–213), भोपाल दिनांक 22.11.2013 (परिशिष्ट–17) द्वारा डॉ0 संजीव शिल्पकार के कब्जे से प्राप्त पी.एम.टी. परीक्षा 2013 के 92 अभ्यर्थियों की सूची उपलब्ध करवाई गई है। इस सूची का मिलान बिन्दु कमांक–9 में उल्लेखित 876 अभ्यर्थियों की सूची जो कि परिशिष्ट–9 में संलग्न है, से किया गया एवं पाया गया कि समस्त 92 अभ्यर्थी 876 अभ्यर्थियों की मिसमैच सूची में उपलब्ध है। इन 92 अभ्यर्थियों की सूची का मिलान बिन्दु कमांक–13 में उल्लेखित परिशिष्ट–13 में संलग्न 345 उन अभ्यर्थियों की सूची से किया गया, जिनकी अभ्यर्थिता म.प्र. व्यावसायिक परीक्षा मण्डल द्वारा आदेश क. म.प्र. व्यापम/6297/2013 दिनांक 09.10.2013 द्वारा निरस्त की जा चुकी है एवं पाया गया है कि 92 अभ्यर्थियों में से 22 अभ्यर्थी (परिशिष्ट–18) ऐसे है जिनकी अभ्यर्थिता पूर्व में ही निरस्त की जा चुकी है।

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

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

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

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

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

8. After receipt of the report, the Director placed the matter before the Chairman with the recommendation to take action against 70 additional candidates who were identified by the Committee of the Joint Controllers. The Chairman approved the proposal. In pursuance of approval accorded by the Chairman, the Director issued an order dated 06.12.2013. The relevant extract of which reads as under:-

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

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

समिति के प्रतिवेदन के परिप्रेक्ष्य में अभिलेखों का परीक्षण करने के उपरान्त करने के उपरान्त यह समाधान हो गया है कि 70 अभ्यर्थियों को अनुचित तरीके से रोल नंबर आवंटित कर परीक्षा नियमों का उल्लंघन करते हुए लाभ पहुंचाया गया है। अतः इन 70 अभ्यर्थियो (परिशिष्ट–1) की अभ्यर्थिता तत्काल प्रभाव से निरस्त की जाती है।"

9. The Board by communication dated 24.10.2013 informed the Assistant

Inspector General of Police, Special Task Force that in Pre Medical Test, 2012 roll numbers of 701 candidates were found to be altered. During the course of investigation of Crime Number 12/2013, one Jagdish Sagar and Sanjeev Shilpkar informed the Investigating Officer of the Special Task Force that they in collusion with Nitin Mohindra and other officials of the Board had indulged in change of roll numbers to facilitate the candidates for indulging in use of unfair means in Pre Medical Test, 2012 as well. Accordingly, the Assistant Inspector General of Police, Special Task Force by communication dated 31.12.2013 addressed to the Controller of the Board requested to conduct an enquiry with regard to Pre Medical Tests held in the years 2009, 2010 and 2011 as well, and to submit a report so that suitable action in the matter can be taken.

10. Thereafter, by communication dated 28.1.2014 the Assistant Inspector General of Police, Special Task Force informed the Controller of the Board that while investigation of Crime No.12/2013 it has been found that OMR sheets of certain candidates have been filled up by the Officials of the Board and, therefore, necessary action be taken against them.

11. In the meanwhile, the Board on 06.11.2013 constituted Technical Committee of following persons to examine the irregularities conducted in the Pre Medical Test, 2012:-

S.No.	Name of Member of	Designation committee
1.	Dr.Samar Upadhyay	Assistant Professor and Head, Computer Applications
2.	Mrs.Juhi Jain	Lecturer & I/c, HOD, IT
3.	Mr.D.K.Chourishi	Lecturer, Computer Science & Engineering.
4.	Mr.Kuldeep Singh Chouhan	Senior Software Engineering
5.	Mr.Ashish Jain	Server Administrator
6.	Mrs.Ajita Satheesh	Assistant Professor

12. It is pertinent to mention here that Pre Medical Test, 2012 was held

on 10.6.2012 in which 38,671 candidates had appeared. The Committee, as stated supra, was constituted vide order dated 06.11.2013 which held it's meeting on 15.11.2013 and found that roll numbers of 701 candidates were altered after its' generation. Out of 701 candidates the Committee identified 345 suspected candidates and after scrutiny recommended for cancellation of result of 319 candidates vide recommendations dated 15.4.2014 and 05.5.2014. The Committee excluded cases of 26 candidates who on the basis of low marks could not qualify for admission to MBBS Course. The Committee also took into account the seating plan in the examination centres and found that roll numbers were tampered with the object to form pairs. In most of the pairs it was noticed that one of the candidates is out of State of Madhya Pradesh and there is similarity in the matching right answers and matching wrong answers to a large extent, which is possible only on account of copying. The recommendations of the committee were approved by the Chairman on 15.4.2014 and 06.5.2014. Consequently, the orders of cancellation of results of candidates who had indulged in use of unfair means in Pre Medical Test, 2012 were issued on 15.4.2014 and 06.5.2014 by which results of 272 and 47 candidates respectively were cancelled.

13. The Board vide order dated 26.4.2014 and 15.5.2014 directed constitution of the Committees to examine the irregularities committed in the Pre Medical Tests of the years 2009, 2010 and 2011 and 2008 respectively. The Pre-Medical Test, 2011 was held on 24.7.2011 in which 26,116 candidates had appeared. It is pertinent to mention here that Pre-Medical Test, 2011 was held off-line. The Committee found that roll numbers of 110 candidates were altered. The Computer Experts Committee in it's meeting held on 03.5.2014 evolved a formula and fixed bench mark score to ascertain use of unfair means in the examination at 127.40 i.e. double the average of correct answers given by the candidates who were not involved in any irregularity i.e. 63.55 marks. On the basis of aforesaid criteria and the records available with the Board, the Committee identified that roll numbers of 55 pairs were altered/ tampered who were sitting next to each other in the examination hall. It was further found by the Committee that there is similarity in the matching right answers and matching wrong answers of aforesaid 55 pairs of candidates and certain candidates from State of Madhya Pradesh as well as the candidates from outside the State had chosen the particular examination centre and were sitting next to each other, whose roll numbers were tampered. The Committee excluded the cases of 10 candidates on the ground that they have secured low

marks, therefore, could not seek admission to MBBS Course and cases of two candidates on the ground that on further verification, no proof with regard to tampering of their roll numbers was found. Accordingly, the Committee recommended for cancellation of the results of 98 candidates. The recommendation of the Committee was approved by the Chairman on 03.5.2014 as a consequence of which the order of cancellation of results of 98 candidates who had indulged in use of unfair means in Pre Medical Test, 2011 was issued by the Director of the Board.

14. The Pre-Medical Test, 2010 was held off-line on 20.6.2010 in which 26,711 candidates had appeared. The Committee identified 132 suspected candidates on the ground that their roll numbers were tampered. The Committee in its meeting held on 05.5.2014 evolved, a formula and fixed bench mark score to ascertain use of unfair means in the examination at 142.66 i.e. double the number of average of correct answers given by the candidates who were not involved in any irregularity i.e. 71.33 marks. On the basis of aforesaid criteria as well as the record available with the Board, the Committee identified that roll numbers of 68 pairs were altered/tampered who were sitting next to each other in the examination hall. It was further found by the Committee that there is similarity in the matching right answers and matching wrong answers of aforesaid 68 pairs of candidates. The Committee excluded 6 candidates on the ground that they had obtained low marks and did not qualify for admission to MBBS Course and on further scrutiny, it was found that there was no sufficient evidence with regard to tampering of roll numbers by 36 candidates. Accordingly, the Committee recommended for cancellation of the results of 90 candidates. The recommendation of the Committee was approved by the Chairman on 06.5.2014 as a consequence of which the order of cancellation of results of 90 candidates who had indulged in use of unfair means in Pre Medical Test, 2010 was issued by the Director of the Board.

15. The Pre-Medical Test, 2009 was held off-line as well as on-line on 5.7.2009 in which 29,162 candidates had appeared. The Committee identified 185 suspected candidates whose numbers were found to be tampered. The Experts Committee held its meeting on 07.5.2014, evolved a formula and fixed bench mark score to ascertain use of unfair means in the examination at 138.62 i.e. double the number of average of correct answers given by the candidates who were not involved in any irregularity i.e. 69.32 marks. On the basis of aforesaid criteria as well as the record available with the Board, the

Committee identified that roll numbers of 95 pairs were altered/tampered who were sitting next to each other in the examination hall. It was further found by the Committee that there is similarity in the matching right answers and matching wrong answers of aforesaid 95 pairs of candidates. The Committee excluded 16 candidates on the ground that marks obtained by them were low and they were not entitled to seek admission in MBBS Course and on further scrutiny it also found that no sufficient material with regard to tampering of their roll numbers with regard to 84 candidates was found. Accordingly, the Committee recommended for cancellation of the results of 85 candidates. The recommendation of the Committee was approved by the Chairman on 08.5.2014 as a consequence of which the order of cancellation of results of 85 candidates who indulged in unfair means in Pre Medical Test, 2009 was issued by the Director of the Board.

16. The Pre-Medical Test, 2008 which was held off-line as well as online on 7.6.2008 in which 38,378 candidates had appeared. The Committee identified 110 suspected candidates. The Committee held its meeting on 16.5.2014, evolved formula and fixed bench mark score to ascertain use of unfair means in the examination at 138.74 i.e. double the number of average of correct answers given by the candidates who were not involved in any irregularity i.e. 69.37 marks. On the basis of aforesaid criteria as well as the record available with the Board, the Committee identified that roll numbers of 59 pairs were altered/tampered who were sitting next to each other in the examination hall. It was further found by the Committee that there is similarity in the matching right answers and matching wrong answers of 21 pairs of candidates who were sitting next to each other whose roll numbers were tampered. The Committee excluded 16 candidates on the ground that they secured low marks and could not secure admission to MBBS Course on further scrutiny it was found that no sufficient material was available with regard to tampering of roll numbers of 52 candidates. Accordingly, the Committee recommended for cancellation of the results of 42 candidates. The recommendation of the Committee was approved by the Chairman on 16.5.2014 as a consequence of which on 19.5.2014 an order of cancellation of results of 42 candidates who had indulged in use of unfair means in the examination in Pre Medical Test, 2008 was issued by the Director of the Board. In the aforesaid factual background, the petitioners have approached this Court.

17. Mr. Rajendra Tiwari, learned senior counsel for the petitioners in W.P.Nos.7576/2014, 7602/2014, 7611/2014, 7694/2014, 8412/2014, 9598/2014, 10361/2014, 10362/2014, W.P.No.10365/2014 and W.P.No.13936/2014 submitted that from perusal of order dated 3.5.2014, no basis for ordering an enquiry in respect of the Pre Medical Tests held between the years 2009 to 2011 is discernible. The enquiry was directed to be conducted merely on the basis of *ipse-dixit* of the Chairman. Neither any report of the Centre Superintendent nor of the Invigilator of examination centre was obtained and no Centre Superintendent/Invigilator was examined to ascertain whether any material exists for ordering an enquiry into the alleged case of mass copying. Only on the basis of identification of certain groups, an enquiry was ordered in respect of the Pre Medical Tests held between the years 2009 to 2011. There was no material to order an enquiry in respect of the Pre Medical Tests of the years 2009 to 2011, before constitution of the Committees. It was also pointed out that the exclusion of candidates from enquiry on the ground that the marks obtained by them were low, is incorrect and no action has been taken against the candidates who were allotted roll numbers naturally. It was also urged that it was not possible for the candidates to manipulate the roll numbers. While inviting our attention to Annexure P/9 in W.P. No.7576/2014, it was pointed out that different pattern of marks obtained by the candidates is emerging, therefore, the same formula could not have been applied by the Board for identification of the candidates who were allegedly involved in mass copying.

It was also argued that there is no material on record to arrive at the conclusion that the petitioners were either involved in altering the roll numbers or had indulged in use of unfair means. It was also pointed out that report of the Committee is an opinion evidence and under section 45 of the Indian Evidence Act, 1872 the same is required to be proved by the Board and, therefore, the District Judge should be directed to submit a report after due enquiry. It was also urged that the candidates participated in the competitive examination with all seriousness and none of them had raised any objection with regard to alleged mass copying, which took place in the Examination Centres, and no explanation has been furnished by the Board as to why there is difference of marks between alleged scorer and the marks obtained by the petitioners. It was also argued that no presumption can be raised merely on account of similarity in seating pattern and on account of obtaining similar marks with the candidates who were allegedly involved in copying. It was

further submitted that opinion of experts is not beyond the pale of judicial review. In support of aforesaid submissions learned senior counsel has placed reliance on decisions of the Supreme Court in *Competition Commission of India vs. Steel Authority of India Limited,* (2010) 10 SCC 744 and *Institute of Chartered Financial Analysts of India and others Vs. Council of the Institute of Chartered Accountants of India and others,* (2007) 12 SCC 210. It was also pointed out by learned senior counsel that the petitioner in Writ Petition No.7694/2014 belongs to a poor family and has completed his studies and is undertaking internship. It was further pointed out that the petitioner was sitting during the examination in front of alleged scorer.

18. Rejoinder reply has been given by learned senior counsel by way of written submissions. In the written submissions, it is stated that Anubhav Sharma and Shivani Sharma were alloted Roll Nos. 523828 and 523829 respectively, who are related to each other as brother and sister. They were sitting in the examination hall next to each other and scored identical marks namely 172. However, no action has been taken against them by the Board because there was no change in their roll numbers. Thus, suspected candidates have been given clean-chit. It has further been mentioned in the written submissions that the Board has failed to disclose the right answers in the mismatch answers, which goes to show that consideration was made with punctilious observation and no serious scrutiny was made. It is further submitted that though several candidates did not indulge in use of unfair means, yet their results were cancelled. The Board has taken action for cancellation of results of the candidates in selective manner. It is also mentioned that rule of law requires the Board to be more cautious and fair with the candidates and the burden to prove its action lies heavily on the Board. It is also mentioned that in cases where candidates have passed all examinations of M.B.B.S. course in first attempt, the action of the Board in cancellation of their results cannot be said to be justified and the fate of such candidates should be made subject to ultimate decision by the criminal Court. Lastly and in the alternative, it has been mentioned that the petitioners be granted the liberty to resort to the remedy of civil suit. In support of aforesaid submissions, learned senior counsel has referred to decisions of the Supreme Court in the cases of *Veer Pal Singh vs. Secretary, Ministry of Defence*, (2013) 8 SCC 83, *Kunhayammed and others Vs. State of Kerala and another,* AIR 2000 SC 2587, *Ashish Batham Vs. State of Madhya Pradesh,* (2002) 7 SCC 317, *East Coast Railway and another Vs. Mahadev Appa Rao and Others,* (2010) 7 SCC 678, *Nagarjuna Construction*

Company Limited Vs. Government of Andhra Pradesh and Others, (2008) 16 SCC 276 and *Natwar Singh Vs. Director of Enforcement and another,* (2010) 13 SCC 255.

19. Mr. R.N. Singh, learned senior counsel for the petitioners in W.P. No.7772/2014 and W.P. No.8135/2014 has submitted that the petitioners had appeared in the Pre Medical Test, 2008. It is further submitted that taking into account the magnitude of the scam, another high level committee of experts ought to have been constituted by the Board to consider the report submitted by the Computer Experts Committee. It is also pointed out that the entire action against the petitioners has been taken in hot haste and the same suffers from the vice of non-application of mind and powers of judicial review are available in the context of the order. Lastly, it is urged that the Court should constitute another Committee to satisfy itself as to whether the conclusions arrived at by the Committee of the experts appointed by the Board are correct. In support of his submissions, learned senior counsel has referred to the decisions of the Supreme Court in the cases of *Natwar Singh* (supra), *Mahadev Appa Rao* (supra) and *Nagarjuna Construction Company Limited* (supra)

20. Mr.Sanjay K. Agrawal, learned counsel for the petitioners in Writ Petition Nos.9768/2014 and 9766/2014 has submitted that the petitioners had appeared in Pre Medical Test, 2012 from the Examination Centre at Shahdol. It is further submitted that out of 701 cases of mismatch, the cases of 510 candidates were examined, out of which, results of 272 candidates were cancelled and thereafter the results of 47 other candidates were cancelled on the recommendations of Special Task Force. It is also argued that the Enquiry Committee has not conducted the wholesome enquiry and in respect of Pre Medical Test, 2012 no forumula was evolved by the Committee of Experts to ascertain whether the particular case is a case of mass copying. It is also argued that in Pre Medical Test, 2012 candidates did not indulge in mass copying and the grounds which were available in respect of Pre Medical Test, 2013 for holding the same to be a case of mass copying are not in existence in the case of Pre Medical Test, 2012. It is also pointed out that there is no material on record to hold the that candidates have resorted to organized use of unfair means in the examination.

21. Mr.Amit Khatri, learned counsel for the petitioners in W.P.No.7537/2014, W.P.No.7540/2014, W.P.No.7773/2014, W.P.No.8431/2014, W.P.

No.8432/2014, W.P. No.7538/2014, W.P. No.7539/2014 and W.P. No.7541/2014, Mr.Kuldeep Bhargava, learned counsel for the petitioner in Writ Petition No.9342/2014, Mr.Atul Nema, learned counsel for the petitioner in Writ Petition No.9981/2014, Mr.C.S.Dubey, learned counsel for the petitioner in Writ Petition No.8462/2014 and Mr.Pushpendra Yadav, learned counsel for petitioners in the Writ Petitions No.9963/2014, 9150/2014 and 9880/2014, Mr.Anup Kumar Shukla, learned counsel for the petitioner in W.P.No.10623/2014 and Mr.Himanshu Mishra, learned counsel for the petitioners in Writ Petitions No.14059/2014 and 14062/2014 respectively have adopted the arguments advanced by Mr.Rajendra Tiwari and Mr.R.N.Singh, learned Senior Counsel.

22. Mr.Nikhil Tiwari, learned counsel for the petitioners in Writ Petitions No.14059/2014 and 14062/2014 while adopting the submissions made on behalf of learned senior counsel for petitioners in other writ petitions has submitted that petitioners' case does not fall within the purview of "unfair means" as defined in clause 3.8 of Madhya Pradesh Medical and Dental Under Graduate Entrance Examination Rules, 2010. It is further submitted that formula evolved by Board has been applied in an erroneous manner, and since only two candidates were found copying in one room the same cannot be treated to be a case of mass-copying. In rejoinder reply, it is submitted that jumbling report in Pre Medical Test, 2011 has been made the basis for taking action in respect of all the examinations.

23. Mr. R.B. Patel, learned counsel for the petitioner in Writ Petition No.9105/2014 submitted that the Board has cancelled the result of 98 candidates who had appeared from thirteen different centres in the State, therefore, the instant case cannot be said to be a case of mass copying. It is further submitted that prior to issuance of impugned order, no opportunity of hearing was afforded to the petitioner. While inviting our attention to roll number-wise list of candidates at page 174 of the return as well as para 5 of the rejoinder, it has been contended that in respect of roll numbers mentioned in para 5 of the rejoinder, no irregularity was found, therefore, the stand taken by respondents that the petitioner tampered with the roll number, is incorrect. It is also pointed out that documents mentioned in I.A. No.9566/2014 were not supplied to the petitioner and some time limit should be prescribed for taking action for cancellation of admission. It is further submitted that there is no material on record to show that the candidates were aware about the

jumbling report, therefore, it is not possible to infer that the candidates had indulged in mass copying. It is also argued that an independent expert ought to have been appointed.

24. Mr. N.S. Ruprah, learned counsel for the petitioner in Writ Petition No.8028/2014 submitted that impugned order has been passed on the basis of surmises and conjectures. It is argued that it is impossible for a candidate to indulge in copying as sequence of questions in all four sets was different and OMR sheet of the petitioner has not been produced. It is also argued that impugned order has been passed in flagrant violation of principles of natural justice. In support of his submissions, learned counsel has referred to the decisions of the Supreme Court in cases of *TVS Finance and Services Limited Vs. H.Shivakumar* (2010) 15 SCC 295, *Oryx Fisheries Private Limited Vs. Union of India and others*, (2010) 13 SCC 427 and *Nagarjuna Construction Company Limited* (supra).

25. Mr. Deep Gupta, learned counsel for the petitioner in Writ Petition No.9589/2014 has submitted that petitioner has secured 159 marks whereas alleged scorer has secured 142 marks. It is pointed out that academic record of the petitioner is good and he has secured more than 85% marks in High School and Higher Secondary School examinations and the petitioner, in fact, was sitting in the examination in front of the alleged scorer. While referring to orders dated 24.4.2014 and 7.5.2014, it is urged that though the trend emerging with regard to cancellation of admissions in both the orders is different, yet the same logic has been applied while cancelling admissions.

26. Mr.Vivek Rusia, learned counsel for the petitioner in Writ Petition No.6883/2014 has submitted that father of the petitioner is a low paid employee and the petitioner has good academic record. It is also urged that initially the committee did not find petitioner's involvement in the use of unfair means in the examination and it is not possible for a candidate to indulge in copying in the presence of invigilator. Our attention has also been invited to communication dated 30.1.2014 sent by the Director, Professional Examination Board to the Director, Medical Education, to contend that since examination was conducted by the Board in the year 2012 and students are prosecuting their studies in various Medical Colleges, therefore, Board has no authority to cancel the results of such students.

27. Mr. Arpan J.Pawar, learned counsel for the petitioners in Writ Petitions

No.7523/2014, 7525/2014, 7526/2014, 7860/2014 and 8137/2014 has submitted that no notice was issued to the petitioners before passing the impugned order and the same was passed in hot haste without properly examining the records. It is also submitted that impugned order has been passed on surmises and conjectures and there is no material available with the respondents for inculpating the petitioners in the case of unfair means. It is pointed out that petitioners have good academic profile and the statistical data prepared by respondent No.3 cannot form the basis for any punitive action against the petitioners. It is also urged that the petitioners No.2 and 3 have also cleared D-MAT Examination, 2011. It is further urged that marks obtained by the petitioners are nowhere similar to alleged scorers. While referring to return filed by respondents, it is pointed out that there is a change in scan numbers of 248 candidates, yet results of only 133 candidates have been cancelled. It is also argued that there is change in date of birth of as many as 161 candidates, but change in scan number in respect of aforesaid candidates in the report has not been indicated.

It is also argued that out of 26,115 roll numbers selected by the Board, only 1036 roll numbers were chosen for scrutiny and in many other cases where candidates have secured more or less same marks, no action has been taken. In this connection, our attention is invited to averments made in para 4 of the rejoinder. It is also urged that there was neither any report of use of unfair means by the petitioners from the invigilators, nor any report of illegal change of seating pattern. The Board has failed to place the OMR sheets of petitioners and the alleged scorers on record. While referring to page 153 of the return filed by respondents, it was pointed out that petitioner No.2 was sitting in front row and not at the rear of the row and the Board is deliberately withholding the information sought for by the petitioners under the Right to Information Act, 2005. It is also argued that document Nos. P-1321/c and P-1325/c, in which, the cases of the petitioners were shown to have been considered, have not been placed on record and there is no averment in the return that OMR sheets of all 26,115 candidates have been examined. It is also submitted that petitioners in W.P. No.7126/14 and W.P. No.8137/14 were female candidates who had appeared in the examination for the first time and, therefore, the allegation of the respondents that they acted as scorers, is incorrect. In support of aforesaid submissions, learned counsel for the petitioners has placed reliance on the decisions of the Supreme Court in cases of *Veer Pal Singh* (supra) and *Institute of Chartered Financial Analysts of*

India (supra). Learned counsel has also referred to paragraph 55 of the judgment referred by the Division Bench of this Court in the case of *Ku. Pratibha Singh Vs. State of M.P. and others* (W.P.No.20342/2013).

28. Mr. Ritwik Parashar, learned counsel for petitioners in W.P. No.7542/2014 and W.P.No.14458/2014 has submitted that the petitioners were sitting in the front row and, therefore, their involvement in copying is ruled out. It is also submitted that the case of the petitioners does not fall within the formula prescribed by the Board for ascertaining whether or not a candidate has indulged in use of unfair means. Mr.Anubhav Jain, learned counsel for the petitioner in W.P. No.9444/2014 has submitted that there is difference in the marks obtained by the petitioner and that of the scorer.

29. Mr. R.K. Sanghi, learned counsel for the petitioner in W.P. No.9322/2014 has submitted that there was no sufficient time during the examiantion and, therefore, it was not possible for the candidates to indulge in copying. It is further submitted that scan number of the petitioner was not changed whereas, the scan number of the beneficiary in W.P. No.7527/2014 was changed. It is further submitted that the petitioner has been appearing in the Pre Medical Tests since year 2005 and has succeeded in the year 2010. It is also pointed out that the beneficiary as well as the scorer took admission in M.B.B.S. Course and both of them belong to State of Madhya Pradesh. It is also pointed out that the petitioner is ready to face the NARCO test. It is also argued that individuals have been charged with copying, therefore, the instant case is not a case of mass copying. In support of aforesaid submissions, learned counsel for the petitioner has placed reliance in the case of *Tushar Ranjan Sahu and 38 others Vs. Council of Higher Secondary Education, Orissa and others*, AIR 1997 Orissa 194. Learned counsel for the petitioner has also referred to Broom's Legal Maxims Tenth Edition and has referred to the maxims *"DE NON APPARENTIBUS ET NON EXISTENTIBUS EADEM EST RATIO' and 'POTEST ADDUCI EXCEPTIO EJUSDEM REI CUJUS PETITUR DISSOLUTIO"*. Learned counsel in support of his submissions has also referred to the First Edition of the "Discipline of Law" by Lord Denning and to 'Due Process of Law' First Edition by Abhinav Chandrachud.

30. Mr. Nishant Jain, learned counsel for the petitioner in W.P. No.7527/2014 has adopted the submissions made by Mr. R.K. Sanghi, Advocate. Mr.A.T. Faridi, learned counsel for the petitioner in W.P. No.10851/2014 has submitted that in the facts of the case, the Board ought to have conducted

fresh examination.

31. Mr. A.K.Bajpai, learned counsel for the petitioner in W.P. No.8273/2014 has submitted that Pre-Medical Test, 2009 was not a case of mass-copying, as out of around 20,000 candidates, the results of only 0.29% of the candidates have been cancelled and, therefore, the Board ought to have followed the principles of natural justice. It is also submitted that formula evolved by the Board for ascertaining whether or not a candidate has indulged in mass-copying has to be static and cannot be different for different years.

32. Mr. H.K Upadhyaya, learned counsel for the petitioners in W.P. Nos.10189/2014, 7800/2014, 8640/2014 and 8095/2014 has submitted that the petitioners are not involved in the tampering of roll numbers and while inviting our attention to page 160 of the return, it is contended that roll numbers of 161 candidates were tampered yet, no action has been taken against them. It is further submitted that percentage of cancellation of the results in the Pre Medical Tests of 2010 and 2011 are respectively 0.33% and 0.37% and, therefore, no inference can be drawn that candidates had indulged in mass copying in the said examinations. In rejoinder reply, it is highlighted that there is distinction between correlation and causation, and correlation does not imply causation. It is also submitted that the Board while taking action against the students has acted on probability. However, the data of match answers applied by the Board do not behave in normal probability distribution as the value of mean, median and mode is not equal. In support of his submissions, Mr. Upadhyay has referred to the extracts taken out from the websites, namely, www.purplemath.com and en.wikipedia.org.

33. Mr.Aditiya Sanghi, learned counsel for the petitioner in W.P. No.7619/14 has submitted that in order dated 7.5.2014 the petitioner has been treated to be a scorer who had allegedly helped one Rajesh Yadav and Mohd.Ashfaq in copying. However, in order dated 24.4.2014 Mohd. Ashfaq has been shown as scorer who had helped one Raksha Maladhari in copying. It was also pointed out that the case of the petitioner does not fall within the formula prescribed by the respondent to ascertain whether the candidates had indulged in use of unfair means. It is pointed out that the entire case against the petitioner is based on suspicion and the fact that the petitioner had indulged in copying, is proved.

34. Learned counsel while advancing arguments in W.P. No.10414/2014

has submitted that the petitioner was sitting in front row facing the wall and therefore, it was not possible for him to indulge in copying. It is also submitted that it is alleged that the petitioner was a scorer who had helped Anshuman Singh as well as Sant Kumar Maurya whereas, in order dated 24.4.2014, said Anshuman Singh has been shown to be a scorer. Learned counsel while canvassing his submissions in W.P.Nos.8108/2014 and 8094/2014 has submitted that petitioner in W.P.No.8108/2014 has completed the M.B.B.S. course and is working as Intern whereas, petitioner in W.P. No.8094/2014 is a student of Final Year of MBBS course. The case of the petitioners does not fall within the scope and ambit of formula prescribed by the respondents to ascertain whether the candidates had indulged in use of unfair means. Learned counsel for the petitioners in W.P. No.7619/2014, 8094/2014, 8108/2014, 10414/2014, 10415/2014 and 10422/2014 has adopted the submissions of Shri Rajendra Tiwari, learned senior counsel.

In W.P.No.8371/2014, learned counsel has submitted that petitioner is alleged to be a scorer in respect of the Pre-Medical Test, 2008 and his case does not fall within the purview of formula prescribed by respondents. In W.P. No.10420/2014, it is submitted that the petitioner had taken admission in Private Medical College in the year 2012 against the Government seat.

35. Mr. Amitabh Gupta, learned counsel for the petitioners in W.P. Nos.7121/2014 and W.P. No.7825/2014 has invited our attention to page 7 of the compilation filed on behalf of the Board and has submitted that the formula adopted by the Board for ascertaining whether the candidates have resorted to unfair means is obsolete and certain more data are required to verify whether it is authentic. It is further submitted that the petitioner in W.P. No.7121/2014 had sought opinion of the experts orally and the experts have opined that there is no logic of adopting the criteria evolved by the Experts Committee of the Board to ascertain whether a candidate had indulged in use of unfair means. It is also submitted that the software as well the documents mentioned in I.A. No.9932/2014 and I.A.No.9060/2014 in W.P. No.7121/2014 ought to have been supplied to the petitioner as the basis of the formula is not discernible to the petitioner. It is also submitted that though an inquisitorial enquiry was undertaken by the Board to ascertain the facts, yet the final order was passed by the Board on 3.5.2014. While inviting our attention to page 3 of the return, it is contended that 300 students from Government Kasturba Higher Secondary School have appeared, out of which 16 students have been

named, either as beneficiary or as scorer. It is further submitted that since the examination was of objective type, therefore possibility of candidates either answering the correct answers or the probable correct answers was very high and, therefore, the per centage of mis-match is on higher side. It is also submitted that non-supply of data as required by the petitioner vide I.A. No.9932/2014 and I.A.No.9060/2014 has prejudiced the petitioner. It is further submitted that there are seven well settled grounds for exclusion of principles of natural justice, namely, statutory exclusion, legislative Act, necessity, undisputed facts, confidentiality, preventive action, emergency and where nothing unfair can be presumed. However, none of the grounds are available in the instant case, so as to warrant exclusion of principles of natural justice. The impugned action has been taken by the respondents in hot haste and no explanation has been offered for exclusion of principles of natural justice. In support of aforesaid submissions, learned counsel for the petitioner has referred to the decision of the Supreme Court in *Competition Commission of India* (supra). It is also urged that even though in a case of enquiry pertaining to mass copying, provisions of the India Evidence Act, 1872 may not apply, however, the documents produced in the enquiry, which are relied upon, had to be proved and if the party wants inspection of the documents, the same should be granted. It is also submitted that in a proceeding before the quasi-judicial authority, the principles of natural justice would apply and no ground is available for exclusion of principles of natural justice in the fact situation of the present case. In support of aforesaid submissions, reference has been made to the decisions of the Supreme Court in the cases of *M/s. Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and others,* (1971) 2 SCC 617 and *Board of High School and Intermediate Education, U.P. Allahabad vs. Ghanshyam Das Gupta and others,* AIR 1962 SC 1110.

36. It is further submitted that the officials of the Board were biased and the action against the petitioners has been taken in premediated manner, which is evident from the order. In support of aforesaid submission, learned counsel has placed reliance on the decision of the Supreme Court in *Radhey Shyam Gupta vs. U.P.State Agro Industries Corporation Ltd and another,* (1999) 2 SCC 21. It is also argued that even if the documents were not required by the candidate, then too such documents ought to have been supplied to the candidate. In support of aforesaid contention, reference has been made to the decision of the Supreme Court in the case of *Nagarjuna Construction Company Limited* (supra). It is also pointed out that the petitioner has a

good academic record. While referring to page 31 of the second compilation filed on behalf of the respondents, it is pointed out that the formula for ascertaining the fact of copying, has not been explained by the respondents. It is also submitted that the petitioner in W.P.No.7121/2014 is a student of IInd Year of M.B.B.S. course, whereas the petitioner in W.P. No.7825/2014 has completed his M.B.B.S. course and is undertaking internship. At this stage, learned counsel for the petitioners has sought leave of this Court to produce certain additional facts. Thereupon, following order was passed on 10.9.2014:-

"10.09.2014

I.A. No.11946/2014 & I.A. No.11944/2014:

Not on Board: these matters have been mentioned by Mr. Amitabh Gupta, Advocate for the petitioners with a request to take up the same along with the group of cases, which are presently being heard by the Court as overnight part heard cases.

In these matters, the petitioners invited order of the Court on interlocutory applications (I.A. No.9060/2014; I.A. No.9932/2014 in W.P. No.7121/2014; I.A. Nos.9933/2014, I.A. No.9073/2014 in W.P. No.7418/2014, I.A. No.9074/2014, I.A. No.9936/2014 in W.P. No.7825/2014 and I.A. No.9075/2014 and 9934/2014 in W.P. No.8056/2014), for issuing direction to the respondents to supply stated documents as a precondition for proceeding with the hearing of the main writ petitions. That request was, however, negatived vide order dated 3.9.2014 with liberty, as the petitioners intended to challenge the said decision before the Supreme Court. The petitioners are, however, now advised to pursue their main petitions before this Court without challenging the said decision before the Supreme Court, but, with liberty to the petitioners to agitate the points urged and referred to in the order dated 3.9.2014 at the appropriate stage.

Above mentioned formal applications have been filed on behalf of these petitioners for preponing the date of hearing of the writ petitions and to hear the same along

with the overnight part heard companion cases, which are already listed before the Court today. The application, however, is not supported by any affidavit of the petitioners. Learned counsel submits that due to paucity of time, he was not able to obtain affidavit of the petitioners but he has received clear instructions on telephone from concerned petitioner(s) to proceed with the hearing of these writ petitions. Further, it is noticed that the application as presented, is very vague and does not specifically state that the petitioners are interested in proceeding with the hearing of these matters inspite of the order dated 3.9.2014 passed by the Division Bench in these petitions.

Learned counsel for the petitioners/applicants submits that the subject applications presented by him in the Court this morning be ignored and instead, he may be permitted to file a formal application incorporating all aspects, as are necessary for entertaining the request for preponing the date of hearing of these writ petitions. He undertakes to file such application with appropriate reliefs including to dispense with the filing of affidavit of the petitioners for the reasons to be recorded in the application and to treat the proposed application as having been made by the Advocate himself. He further prays that until such formal application is filed, the request, which he proposes to make in the said application, be treated as oral request made by him across the Bar and proceed on that basis. This request is made because the arguments of the petitioners in companion cases, which are listed as overnight part heard cases, are already concluded and the reply of the State will begin from today. Before that, he intends to make his submission on behalf of the aforesaid two petitioners on condition stated hitherto.

We show indulgence to these petitioners and permit the Advocate for the petitioners to address us on merits of the writ petitions with liberty to the petitioners to challenge the opinion recorded in the decision dated 3.9.2014 if and

when occasion arises at the appropriate stage.

The undertaking given by Mr. Amitabh Gupta, Advocate for the petitioners that formal application regarding the abovesaid position will be filed in the course of the day made across the Bar, is accepted as the petitioners should not suffer, as the matter would become fate accompli for them if adverse judgment is rendered in the companion cases.

We further place on record the statement made by Mr. Amitabh Gupta, Advocate that although he is appearing as Advocate in about 75 cases, which have been deferred on his request to 6th October, 2014, only two petitioners have agreed to abide by his advice to pursue the writ petitions before this Court and the rest of the petitioners may decide to withdraw the respective petitions filed by them with liberty to file civil suit for appropriate reliefs against the orders passed by the Competent Authority, which decision will be taken by them very shortly. Hence, formal application for preponing the hearing of those matters is not made on their behalf, though Mr. Gupta is common Advocate for the petitioners in all those cases.

I.A. No.11946/2014 and I.A. No.11944/2014 are accordingly disposed of on the above terms.

Shri Amitabh Gupta is called upon to proceed with his argument in the main writ petitions forthwith, so that the Advocate for the respondents can give a consolidated reply (argument) in respect of all the petitioners together thereafter. Accordingly, Shri Amitabh Gupta commenced his oral arguments in the main above-numbered writ petitions.

(A.M. Khanwilkar)
Chief Justice

(Alok Aradhe)
Judge

Later on :

At 12:40 P.M.

At this stage, when one more than one hour has been spent on hearing Shri Amitabh Gupta, learned counsel for the petitioners, he submits that the petitioners would like to rely on new facts including academic performance of the petitioners in other examinations conducted during the same time. No such pleading is found in the writ petition. Question of permitting the petitioners to amend the pleadings at this belated stage and more so keeping in mind the indulgence shown by allowing preponement of hearing of the writ petitions on the request and assurance given by the Advocate across the Bar as recorded in the earlier part of the order, cannot be countenanced. Entertaining such request would inevitably result in deferring the hearing of all the matters, which ought to be eschewed. For, hearing in other connected matters is already continuing for more than four full days (i.e. 4.9.2014, 5.9.2014, 8.9.2014 and 9.9.2014).

Therefore, we must record our disapproval about the manner in which the matter is being presented by Shri Amitabh Gupta, learned counsel for the petitioners. For, if his request is to be accepted, it would result in protracting the hearing of all the cases. Hence, this prayer is rejected."

37. In rejoinder reply, it is submitted that there is irrationality on the part of the Board in conducting the examination and the same is being imputed to the petitioners. It is also submitted that the cases of all the candidates were not subjected to scrutiny on the basis of the formula of Unfair Score evolved by the Board and the averments made in paragraph 6.4 in Writ Petition No.7121/2014 have not been rebutted by the Board. It is contended that the possibility of several candidates having secured similar marks has also not been explained, as possibility of answering probable answers is high. It is also urged that the Board should have taken into consideration the cases of all the selected candidates while undertaking the process of cancellation of examination results of all the candidates who have allegedly indulged in unfair means and by not doing so, unequals have been treated as equals and the action of the Board suffers from irrationality. It is also pointed out that Brochure issued by the Board should have contained a stipulation that if candidates secure similar marks, their results were likely to be cancelled. It is submitted

that this Court in exercise of power under Article 226 of the Constitution of India has the jurisdiction to determine the disputed questions of fact. In support of the aforesaid submissions, our attention has been invited to relief clauses 7.3 and 7.4 in Writ Petition No.7825/2014 and reliance has been placed on the decisions in *Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot and others,* AIR 1974 SC 2105 and *Om Prakash v. State of Haryana and Others*, (1971) 3 SCC 792.

38. Lastly, it is urged that no complaint has been made by anybody immediately after the examination. It is also urged that the rules of game cannot be changed after examination, as formula to ascertain the fact whether or not a candidate had indulged in use of unfair means was evolved after the examination was held, which amounts to change of rules of game. In support of aforesaid submissions, learned counsel has placed reliance on the decisions in *M/s.Monarch Infrastructure (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation and others,* AIR 2000 SC 2272 and *Ramesh Kumar v. High Court of Delhi and Another,* AIR 2010 SC 3714. Learned counsel has also referred to the decision in *Tata Cellular v. Union of India,* AIR 1996 SC 11 to invite our attention to scope of judicial review.

39. Mr. K.C.Ghildiyal, learned counsel for the petitioner in Writ Petition No.7295/2014 submitted that by an order dated 27.3.2014, the admission of the petitioner of Pre-Medical Test, 2013 has been cancelled. It is further submitted that the impugned order is wholly illegal, arbitrary and without any justification. It is also urged that no opportunity of hearing was afforded to the petitioner before passing the impugned order.

40. In Writ Petition Nos.1918/2014, 7529/2014, 7530/2014, 7682/2014, 7776/2014, 7856/2014, 7861/2014, 7876/2014, 7881/2014, 7891/2014, 7926/2014, 7982/2014, 8023/2014, 8024/2014, 8030/2014, 8048/2014, 8049/2014, 8050/2014, 8051/2014, 8052/2014, 8068/2014, 8069/2014, 8083/2014, 8144/2014, 8167/2014, 8488/2014, 8985/2014, 8990/2014, 8993/2014, 9318/2014, 9321/2014, 9326/2014, 9327/2014, 9340/2014, 9413/2014, 9415/2014, 9466/2014, 9475/2014, 9577/2014, 9583/2014, 9584/2014, 9585/2014, 9588/2014, 9595/2014, 9596/2014, 9624/2014, 9798/2014, 10149/2014, 10151/2014, 10153/2014, 10155/2014, 10156/2014, 10158/2014, 10159/2014, 10160/2014, 10161/2014, 10162/2014, 10163/2014, 10164/2014, 10165/2014, 10221/2014, 10390/2014, 10391/2014, 10418/2014, 10503/2014, 10507/2014, No.11097/2014, 11099/

2014, 11106/2014, 11112/2014, 11119/2014, 11153/2014, 11491/2014, 11493/2014, 11496/2014, 11510/2014 9690/2014 and 8817/2014 no counsel has addressed us separately, therefore, we presume that they have adopted the arguments already made on behalf of the petitioners in other matters.

41. Mr. P.K. Kaurav, learned counsel for the respondents on the other hand has invited our attention to various paragraphs of the order dated 11.4.2014 passed in W.P. No.20342/2013 (*Ku. Pratibha Singh Vs. State of M.P. and others*) and has submitted that the issues raised in the instant writ petition are covered by the decision rendered by Division Bench of this Court in the aforesaid writ petition. It is further submitted that the common elements, namely tampering/mass copying of roll numbers, involvement of some technical professional racketeers, tampering/mass copying only in selected cities and selected centres and high percentage of matching of correct and incorrect answers in selected cities and centres and the opinion furnished by the Special Task Force in respect of Pre Medical Tests, 2008 to 2012 as well as 2013 exist and, therefore, it can safely be held that candidates even in the Pre Medical Tests of 2008 to 2012 have indulged in mass copying. It is further submitted that on account of revealation made in the course of investigation, a decision was taken to scrutinize the cases of the candidates who had appeared in the Pre Medical Tests between the years 2008 to 2012. The formula evolved by the Computer Experts Committee for ascertaining whether or not the candidates had indulged in use of unfair means, is logical.

42. Learned counsel for the respondents has invited our attention to various pages of the compilation filed by him and has pointed out the seating plan as well as the documents on record to contend that most of the candidates who had indulged in copying were sitting at the back of the row, in certain centres and in selected cities. It was further submitted that the candidates whose matching answers were low and who did not qualify in the examination were excluded from the purview of scrutiny and, therefore, no action was taken against them. However, an undertaking has been given by learned counsel for the respondent before us that action against all the candidates who had indulged in the case of mass copying would be taken as was done in respect of Pre Medical Test, 2013.

It is also submitted that action for cancellation of results of the candidates has been taken on the basis of data which were available with the Board as well as the record, seating plan and the information which was supplied

by the Special Task Force. It is also urged that material on record leads to inevitable conclusion that identified candidates had indulged in use of unfair means. It is submitted as under:

(a) The roll numbers were allotted to concerned candidates in a particular pattern and in deviation of prescribed method/ norm.

(b) The roll numbers are clearly mis-matching as they have been realigned to facilitate the concerned candidates to indulge in copying.

(c) The same officers who had manipulated the data and had realigned the roll number of the year 2013 namely Nitin Mohindra, Senior System Analyst, Ajay Kumar Sen, System Analyst and C,K.Mishra, Assistant Programmer were Incharge and responsible for the activity and the same pattern has been adopted for the year 2008 to 2012.

(d) There is high percentage of matching of correct as well as wrong answers given by Scorer and the concerned candidate as has been noticed from the respective answersheets.

(e) Many candidates despite scoring very high marks in 2011 and 2012 did not take admission in the MBBS course which indicates that they appeared in the examination only as Scorers to help the candidates sitting behind or in front of them, as the case may be. Many candidates who appeared in 2008, 2009 and 2010 examinations and whose results have been cancelled by the Board, have taken admissions but they had appeared in PMT examinations in the previous years also and performed poorly. The marks scored by these candidates in their previous attempts have been mentioned in Annexure-R/8.

(f) The irregularities have been found to be in increasing manner from 2008 to 2013 which also goes to show a gradual increasing trend of commission of irregularities in MBBS Examination for facilitating commission of unfair means by selected candidates.

(g) The graphical chart clearly shows unusual trend of average matching and mismatching of answers in comparison of candidates whose results are cancelled and all students.

(h) Mass copying has taken place at particular centres and in particular cities where the candidates outside from the State of Madhya Pradesh alongwith the candidates from Madhya Pradesh have appeared, at times concentrated number in one room of the Centre. The candidates who have acted as scorers, even though secured higher marks, have neither taken admission in the M.B.B.S. Course nor have filed writ petitions before this Court challenging the cancellation of the results.

43. It is also urged that aforesaid indisputable facts emerging from the official record placed before the Court, are sufficient to justify the decision taken by the authorities and to arrive at the conclusion that identified candidates against whom action has been taken were involved in organized mass-copying and had resorted to unfair means during examination. In support of his submissions, learned counsel has relied on the decisions of Supreme Court in the cases of *Bihar School Examination Board vs. Subhash Chandra Sinha,* AIR 1970 SC 1269, *Maharashtra State Board vs. K.S.Gandhi,* (1991) 2 SCC 716, *Union of India vs. Anand Kumar,* (1994) 5 SCC 663, *Biswa Ranjan Sahu Vs. Sushanta Kumar,* (1996) 5 SCC 365, *M.C.Mehta vs. Union of India,* (1999) 6 SCC 237, *Aligarh Muslim University vs. Mansoor Ali Khan,* AIR 2000 SC 2783, *Ram Preeti Yadav vs. U.P.Board of High School and Intermediate Education and others*, (2003) 8 SCC 311, *State of Maharashtra vs. Jalgaon Municipal Corporation,* (2003) 9 SCC 731, *Secretary, AP Social Welfare Residential Educational Institute vs. Pindiga,* (2007) 13 SCC 352, *Chief General Manager, BSNL vs. Surendranath Pandey,* 2012 (1) SLJ 73, *Tushar Ranjan Sahu* (supra) , *M.P. Board of Secondary Education vs. Shahi Tomar,* 2004 (1) MPLJ 455, *Chairman JNK State Board vs. Faiyaz Ahmad,* (2000) 3 SCC 59, *B.Ramanjini and others vs. State of A.P.,* (2002) 5 SCC 533, *All India Railway Recruitment Board vs. K. Shyam Kumar,* (2010) 6 SCC 614, *Board of High School and Intermediate Education Vs. Bagleshwar Prasad,* AIR 1966 SC 875, *Prem Prakash Kaluniya vs. Punjab University,* (1973) 3 SCC 424, *Madhyamik Shiksha Mandal Vs. Abhilash Shiksha Prasar Samiti,* (1998) 9 SCC 236, *UPSC Vs. Jagannath Mishra,* (2003) 9 SCC 237, *Director, Students*

Dr.Ambedkar Institute of Hotel Management Nutrition and Catering Technology Chandigarh, (2009) 1 SCC 59 and *Pravamayee Nayak Vs. Council of Higher Secondary Education,* AIR 2003 Orissa 47.

44. In respect of Writ Petition No.7295/2014, learned counsel for the Board, while referring to the return, has submitted that the controversy involved in the petition is covered by the decision rendered by the Division Bench of this Court in *Pratibha Singh* (supra). While referring to paragraph 5 of the return it is pointed out that a candidate having roll number 545059 who was sitting in front of the petitioner in the examination hall was from New Delhi who had opted Shahdol as examination centre and the petitioner who had roll number 545060 and sitting behind the aforesaid candidate from New Delhi belongs to Balaghat, had chosen Shahdol as examination centre. It is further submitted that in the order it has been mentioned that seventy questions were answered in similar manner by the scorer as well as the petitioner and as per information furnished by the Special Task Force the candidate bearing roll number 545059 and the petitioner were in contact with the middleman and their roll numbers were tampered and they had deliberately opted for examination centre, Shahdol whereas for the candidate from New Delhi, Gwalior was the nearest examination centre. Accordingly, it has been held that the petitioner had indulged in use of unfair means and her examination result has rightly been cancelled.

45. We have considered the rival submissions made on both sides and have perused the record. Before proceeding to deal with the issues involved in the instant writ petitions, we deem it appropriate to deal with Interlocutory Applications No.9932/2014 and 9060/2014 filed in Writ Petition No.7121/2014. By means of I.A.No.9060/2014, the petitioner in Writ Petition No.7121/2014 has sought for the production of documents/ software/information. In I.A.No.9932/2014 the petitioner has, *inter alia,* submitted that the Board had supplied the written programming of the Software, namely, CMP 200 - the programme used by Joint Controller (Computer) for analyzing the answer-sheets of the candidates. However, information, as to said programme, is deficient in following respects:-

> *(a) Details of the operating system on which the given program CMP 200. PRG was compiled /executed.*
>
> *(b) Soft copy of the software/compiler/platform which was used for the given program CMP 200.PRG*

(c) Algorithm/flow-chart/state-machine used to construct/write the program named CMP 200. PRG.

(d) Input and output files used to get the result as mentioned in the order impugned."

The aforesaid information is being sought by the petitioners on the basis of opinion given by Assistant Professors of Pt.Dwarka Prasad Mishra, IIIT-DM, Jabalpur.

46. During the course of submissions when a query was put to learned counsel for the petitioners, whether the petitioners had sought the opinion of the experts in writing, learned counsel for the petitioners fairly submitted that he had sought opinion of the experts orally.

47. We have carefully gone through the opinion given by the experts. In the opinion relied upon by the petitioners the experts have stated that the formula does not seem to be based on any scientific background and impugned orders by which the results of the candidates have been cancelled are silent as to any statistical analysis is available in relation to the question paper with respect to the nature/pattern of answers of the questions contained in it. The experts have further stated that the impugned orders of cancellation of results of the candidates are silent as to whether any expert opinion has been taken with respect to answers and question in order to know the relevancy of four options to the question, as many a times, two options are easily recognized as irrelevant, thereby increasing the probability of opting same correct or incorrect options out of remaining two because of seeming proximity/similarity between them. The experts have also stated that the impugned orders do not mention the contents stated in para 4 of the opinion. The background in which the experts have given their opinion is not discernible to us, as the opinion from them was sought orally.

48. An opinion of an expert has to be understood in the context of query put to him. It is pertinent to note that neither the opinion has been given by the experts on the letter head nor any affidavit in support of the opinion, has been filed. Besides that, we are afraid that while criticising the impugned orders, the experts have travelled beyond the scope of opinion, as experts cannot be permitted to adjudge the validity of the orders passed by the Board which the Court alone is empowered to examine. The experts have not given any opinion that the formula evolved by the committee of experts of the Board is either

impermissible or replete with palpable error or by using the formula, the cases of the candidates who had resorted to unfair means, cannot be identified. Therefore, on the basis of aforesaid expert opinion, the petitioners cannot be permitted to seek production of documents/ software/information as prayed by them in I.A. No.9932/2014. It is well settled in law that all the grounds for passing order by an administrative authority need not be mentioned in the order itself, but can be relied upon contemporaneous material later on, in which larger public interest is involved. [See: *K.Shyam Kumar* (supra)] Therefore, there is no need of mentioning the basis of formula in the impugned orders of cancellation of results of the candidates. All the material information which has been taken into account by the Board in decision making process while passing the impugned orders and which has been taken into consideration by this Court has been supplied to the petitioners and, therefore, question of prejudice on account of non-supply of the documents, as demanded, does not arise.

49. Now we may deal with the core issue of the case i.e. whether candidates had indulged in use of unfair means i.e. mass copying in Pre Medical Tests 2008 to 2012. The expression 'mass copying' has not been defined in the Rules governing the Pre Medical Test. It has, therefore, to be understood in its common parlance. In *Tushar Ranjan Sahu* (supra), it has been held that what could be considered mass copying cannot be laid down with mathematical precision and has to be decided in the facts of each case. Now, we may refer to the facts year-wise to ascertain whether the candidates had indulged in mass-copying. The Committee constituted to identify the candidates who had indulged in use of unfair means in Pre Medical Test, 2012 in its report, *inter alia*, found that:-

> (i) Roll numbers of 701 candidates were tampered after their generation and there was departure from settled norms for allotment of roll numbers in respect of aforesaid candidates.
>
> (ii) In Bhopal, in examination centres, namely, Raja Bhoj Higher Secondary School, Bhopal; Government Kamla Nehru Higher Secondary School, Bhopal; and Government Kasturba Higher Secondary School, Bhopal, 12, 18, 22 candidates respectively were sitting in pairs at the end of the row whose roll numbers were tampered and their right match answers and wrong match answers are similar.

(iii) Similarly, in Indore in examination centres, namely, Shri K.B.Patel Gujrati Girls Higher Secondary School, Indore; PMB Gujarati Science College, Indore; and RRMB Gujarati Higher Secondary School, Indore, 46, 44 and 116 candidates respectively were sitting in pairs, whose roll numbers were tampered and their right match answers and wrong match answers are identical.

(iv) In Government India Gandhi Girls College, Shahdol, 14 candidates were sitting in pairs and their right match answers and wrong match answers are identical.

(v) The candidates whose roll numbers were altered and who were sitting in pairs, one of the candidate from the pair was from outside the State and the other candidate in most of the cases did not belong to the city where the examination centre was located.

For the facility of reference relevant extract of the chart annexed with the Compilation-I at Page 165 as well as seating plan of the candidates is reproduced below which shows that candidates sitting in pairs in selected cities and in selected examination centres have secured same marks and one of the candidates of the pair was from outside the State of Madhya Pradesh, and other candidates in most of the cases did not belong to the city where examianation centre was located.

Pre-Medical Test -2012

Examination City – Bhopal

Examination Centre – Govt. Raja Bhoj Higher Secondary School

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
2.	Anand Kumar, Patna (Bihar) Samrudhi Dixit, Balaghat	412035 412036	163 162	199	151	48
4.	Sonu Kumar, Patna (Bihar) Farukh Shah, Ujjain	412095 412096	155 155	195	142	53

Examination City - Bhopal
Examination Centre - Govt. Kamla Nehru Girls Higher Secondary School

S.No	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
12.	Richhapal Galwa, Kota (Rajasthan)	413103	172	195	160	35
	Avijeet Prasad, Gwalior	413104	167			
13.	Ashok Kumar, Indore	413109	165	196	152	44
	Ashish Swami, Jhunjhunu (Rajasthan)	413110	165			

Examination City - Bhopal
Examination Centre - Govt. Kasturba Higher Secondary School

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
18.	Shakir Seekar (Rajasthan)	413567	163	182	148	34
	Raghuveer Yadav, Morena	413568	165			
21.	Pradeep Kumar Verma, Narsinghpur	413597	165	198	152	46
	Jaikaran Yadav, Bhopal	413598	163			

Examination City - Indore
Examination Centre -Shri K.B. Patel Gujrati Girls Higher Secondary School

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
28.	Brajesh Mishra, Katni	433007	163	188	145	43
	Natasha Cam, Dewas	433008	159			
31.	Vinayak ChandraDiwakar, Patna (Bihar)	433025	141	194	129	65
	Deepak Chouhan, Dhar	433026	142			
35.	Prakhar Garg, Bulundshahar (U.P.)	433037	122	170	99	71
	Rahul Chouhan, Badwani	433038	116			
37.	Vivek Kumar, Patna (Bihar)	433066	149	191	134	57
	Ashish Dawar, Dhar	433067	146			
46.	Mohammad Daidan, Hamirpur (U.P.)	433125	168	193	156	37
	Anil Dabar, Indore	433126	173			

Examination City - Indore
Examination Centre - P.M.B. Gujrati Science College

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
51.	Pradeep Kumar Bharadwaj, Indore	433417	139	197	128	69
	Jitendra Akhdiya, Jhabua	433418	139			
54.	Darvesh Singh, Bareli (U.P.)	433435	139	190	124	66
	Vinod Mehta, Khargone	433436	137			
57.	Alok Agrahari, Sultanpur (U.P.)	433453	158	192	142	50
	Gaurav Solanki, Khargone	433454	155			
60.	Anil Singh, Kanpur (U.P.)	433471	170	193	155	38
	Rajkumar Kanash, Dhar	433472	169			
65.	Anuj Kumar Maurya, Kanpur (U.P.)	433513	165	195	149	46
	Pushplata Solanki, Dahi	433514	161			
70.	Juber Ahmad, Bareli (U.P.)	433533	165	199	153	46
	Sonal Saryam, Seoni	433534	166			

Examination City - Indore

Examination Centre - R.R.M.B. Gujrati Higher Secondary School

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
72.	Mohammad Feroz, Bareli (U.P.)	433903	147	182	134	48
	Anoop Kumar Sharma, Nagda	433904	156			
75.	Vivek Patel, Indore	433917	151	193	137	56
	Vivek Chourasiya, Tikamgarh	433918	149			
80.	Anil Kumar, Rampur (U.P.)	433929	172	197	157	40
	Parak Nayak, Chhattarpur	433930	169			
83.	Laxman Gupta, Satna	433939	133	191	122	69
	Shruti Saxena, Bhopal	433940	137			
87.	Muktadeer Ahmad Pilibheet (U.P.)	433953	143	186	132	54
	Chitranshi Garg, Indore	433954	152			
91.	Rahul Gurjar, Bhind	433970	163	197	152	45
	Neeraj Pathak, Indore	433971	167			

95.	Devendra Kumar, Indore Rohit Hada, Jhabua	433981 433982	145 162	181	135	46
98.	Kamal Akhtar, Kanpur Arpit Patidar, Khargone	433989 433990	162 161	198	150	48
105.	Priyanka Chhapre, Durg Shradda Gupta, Badwani	434019 434020	163 158	192	146	46
108.	Mohammad Afroz, Kanpur Manisha Kanare, Mandleshwar	434031 434032	126 124	185	112	73
113.	Hemant Sevriya, Gwalior Budhvilas Singh, Satna	434054 434055	155 162	182	143	39
129.	Sohaib Aajam, Kanpur Umashankar Gahlot, Jhabua	434101 434102	145 144	186	128	58
130.	Vijay Kumar Singh, Jabalpur Chetan Chouhan, Indore	434113 434114	165 163	196	151	45
131.	Madhvi Singh, Indore Deepshika Damor, Jhabua	434128 434129	140 143	188	129	59

Examination City - Shahdol

Examination Centre - Govt. Indira Gandhi Girls College

\S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
132.	Rupesh Kumar Shrivastava, Patna Ankit Tiwari, Katni	453635 453636	169 168	199	156	43
133.	Nitesh Kumar Singh, Patna Anshul Ochhani, Shahdol	453665 453666	166 168	191	153	38
135.	Mithlesh Kumar, Patna Abhay Surana, Balaghat	453725 453726	165 157	183	145	38
136.	Vijay Kumar Singh, Patna Ruchika Kurvey, Umariya	453755 453756	163 168	185	149	36
137.	Ravishankar Kumar, Patna Dipika Bakshi, Betul	453815 453816	161 166	177	143	34
138.	Satish Chandra, Kota (Raj.) Shailesh Kumar Raghuwanshi, Sarni	453845 453846	171 168	195	155	40

PMT 2012-(701) Candidates - Seating Plan

S. No.	City Name	Name of Examination Center/ Name of Invigilators	Room No.	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
1	Bhopal	Raja Bhoj H.S.School Bhopal Smt.Madhuri Singh Smt.Pushpa Thapak	12	412001 412002 412003 412004 412005/195 412006/195	412007 412008 412009 412010 412011 412012	412013 412014 412015 412016 412017 412018	412019 412020 412021 412022 412023 412024	412025 412026 412027 412028 412029 412030	
2	Bhopal	Raja Bhoj H.S.School Bhopal Smt.Sushma Smt.Sunit	13	412031 412032 412033 412034 412035/199 412036/199	412037 412038 412039 412040 412041 412042	412043 412044 412045 412046 412047 412048	412049 412050 412051 412052 412053 412054	412055 412056 412057 412058 412059 412060	
7	Bhopal	Govt.Kamla Nehru Girls H.S. Smt.Nasrat Khan Smt.Archana Sharma	1	413051 413056/105	413062/197	413067/190 413068/190	413073/196 413074/196	413079/184 41380/184	
9	Bhopal	Govt.Kamla Nehru Girls H.S.S. Bhavana Sharma Bharat Khare	3	413111 413112 413113 413114 413115/53 413116/53	413117 413118 413119 413120 413121/55 413133/55	413123 413124 413125 413126 413127/200 413128/200	413129 413130 413131 413132 413133/195 413134/195	413135 413136 413137 413138 413139/161 413140/161	
11	Bhopal	Govt. Kasturba Girls H.S.S. Smt.Kiran Verma Smt.Rajni Gupta	1	413551 413552 413553 413554 413555/186 413556/186	413557 413558 413559 413560 413561/195 413562/195	413563 413564 413565 413566 413567/182 413568/182	413569 413570 413571 413572 413573/167 413574/167	413575 413576 413577 413578 413579/173 413580/173	

13	Bhopal	Govt.Kast urba Girls H.S.S. Smt.Vibha Shrivastava Smt.Rukmani Choubey	3	413611 - 413612 413613 413614 **413615/ 197** **413616/ 197**	413592/NA 413617 413618 413619 413620 **413621/ 200** **413622/ 200**	413623 413624 413625 413626 **413627/ 186** **413628/ 186**	413629 413630 413631 413632 413633 413634	413635 413636 413637 413638 413639 413640	
17	Indore	Mata Jijabai Govt. P.G. Girls College, Indore Dr.Nisha Modi Babita Jain	25	429601 429602 429603 429604 429605 429606 429607 429608 429609 429610	429611 429612 429613 429614 429615 429616 429617 429618 429619 429620	429621 429622 429623 429624 429625 429626 429627 429628 429629 429630	429631 429632 429633 429634 429635 429636/A **429637/ 53** **429638/ 53** 429639 429640	429641 429642 429643 429644 429645 429646 429647 429648 429649 429650	429651 429652 429653 429654 429655 429656 429657 429658 429659 429660
18	Indore	Shri Atal Bihari Bajpai Govt. Arts &Comme rce College Dr.Kavita Rawat Dr.S.P. Pandey	40	431841 **431842/ 85** **431843/ 85** 431844 431845 431846 431847 431848 431849 431850	431851 431852 431853 431854 431855 431856 431857 431858 431859 431860	431861 431862 431863 431864 431865 431866 431867 431868 431869 431870	431871 431872 431873 431874 431875 431876 431877 431878 431879 431880		
28	Indore	P.,M.B. Gujrati Science College, Indore Smt.Rajesh Dubey Shri B. Chawde	CB-07	433449 433450 433451 433452 **433453/ 192** **433454/ 192**	433455 433456 433457 433458 **433459/ 190** **433454/ 190**	433461 433462 433463 433464 **433465/ 196** **433466/ 196**	433467 433468 433469 433470 **433471/ 193** **433472/ 193**		
32	Indore	RRMB	2	433933/	433941/126	433949	433957/		

		Gujrati School, Indore KU.Sonal Soni Ku.Rinku Sharma		197 433934/ 197/15 433935/ 152/19 433936/ 197 433937 433938 433939/ 191 433940/ 191/12	/ 180 433942/180 433943 433944 433945/48 433946/48/ /152 433947/ 152/ 197 433948/ 197	433950 433951/ 195 433952/ 195/143 433953 143/186 433955 433956	197 433958/ 197/106 433959/ 106/167 433960/ 167 433961 433962 433963/ 192 433964/ 192/ 43		
37	Indore Gujrati School,	RRMB Indore Dr.Rekha Jain Smt. Jyotsana Sisangiya	7	434093 434094 434095/ 197 434096/ 197/15 434097/ 150/19 434098/ 198 434099 434100	434101/186 434102/186 /434103 434104 434105 434106 434107/A 434108/ 133	434109/133 434110 434111 434112 434113/ 196 434114/ 196/32 434115/ 32/ 26 434116/26	434117 434118 434119 434120 434121/A 434122/ NA 434123 434124		
42	Indore	Govt. Nutan H.S. School Smt. Neeta Vaishnav Vinod Joshi	11	436591 436592 436593 436594 436595 436596 436597	436598 436599 436600/50 436601/50 436602 436603 436604	436605 436606 436607 436608 436609 436610 436611	436612 436613 436614 436615 436616 436617 436618	436619 436620 436621 436622 436623 436624	436625 436626 436627 436628 436629 436630
44	Indore	Sikka S.S. School Manoj Parasar Swati Sarvate	21	437809 437810 437811 437812 437813 437814	437815 437816 437817/73 437818/73 437819 437820	437821 437822 437823 437824 437825 437826	437827 437828 437829 437830 437831 437832	437833 437834 437835 437836 437837 437838	437839 437840 437841 437842 437843 437844
47	Shahdol	Govt.IG Girls College	2	453601 453602 453603 453604	453607 453608 453609 453610	453613 453614 453615 453616	453619 453620 453621 453622	453625 453626 453627 453628	453631 453632 453633 453634

		Dr.M.S. Shrivastava Dr.Rajendra Gupta		**453605/165** **453606/165**	453611 453612	453617 453618	453623 453624	453629 453630	453635/199 453636/199
49	Shahdol	Govt. IG Girls College Dr.Pratibha Shrivastava R.C.Gutpa	4	453673 453674 453675 453676 453677 453678	453679 453680 453681 453682 453683 453684	453685 453686 453687 453688 453689 453690	453691 453692 453693 453694 **453695/191** **453696/191**	453697 453698 453699 453700 453701 453702	453703 453704 453705 453706 453707 453708

50. Thus, from perusal of the report of the Computer Experts Committee it is apparent that Roll Numbers of 701 candidates were altered in deviation from the settled norms for allotment of roll numbers i.e. according to date of birth and month of birth and the aforesaid candidates were made to sit in pairs in selected examination centres in selected cities and the marks obtained by them are also nearly identical. There is striking similarity in the right match answers and wrong match answers which cannot be a coincidence. It is also pertinent to mention here that the candidates who acted as scorers i.e. who facilitated copying, were mostly from out of State and had chosen the particular examination centres sitaute far away from their home town. Similarly, most of the candidates who indulged in copying also chose that very particular centres chosen by the scorers which are situate away from their places of residence, even though examination centre was available at their place of residence or nearby their places of residence and they were sitting in pairs with the scorers. This again cannot be a coincidence. It is also noteworthy that, scorers who were mostly from outside the State of Madhya Pradesh and had secured good marks have neither taken admission nor have filed writ petitions against the orders by which their examination results have been cancelled by the Board. We may also take note of the statement made by Mr.P.K.Kaurav, learned counsel for respondents, that 131 candidates whose roll numbers were tampered and opted for Indore as examination centre were outside the State of Madhya Pradesh or were not from Indore as per address furnished by them.

51. The Committee constituted to identify the candidates who had indulged in use of unfair means in Pre Medical Test, 2011 in its report, inter alia, found as under:-

(i) In examination centres, namely, Government Kasturba Higher Secondary School, Government Kamla Nehru Girls Higher Secondary School and Government Nutan Subhash Higher Secondary School in Bhopal 16, 24 and 3 candidates respectively were sitting in pairs at the end of the row and their right match answers and wrong match answers are similar.

(ii) In examination centres, namely, Government Maharani Laxmi Bai P.G.Girls College, Mata Jija Bai Government Girls P.G.College Moti Tabela, Government Bal Vinay Mandir Excellence Higher Secondary School, Swami Vivekanand Government Model Higher Secondary School, Government Ahilyashram Higher Secondary School, Government Maharaj Shivajirao Higher Secondary School, P.M.B.Gujrati Science College, R.R.M.B. Gujrati Higher Secondary School and Shri K.V.Patel Gujrati Middle School in Indore 4, 6, 10, 2, 10, 10, 4, 4 & 2 candidates respectively were sitting in pairs in the end of the row and their right match answers and wrong match answers are similar.

(iii) In Government P.G.College, Khargone 04 candidates were sitting in pairs at the end of the row and their right match answers and wrong match answers are identical.

(iv) The candidates whose roll numbers were altered and out of the candidates who were sitting in pair, one of the candidate of the pair was from outside the State and the other candidate in most of the cases did not belong to the city where the examination centre was located.

For the facility of reference, relevant extracts of the chart annexed with the Compilation-I is at Pages 131 & 161 as well as seating plan of the candidates and relevant of right match and wrong match answers of the candidates, are reproduced below which shows that candidates appearing in selected cities and in selected examination centres have secured same marks and their right match answers and wrong match answers are similar. From such candidates sitting in pairs, one of the candidate was from outside the State of Madhya Pradesh and the another candidate had chosen the examination centre situated away from his place of residence even though examination centre was available either at his place of residence or nearby or was a local candidate residing nearby the examination centre.

Pre Medical Test, 2011

Examination City- Bhopal
Exam Centre- Government Kasturba Higher Secondary School.

Group No.	Name of Candidate and city of permanent residence	Roll Number	Marks Obtained	Match answer	Right match answer	Wrong match answer
01	Mahendra Kumar Yadav, Jaipur Yusuf Saifi, Mandleshwar	206205 206206	165 165	188	154	34
02	Harlal Singh, Sikar, Rajasthan Rakshand Khantal, Tikamgarh	206223 206224	154 142	180	137	43
03	Bhavna Aharwal, Jabalpur Pawan Kumar Maida, Ratlam	206247 206248	131 124	171	115	56

Examination City- Bhopal
Exam Centre- Govt. Kamla Nehru Girls Higher Secondary School

Group No.	Name of Candidate and city of permanent residence	Roll Number	Marks Obtained	Match answer	Right match answer	Wrong match answer
01	Ramaram Choudhary, Ubenner Rahil P. Veera, Jabalpur	207161 207162	153 155	175	143	32
02	Pradeep Kumar, Ajmer, Shantanu Vyas, Dewas	207173 207174	164 161	184	152	32
03	Deepak Pandey, Kanpur Jitendra Malviya, Dhar	207215 207216	166 168	183	156	27

P.M.T., 2011
Roll No.-Wise List of 26116 Candidates

S.No.	Roll No.	Scan No.	Form No.	Birth	Candidate's Name	Actual DD/MM
3276	206203	205462	160104	04/12/1993	Aishwaraya MB Sagar	
3277	206204	204090	155083	05/01/1988	Abhishek Gupta	
3278	206205	207511	137122	15/02/1988	Mahendra Kumar Yadav	05/01
3279	206206	205581	151735	10/08/1992	Yusuf Saify	05/01
3280	206207	206410	157774	05/01/1990	Saddam Abrar	
3281	206208	204986	154281	05/01/1990	Raju Rawat	
3282	206209	206287	160662	05/01/1992	Divya Bajpai	
3283	206210	204445	157149	05/01/1992	Monika Yadav	

PMT-2011 (Tentative) Seating Plan

S.No.	City Name	Name of Examination center/ Invigilator's Name	Room No.	Column 1	Column 2	Column 3	Column 4	Column 5
1	Bhopal	Govt. K.N.G.H.S.S. TT Nagar Bhopal Smt.Archana M Smt.Sunita Bhatnagar	1	207151 207152 207153 207154 207155/15 207156/15	207157 207158 207159 207160 207161/175 207162/175	207163 207164 207165 207166 207167/196 207168/196	207169 207170 207171 207172 207173/184 207174/184	207175 207176 207177 207178 207179/161 207180/161
2	Bhopal	Govt. K.N.G.H.S.S. TT Nagar Bhopal Smt. Bhavani Sharma Smt. Sunita Premchandani	2	207181 207182 207183 207184 207185/185 207186/185.	207187 207188 207189 207190 207191/151 207192/151	207193 207194 207195 207196 207197/183 207198/183	207199 207200 207201 207202 207203/176 207204/176	207205 207206 207207 207208 207209 207210
3.	Bhopal	Govt. Kasturba Girls H.S.School, Bhopal Shahina Khan Shaila Chourasia	1	206201 206202 206203 206204 206205/188 206206/188	206207 206208 206209 206210 206211/152 206212/152	206213 206214 206215 206216 206217/195 206218/195	206219 206220 206221 206222 206223/180 206224/180	206225 206226 206227 206228 206229 206230
4.	Bhopal	Govt. Kasturba Girls H.S.School, Bhopal Dr. Smt. Uma Tiwari Smt. Manjulata Shourti	2	206231 206232 206233 206234 206235/194 206236/194	206237 206238 206239 206240 206241/34 206242/34	206243 206244 206245 206246 206247/171 206248/171	206249 206250 206251 206252 206253 206254	206255 206256 206257 206258 206259/85 206260/85

Chart showing striking similarity in right match answers and wrong match answers

Group No.	Name of Candidate and city of permanent residence	Roll Number	Marks Obtained in PMT, 2011	Match answer	Right match answer	Wrong match answer	Additional answer other than match answer	Name of College of Admission
03	Satish Kumar, Alwar, Raj. Tausif Ahmad, Basti, U.P.	206217 206218	150 150	195	144	51	56	Chirayu Medical College, Bhopal
10	Manoj Soni, Jaipur, Rajasthan Shreyansh Soni, Raipur	207167 207168	166 161	196	155	41	45	N.S.C. Bose Medical College, Jabalpur
19	Sharad Yadav, Kanpur Nikhil Jain, Sagar	207227 207228	171 166	176	154	22	46	S.S. Medical College, Rewa
27	Brajendra Pratap Singh, Pratapgarh, U.P. Dharmendra Prajapati, Anuppur	225207 225208	148 119	161	115	46	85	M.G. Medical College, Indore

39	Vinod Kumar, Indore Hariram Hatila, Jhabua	226639 226640	127 149	155	121	34	79	MG Medical College, Indore
41	Tahir Hussain, Indore Avinash Dodiyar, Ratlam	226719 226720	121 118	152	105	47	95	Gajraja Medical College, Gwalior
48	Dilyan Mohd. Khargone Gulab Barme, Burhani	234579 234580	147 128	170	123	47	77	Gandhi Med. College, Bhopal

52. The Committee constituted to identify the candidates who had indulged in use of unfair means in Pre Medical Test, 2010 in its report, *inter alia,* found as under:-

> "(i) In examination centres, namely, Government Kasturba Higher Secondary School, Government , Bhopal; Government P.G.College, Dhar; Government Holkar Science College, Indore and Government Malav Girls Higher 4Secondary School, Indore and Government Excellent Bal Vinay Mandir, Indore and Government P.G.College, Khargone, 2, 4, 50, 2, 14, 18 candidates respectively were seated in pairs at the end of the row and their right match answers and wrong match answers are identical.
>
> (ii) All the aforesaid candidates who were seated in pairs have received similar marks."

For the facility of reference relevant extracts of the charts annexed with the Compilation-I at Pages 27 & 124 and relevant extracts of roll number-wise chart tampering in roll numbers and relevant extract of chart showing similarity in right match answers and wrong match answers of such candidates who were sitting in pairs are reproduced below. The aforesaid relevant extract establishes the fact that the scan numbers of the candidates were tampered so as to change their roll numbers to enable them to sit in pair and there is striking similarity in right match and wrong match answers of such candidates. The same reads as under:-

Pre Medical Test-2010

Exam City- Bhopal

Exam Centre-Govt. Kamla Nehru Girls Higher Secondary School

Group No.	Name of Candidate and city of permanent residence	Roll No.	Marks Obtained	Match Answers	Right Match Answers	Wrong Match answers
01	Subi Singh Bhadoriya, Bhind	504963	167	161	140	21
	Sonu Pachori, Bhopal	504964	163			

P.M.T.: 2010

Roll No.-Wise List of 26711 Candidate's

S.No.	Roll No.	Scan No.	Form No.	Birth	Candidate's Name	Actual Scan No.
3142	504962	104443	414883	29/10/1991	Neetu Salu	
3143	504963	106791	418832	12/08/1991	Subi Singh Bhadoriya	104445
3144	504964	107122	420299	22/10/1987	Sonu Pachori	104447
3145	504965	104449	424260	18/06/1991	Pankaj Malviya	
3146	504966	104451	424219	22/02/1988	Rajendra Kumar Baghel	

P.M.T. : 2010

Comparison of 68 Pairing Report From 26711 Candidates (Total Match A/S + Wrong Match A/S- Mismatch A/S) = 142.66

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
Centre Name: Govt.Geetanjali Girls College P.G.B.T. College Campus Bairasia Road Bhopal								
503559	503560	159	41	0	200	97	62	180
Centre Name: Govt. Science & Commerce College, Benazir, Gokhale Hostel Bhawan, Jahangirabad, Bhopal								
504831	504832	169	31	0	200	138	31	169
Centre Name: Laxmi Narayan College of Technology, Kalchuri Nagar, Raisen Road, Bhopal								
505946	505947	198	2	0	200	146	52	248
506227	506228	169	31	0	200	139	30	168
506389	506390	188	23	0	200	141	36	190

Centre Name: Govt.Malav Girls H.S.School, Moti Tabela, Indore

519453	519454	168	32	0	200	148	20	156
519486	519487	153	47	0	200	101	52	158

Centre Name: Govt. Science & Commerce College, Bhanwar Kuan, A-B Road, Indore

517716	517717	177	23	0	200	130	47	201

Centre Name: Govt. Excellent Bal Vinay Mandir, Nehru Park Road, Indore

520715	520716	159	41	0	200	121	38	156

Centre Name: Shri Guru Tech Bahadur Khalsa College, Mahanada, Jabalpur

523828	523829	171	29	0	200	150	21	163

Centre Name: Rewa Engineering College, Rewa

529010	529011	148	52	0	200	58	90	186
529391	529392	166	34	0	200	143	23	155

Centre Name: Govt.Autonomous Girls PG. Excellence College, Sagar

532031	532032	187	13	0	200	157	30	204

Centre Name: Govt. Arts & Commerce, Tilisagar

532552	532553	137	63	0	200	66	71	145

Group No.	Name of candidate and city of permanent residence	Roll No.	Marks Obtained in PMT, 2010	Match answers	Right match answers	Wrong match answers	Additional answers than match answers
01	Subi Singh Bhadoriya,Bhind (Unreserved) --- Sonu Pachori, Bhopal (Unreserved)	504963 --- 504964	167 163	161	140	21	60
03	Rakesh Kumar Mishra, Dhar Balram Kanel, Indore	509102 509103	145 167	161	131	30	69
09	Amarnath Verma, Indore Shailesh K. Barua, Indore	517069 517070	156 152	190	142	48	58
15	Govind Kumar Indore	517198	170	190	151	39	49

	Amit Kumar Pipaliya, Badwani	517199	161				
18.	Puneet Kumar Mishra, Indore Nidhi Jain, Sagar	517249 517250	159 154	184	144	40	56
22	Vijay Kumar Yadav, Indore Akshay Shandilya, Khargone	517349 517350	170 172	195	158	37	42
26	Jahiruddin Ansari, Indore Nirmal Choudhary, Jhabua	517419 517420	171 166	192	155	37	45
30	Namrata Damor, Jhabua (ST) Bhavesh Bhamaniya, Bhopal	520715 520716	144 144	159	121	38	79
33	Mahima Singh Chandel, Indore Suntil Atal, Gwalior	520795 520796	161 156	172	139	33	61
35	Gopal Patidar, Indore Rajesh Singh Argal, Indore	520891 520892	165 160	162	138	24	62
39	Arvind Kumar Yadav, Khargone Natasha Sheikh, Khargone	526014 526015	159 154	188	142	46	58
42	Rakesh Kumar Khargone Neha Verma, Sendhwa (ST)	526046 526047	138 141	192	127	65	73
45	Krishna Dev Ojha, Khargone Arun Kirade, Khargone	526062 526063	159 139	176	129	47	71
47	Ajay Nishad, Khargone Ravikumar Dewade, Badwaha	526095 526096	152 166	163	134	29	66

53. The Committee constituted to identify the candidates who had indulged in use of unfair means in Pre Medical Test, 2009 in its report, inter alia, found as under:-

> "(i) In examination centres, namely, Government M.L.B. Girls School, Guna; M.B.Khalsa College, Indore; Maharaja Ranjeet Singh College of Professional Science, Indore; Central India Institute of Technology, Indore; Trilok Chand Jain Higher Secondary School, Indore; Government Malav Girls Higher

Secondary School, Indore; and Government Holkar Science College, Indore the roll numbers of the candidates were altered and they were sitting in pairs in the aforesaid examination. It was found by the Committee that such candidates were sitting at the end of the row and their right match answers and wrong match answers are identical.

(ii) It was found by the Committee that 2, 5, 4, 3, 3, 30, 3, 4 and 31 candidates were sitting in pairs in the aforesaid examination centre respectively whose roll numbers were tampered and whose right match answers and wrong match answers are identical."

For the facility of reference relevant extracts of the chart annexed with the Compilation-I at Page 22 are reproduced below which show that candidates appearing in selected cities and in selected examination centres have secured same marks:

Pre-Medical Test-2009

Examination City - Guna
Examination Centre - Government M.L.B. Kanya Vidyalaya.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
01	Abhay Singh Yadav, Ujjain Hitesh Patidar, Indore	843023 843024	151.31 164.12	164	137	27

Examination City - Indore
Examination Centre- M.B. Khalsa College

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
02	Radheshyam Bamaniya, Badwani Nitin Kumar Balke, Rajpur	853005 853006	132.34 131.30	180	118	62
03	Rakesh Kumar Garg, Indore Pooja Arya, Pansemal	853028 853029	134.53 133.46	197	126	71
04	Pooja Arya, Pansemal Ravindra Baghel, Kukshi	853029 853030	133.46 130.30	197	124	73

Examination City - Indore

Examination Centre - Maharaja Ranjeet Singh College of Professional Science.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
07	Mahendra Singh Rana, Gwalior Deepak Bundela, Manawar	854654 854655	126.86 125.80	191	120	71
08	Deepak Bundela, Manawar Sunil Dabar, Indore	854655 854656	125.80 122.68	190	117	73

Examination City - Indore
Examination Centre - Trilokchand Jain Higher Secondary School.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
12	Neelam Kumari, Indore Nisha Chauhan, Manawar	855660 855661	154.79 154.79	197	146	51
13	Nisha Chauhan, Manawar Vaishali Bariya, Alirajpur	855661 855662	154.79 152.68	194	144	50
18	Achal Kumar Mandhare, Indore Praveen Kumar Harode, Multai	855691 855692	157.71 159.79	194	149	45
22	Priyanka Bharke, Indore Vikrant Mandloi, Alirajpur	855739 855740	163.03 161.99	198	154	44

Examination City - Indore
Examination Centre - Government Post Graduate Girls College Moti Tabela.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
27	Manoj Kumar Chandra, Indore Shalini Khatri, Gwalior	856078 856079	157.78 160.95	191	148	43
28	Shalini Khatri, Gwalior Amit Kumar Pipliya, Badwani	856079 856080	160.95 157.78	191	148	43

Examination City - Indore
Examination Centre - Government Malaw Girls Higher Secondary School.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
29	Nitin Arya, Pansemal Mukesh Deol, Jhabau	856555 856556	153.53 151.40	194	143	51

Examination City - Indore
Examination Centre - Government Holkar Science College.

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answers	Right match answers	Wrong match answers
35	Rushabh Momaya, Sendhwa Amit Choudhary, Indore	857629 857630	133.72 132.67	192	124	68
37	Vishal Man, Indore Deovrath Pandey, Shivpuri	857678 857679	150.45 145.13	177	133	44
38	Deovrath Pandey, Shivpuri Arbaz Ali Sheikh, Dewas	857679 857680	145.13 149.31	161	127	34
39	Akhil Arora, Indore Akshay Kumar Trivedi, Jabalpur	857689 857690	139.92 151.46	158	123	35
46	Arvind Kumar Pipaliya, Anjad Vasudeo Pawak, Indore	857769 857770	145.26 142.07	181	131	50

P.M.T. 2009

Comparison of 96 Pairing report from 29162 candidates

(Total Match A/s. + Wrong Match A/s - Mismatch A/s) = 138.62

Centre Name: Bhabha Engineering & Research College, Back of Vrindavan Garden, Jatkhedi, Hoshangabad Road, Bhopal

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
832534	832535	175	25	0	200	133	42	192
832788	832789	192	0	0	200	126	66	250

Centre Name: Govt. MLB Girls School, Infront of City Kotwali, Guna

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
843023	843024	164	36	0	200	137	27	155

Centre Name: Govt. Girls Gajra Raja H.S.School, Bada, Lashkar, Gwalior

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
845096	845097	193	7	0	200	146	47	233
845097	845098	177	23	0	200	140	37	191

Centre Name: Shrimant Madhav Rao Scindia Govt. Model Science College, Jhansi Road, Gwalior

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
845661	845662	172	28	0	200	55	117	261
845896	845897	166	34	0	200	132	34	166

Centre Name: Govt. Kamala Raja Girls College, Kampoo, Gwalior

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
847358	847359	169	31	0	200	135	34	172
847475	847476	169	31	0	200	149	20	158

Centre Name: M.B. Khalsa College, Raj Mohalla Chouraha, Near Gangwal Bus Stand, Indore

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
853005	853006	180	20	0	200	118	62	222
853028	853029	197	3	0	200	126	71	265

Centre Name: Govt. Arts & Commerce College, A.B. Road, Indore

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
853638	853639	162	38	0	200	147	15	139
853924	853925	162	38	0	200	145	17	141

Centre Name: Institute of Engineering & Technology, D.A.V.V. Khandwa

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
854155	854156	156	30	14	200	111	45	171
854178	854179	144	56	0	200	87	57	145

Centre Name: Central India Institute of Technology, Dewas Bypass Road, Ardia Indore

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
855154	855155	189	11	0	200	134	55	233
855155	855156	174	24	2	200	126	48	198

Centre Name: Tirlok Chand Jain H.S. School, In front of Chhatripura Thana, Indore

Roll No.1	Roll No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New FLD
855655	855656	190	10	0	200	142	48	228
855660	855661	197	3	0	200	146	51	245

Centre Name: Govt. P.G. Girls College, Moti Tabela, Indore

856078	856079	191	9	0	200	148	43	225
856079	856080	191	9	0	200	148	43	225

Centre Name: Govt. Malav Girls H.S. School, Moti Tabela, Indore

856555	856556	191	6	0	200	143	51	239
856579	856580	167	33	0	200	122	45	179

Centre Name: Govt. Holkar Science College, Indore

857579	857580	177	23	0	200	125	52	206
857589	857590	170	30	0	200	123	47	187

Centre Name: Govt. Mankunwar Bai Arts & Commerce Womens College, Napier Town, Jabalpur

861211	861212	162	38	0	200	134	28	152

Centre Name: Govt. Model Science College, Pachpedi, Jabalpur

862831	862832	169	31	0	200	116	53	191

Centre Name: Govt. Engineering College, Ranjhi, Jabalpur

863508	863509	188	12	0	200	155	33	209

Centre Name: Bappa Shri Narayan Vocational P.G. College (K.K.V.) Station Road, Charbag, Lucknow

873255	873256	155	45	0	200	120	35	145
873343	873344	154	46	0	200	111	43	151

Centre Name: Kendriya Vidhyalaya, Near Dilkusha Garden, Lucknow Cantt., Lucknow

873508	873509	165	35	0	200	145	20	150
873898	873899	184	16	0	200	153	31	199

Centre Name: Govt. Girls College, Mhow Neemuch Road, Mandsaur

875033	875034	160	40	0	200	136	24	144

Centre Name: Rajeev Gandhi Govt. P.G. College, Mhow Neemuch Road, Mandsaur

875328	875329	128	72	0	200	44	84	140

Centre Name: Kendriya Vidhyalaya, Sector - 4, R.K. Puram, New Delhi

878171	878172	141	59	0	200	76	65	147
878313	878314	164	36	0	200	139	25	153

Centre Name: Govt. T.R.S. College, Rewa

881475	881476	150	50	0	200	62	88	188

Centre Name: Govt. Model Science College, Rewa

881805	881806	178	22	0	200	98	80	236

Centre Name: Rewa Engineering College, Rewa

882332	882333	175	25	0	200	80	95	245
882369	882370	150	50	0	200	43	107	207

Centre Name: Govt. M.L.B. Girls H.S. School No.1, Sagar

885005	885006	165	35	0	200	126	39	169
885128	885129	185	15	0	200	142	43	213

Centre Name: Govt. Autonomous Excellence Girls P.G. College, Sagar

885797	885798	161	39	0	200	136	25	147

Centre Name: Govt. P.G. College, Naveen Bhawan, Gahra Nala, Satna

887235	887236	164	36	0	200	138	26	154
887271	887272	144	56	0	200	83	61	149

Centre Name: Pt. Shambunath Shukla P.G. College, Shahdol

889101	889102	163	37	0	200	146	17	143

54. The Committee constituted to identify the candidates who had indulged in use of unfair means in Pre Medical Test, 2008 in its report, *inter alia*, found as under:-

> "(i) In examination centres, namely, Government Holkar Science College, Indore; Trilokchand Jain Higher Secondary School, Indore; Government Arts & Commerce College, Indore; Government Madhav Science College, Ujjain the candidates whose roll numbers were altered were sitting in pairs in the aforesaid examination.
>
> (ii) The Committee further found that right match answers and wrong match answers of the aforesaid candidates who

were sitting in pairs were identical.

(iii) It was found by the Committee that 20, 7, 12 and 3 candidates were sitting next to each other in the aforesaid examination centres.

(iv) The committee further found that the marks secured by such candidates in Pre Medical Test, 2008 are identical."

For the facility of reference relevant extracts of the chart annexed with the Compilation-I at Page 19 are reproduced below which show that candidates appearing in selected cities and in selected examination centres have secured same marks.

P.M.T. 2008

Comparison of 59 Pairing report from 38378 candidates

(Total Match A/s. + Wrong Match A/s - Mismatch A/s) = 138.74

Centre Name: Govt. Motilal Vigyan Mahavidyalaya, Near Old Vidhan Sabha, Bhopal

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
205088	205089	166	34	0	200	158	8	140
205471	205472	179	21	0	200	99	80	238

Centre Name: Govt. Jiwaji Rao H.S. School, Lashkar, Gwalior

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
2224388	224389	164	36	0	200	90	74	202
224498	224499	161	39	0	200	144	17	139

Centre Name: Govt. Kamla Raja Girls, P.G. Autonomous College, Kampoo, Gwalior

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
224576	224577	128	50	22	200	59	69	147
224669	224670	169	31	0	200	160	9	147

Centre Name: Madhav College, Nai Sadak, Lashkar, Gwalior

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
226104	226105	196	3	1	200	116	80	273
2262158	226159	164	36	0	200	153	1	139

Centre Name: J.C. Mill Girls College, Birla Nagar, Gwalior

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
226663	226664	180	20	0	200	117	63	223
226742	226743	150	50	0	200	76	74	174

Centre Name: Trilokchand Jain H.S. School, Chhatripura, In front of Police Station Biyabani, Indore

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
236505	236506	189	11	0	200	149	40	218
226511	236512	175	25	0	200	133	42	192

Centre Name: Govt. Arts & Commerce College, A.B. Road, Bhanwarkuan Main Road, Indore

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
236905	236906	186	14	0	200	127	59	231
236906	236907	183	17	0	200	127	56	222

Centre Name: Govt. Mankunwar Bai Arts & Commerce Women's College, Napier Town, Jabalpur

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
241937	241938	184	16	0	200	129	55	223

Centre Name: Gyanganga Institute of Technology & Science, Tilwaraghat Road, Jabalpur

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
243104	243105	142	58	0	200	78	64	148

Centre Name: Navyug Arts & Commerce College, Civil Lines, Jabalpur

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
243976	243977	155	45	0	200	126	29	139

Centre Name: Govt. Science College, Rewa

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
257129	257130	147	52	1	200	71	76	171
257318	257319	149	51	0	200	105	44	142

Centre Name: College of Agriculture, Rewa

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
257641	257642	179	21	0	200	152	27	185

Centre Name: Govt. M.L.B. Girls H.S. School No.1, Sagar

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
261256	261257	163	37	0	200	149	14	140

Centre Name: Govt. Madhav Science College, Ujjain

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
269415	269416	165	35	0	200	151	14	144
269416	269417	191	9	0	200	157	34	216

Centre Name: S.A.T.I. (Degree) Vidisha

Roll No.1	Roll. No.2	Match Answer	Mismatch Answer	Blank Answer	Total	Right Match Answer	Wrong Match Answer	New Fld.
271075	271076	182	18	0	200	150	32	196
271242	271243	161	39	0	200	141	20	142

Pre-Medical Test -2008

Examination City - Indore

Examination Centre - Govt. Holkar Science College

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
1.	Vikram Raj Sable, Betul Soundrya Bodh, Sanawad	232019 232020	161.62 139.88	158	129	29
3.	Rashmi Tiwari, Rewa Parag Panthi, Indore	232037 232038	100.40 107.68	147	82	66
7.	Anil Katara, Indore Sunil Barua, Indore	232098 232099	177.21 166.88	177	158	19

Examination City - Indore

Examination Centre - Trilokchand Jain, H.S.School

S. No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
12.	Lallan Pratap Singh, Indore Jitendra Garg, Indore	236505 236506	160.51 155.34	189	149	40
13.	Varun Nahale, Manawar Sameer Sonkar, Indore	236511 236512	150.13 150.14	175	133	42

Examination City - Indore

Examination Centre - Govt. Arts & Commerce College

S. No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
16.	Amand Kumar Mandare, Dewas Manish Kushwaha, Indore	236905 236906	137.69 134.55	186	127	59
19.	Jitendra Gupta, Indore Priya Bharke, Indore	236962 236963	118.01 122.18	177	107	70

2 0.	Priya Bharke, Indore Abhishek Verma, Dewas	236963 236964	122.18 150.25	150	109	41
2 2.	Chandrashekhar Pal, Dhar Nisha Kanash, Indore	236988 236994	151.27 166.80	185	151	34
2 3.	Nisha Kanash, Indore Pinky Kannoj, Manawar	236995 236996	159.58 150.28	185	143	42

The fact that the candidates have indulged in use of unfair means in Pre-Medical Tests of 2008 to 2012 is also evident from the following chart mentioned at page 182 of Compilation 1, which shows that in cases where the results of the examinations have been cancelled, the average of wrong match answers as compared to the general average of wrong match answers given by the candidates who were not involved in use of unfair means, is much higher:

Examination Name	Average Match Answer	Average Mismatch Answer	Average Right Match Answer	Average of Wrong Match Answer/ (Total Attempted- Right Match Answer)
P.M.T. 2013	60.95	138.94	25.97	0.20
P.M.T. 2013 Candidature Cancelled	148.36	50.54	96.99	0.59
P.M.T. 2012	69.51	130.45	39.98	0.19
P.M.T. 2012 Candidature Cancelled	169.05	30.88	129.38	0.65
P.M.T. 2011	63.55	136.29	33.98	0.18
P.M.T. 2011 Candidature Cancelled	176.02	23.61	131.12	0.67
P.M.T. 2010	71.33	128.61	44.80	0.17
P.M.T. 2010 Candidature Cancelled	177.34	22.64	137.79	0.65
P.M.T. 2009	69.32	130.64	39.03	0.19
P.M.T. 2009 Candidature Cancelled	178.47	21.02	131.41	0.71
P.M.T. 2008	69.37	130.59	41.84	0.17
P.M.T. 2008 Candidature Cancelled	172.36	27.60	127.80	0.62

55. Another aspect of the matter which is worth noticing is that though large number of candidates who were qualified for admission in medical colleges yet they did not take admission in the medical colleges whose results were subsequently cancelled on account of their involvement in mass-copying, reinforces the facts inferred by the authorities that they acted as scorers and this fact is evident from the following chart:

Summary report of cancelled cases due to roll number tampering and admitted in various medical colleges.
Year 2008 to 2012.

S. No.	P.M.T. Year	Cancelled cases due to roll number tampering	Admitted in various medical colleges	Candidates who did not take admission
1.	2008	42	10	32
2.	2009	85	45	40
3.	2010	90	53	37
4	2011	98	39	59
5.	2012	319	121	198

56. No explanation has been offered on behalf of the petitioners as to why the roll numbers allotted to the petitioners were not in conformity with the norm prescribed by the Board for allotment of roll numbers and why in case of the petitioners and the candidates who have acted as Scorers, there is similarity in the right match answers as well as wrong match answers. We may also state that in an enquiry such as in the present case, the Board was justified in proceeding on the basis of indisputable circumstances pointing finger towards involvement of the concerned candidates and record its subjective satisfaction in that behalf. The Committee has arrived at the conclusion that candidates had indulged in mass copying in Pre Medical Tests, 2008 to 2012, on the basis of data and records available with Board, report of the Computer Experts committee and information furnished by the Special Task Force. Thus, the facts narrated supra leads to inevitable conclusion that the candidates whose results have been cancelled have indulged in mass-copying in Pre Medical Tests, 2008 to 2012.

57. Before proceeding to deal with the common contentions raised on behalf of the petitioners it is noteworthy to mention here that the results of 439 candidates who had indulged in unfair means in Pre Medical Test, 2013

were cancelled. The candidates approached this Court by filing several writ petitions which were decided by the common order dated 11.4.2014 passed in a batch of Writ Petitions headed by Writ Petition No.20342/2013 [*Ku.Pratibha Singh (minor) Vs. The State of Madhya Pradesh and others*]. The Division Bench of this Court by a detailed and judgment dealt with the contentions raised by the petitioners therein, most of which have again been raised in some form or the other in this Batch of writ petitions. It is pertinent to mention here that the order dated 11.4.2014 passed by a Division Bench of this Court in the aforesaid writ petitions has attained finality as the Special Leave Petition preferred against the said order (dated 11.4.2014 passed in batch of writ petitions) has been dismissed by Supreme Court vide order dated 8.8.2014 passed in Special Leave Petitions No. 18791-18792. In order to appreciate the fact that some of the issues raised in these writ petitions have already been examined in detail and extensively by the Division Bench of this Court in said writ petitions, it would be apposite to refer to the following chart:-

Contention of the Petitioners raised in present batch of writ petitions	**Contentions dealt with in the order dated 11.4.2014 passed by Division Bench of this Court in W.P.No.20342/2013 and other connected writ petitions**
(i) Sequence of question paper in four different sets was different, therefore, it is not possible for a candidate to indulge in copying	The Division Bench for the reasons assigned in paragraph 84 of the order and in view of paragraphs 11 &12 of decision of Supreme Court in ***Bagleshwar Prasad (supra)***has rejected this contention.
(ii) Neither any Centre Superintendent was examined nor any report of Invigilator of the Examination Centre was obtained to ascertain the factum of mass-copying.	This contention has been dealt with in paragraph 114 of the order and it has been held as follows:- "As the theory propounded by the respondent-Board that all this has happened as a large scale conspiracy, is plausible one, even the involvement of concerned Supervisor or Invigilator or officials

	at the concerned examination centres cannot be ruled out. Suffice it to observe that the existence of other clinching circumstances regarding organised unfair means during the examination were sufficient for the Board to proceed in the matter. Nay, it was the bounden duty of the Board to do so in public interest even in absence of any report from the Supervisors or Invigilators.
(iii) The Board had no authority to cancel examination results of the candidates who had taken admission in M.B.B.S. Course.	This argument was dealt with by Division Bench in paragraphs 39 to 42 of the order and has been rejected.
(iv) The impugned action against the petitioners is vitiated on account of violation of principles of natural justice.	For the reasons assigned in paragraphs 91 to 106 and taking note of several decisions of Supreme Court it has been held that principles of natural justice do not have any application in case of mass copying.
(v) The petitioners have brilliant past academic record and, therefore, no inference with regard to their involvement in unfair means can be drawn.	For the reasons assigned in paragraph 107 of the order this contention has been rejected.

58. Since the aforesaid issues have already been dealt with in extenso in the order passed in the case of *Pratibha Singh* (supra) which has been upheld by the Supreme Court, therefore, it is not necessary for us to further deal with those contentions raised on behalf of the petitioner in this regard. Therefore, we proceed to deal with other issues.

59. The petitioners have taken a stand that the formula applied for

ascertaining the unfair means score is required to be explained and the expert opinion is not beyond the scope of judicial review and same can be examined by this Court. In this connection, reliance has been placed on the decisions of the Supreme Court in the cases of *Natwar Singh* (supra), *East Coast Railway* (supra) and *Nagarjuna Construction Company Limited* (supra). In view of the stand taken by the petitioners with regard to the basis of the formula evolved by the Board, we called upon the Board to explain the same to reassure ourselves and not to sit over the opinion by the experts as Court of appeal, in pursuance of which Mr. A.P. Shrivastava, the then Chairman of the Board and Dr. Santosh Kumar Gandhi, Joint Controller of the Board appeared before us. The qualification of Mr. A.P. Shrivastava is B.Sc. in Mathematics, Physics & Statistics and M.Sc. in Mathematics from Allahabad University. He has also qualified I.A.S. examination with the subjects-Mathematics and Physics. Mr. A.P. Shrivastava had an excellent academic record and he has been awarded National Science Talent Research Scholarship from HCERC. Similarly, Mr. Santosh Kumar Gandhi holds the Bachelor degree in Electronics and Master degree and Ph.D. in Computer Applications from Maulana Azad National Institute of Technology, Bhopal. Mr. A.P. Shrivastava has stated before us as follows:

> "1. Average or Mean of a set of measurements indicates the value around which the values of the measurement are centered. The Standard Deviation of a set of measurements indicates the variability or dispersion around the average.
>
> A large number of random variables observed in nature possess a frequency distribution that is approximately mound-shaped which is known as Normal Probability Distribution.
>
> 2. If μ is the mean and σ is the Standard Deviation of a distribution of measurements that is approximately mound-shaped or Normal, then the following Empirical Rules applies :
>
> (i) The interval $(\mu \pm \sigma)$ contains approximately 68.27% of the measurements.
>
> (ii) The interval $(\mu \pm 2\sigma)$ contains approximately 95.45% of the measurements.

(iii) The interval ($\mu \pm 3\sigma$) contains approximately 99.73% of the measurements.

The above empirical rule is also called the three-sigma rule. This empirical rule is often used to quickly get a rough probability estimate of something given its standard deviation, if the population is assumed normal, thus also a simple test for outliers (if the population is assumed normal).

3. For each question, there was only one correct answer but three incorrect answers in the objective type examination of PMT. Therefore, the number of incorrect matching answers indicates the higher likelihood of the candidates having helped each other in answering questions. On the other hand, the number of mismatch answers for a pair of candidates indicates the independent application of mind of the candidates. If the mismatch number is relatively large, the likelihood of the candidates having helped each other in answering questions is low.

The inference about collusive copying of answers by a pair of candidates sitting next to each other cannot be based solely on the number of matching answers. The inference must take into account the number of mismatches and the number of incorrect matches also.

4. Therefore, the formula for filtering out the suspects for PMT-2011 was first modified by assigning weight of three to the number of incorrect matching answers. But, with this modification the filtered list contained candidates who had performed badly as the number of incorrect answers was very large for them.

The difference between the number of incorrect matches and mismatches indicates the likelihood of answering in collusion or copying the answers. Therefore, the number of matching answers has been adjusted for this factor to arrive at a better indicator. This indicator has been called Unfair Means Score. This indicator can also be seen as a weighted score of matching answers in which the weight of one has been assigned

to number of correct matches, weight of two to number of incorrect matches and weight of minus one to number of mismatches. The list of suspects based on this formula was then examined by the Enquiry Committee constituted for this purpose. Each candidate's case was individually examined keeping in mind the number of incorrect matches, mismatches and correct matches.

5. A relatively high cut-off value has been chosen for filtering out the list of suspects. This cut-off value two times the Average of number of matching answers. Ideally, the cut-off value shoud have been Average plus 3 times Standard Deviation as hardly 0.3% measurements are expected to exceed this value in case of Normal Distribution. Because of the Higher cut-off value, it was easy to finally identify the candidates who had indulged in unfair means in answering questions."

60. The formula has been applied in Pre-Medical Tests of 2008 to 2011 in a reasonable and fair manner as the candidates have been subjected to process of filteration at various stages, which is evident from the following charts:

Professional Examination Board, Bhopal
Statistical Analysis of PMT 2008

PMT-2008			Match	Mismatch	Blank	Total	Right Match	Wrong Match	UFM Score
Entire									
Population		Average	69	131	0	200	42	28	-34
Population size	33682	Std Deviation	17	17	1	0	21	10	33
For Match >	103	Average	122	78	0	200	106	16	60
Population size	1491	Std Deviation	16	16	1	0	18	11	37
For Match >	120	Average	137	63	0	200	121	16	90
Population size	641	Std Deviation	15	15	2	0	16	14	38
For Match >	137	Average	152	48	0	200	132	20	123
Population size	239	Std Deviation	14	14	2	0	18	21	43
For UFM score>	138	Average	168	31	1	200	121	47	185
Population size	59	Std Deviation	17	15	5	0	32	28	42
Cancellations		Average	172	28	0	200	127	44	188
Population size	21	Std Deviation	14	14	0	0	22	14	32

Professional Examination Board, Bhopal
Statistical Analysis of PMT 2009

PMT-2009			Match	Mismatch	Blank	Total	Right Match	Wrong Match	UFM Score
Population		Average	70	130	0	200	39	31	-31
Population size	23754	Std Deviation	19	19	1	0	23	10	38
For Match >	108	Average	130	70	0	200	108	21	81
Population size	1102	Std Deviation	19	19	1	0	17	11	43
For Match >	127	Average	145	55	0	200	122	23	114
Population size	494	Std Deviation	17	17	1	0	14	15	45
For Match >	146	Average	165	35	0	200	133	33	163
Population size	158	Std Deviation	16	16	1	0	16	20	47
For UFM score >	140	Average	174	26	0	200	134	41	194
Population size	94	Std Deviation	13	14	0	0	20	13	38
Cancellations		Average	181	19	0	200	134	47	209
Population size	42	Std Deviation	15	14	2	0	15	11	34

Professional Examination Board, Bhopal
Statistical Analysis of PMT 2010

PMT-2010			Match	Mismatch	Blank	Total	Right Match	Wrong Match	UFM Score
Entire									
Population		Average	71	129	0	200	45	27	-31
Population size	21415	Std Deviation	20	20	2	0	23	10	40
For Match >	111	Average	130	70	0	200	110	19	78
Population size	998	Std Deviation	17	17	1	0	16	9	39
For Match >	131	Average	149	51	0	200	128	21	119
Population size	339	Std Deviation	16	16	1	0	13	12	40
For Match >	151	Average	168	32	0	200	138	30	167
Population size	104	Std Deviation	13	13	0	0	11	14	38
For UFM score >	142	Average	174	26	0	200	134	41	189
Population size	64	Std Deviation	13	14	0	0	20	13	28
Cancellations		Average	177	23	0	200	138	39	193
Population size	45	Std Deviation	12	12	0	0	12	10	29

Professional Examination Board, Bhopal

Statistical Analysis of PMT 2011

PMT-2011			Match	Mismatch	Blank	Total	Right Match	Wrong Match	UFM Score
Entire									
Population		Average	64	136	0	200	34	30	-43
Population size	22121	Std Deviation	17	17	3	0	19	10	36
For Match >	98	Average	117	83	0	200	96	21	56
Population size	750	Std Deviation	20	20	1	0	18	12	46
For Match >	115	Average	136	64	0	200	113	23	94
Population size	290	Std Deviation	21	21	2	0	17	16	54
For Match >	132	Average	156	44	0	200	124	32	145
Population size	114	Std Deviation	21	21	1	0	19	21	56
For UFM score >	128	Average	174	26	0	200	125	49	197
Population size	108	Std Deviation	17	16	1	0	26	17	34
Cancellations		Average	175	25	0	200	131	45	195
Population size	49	Std Deviation	16	16	1	0	18	12	37

61. It is well settled in law that the academic issues must be left to be decided by the Expert Body which deserves great respect. The Court cannot act as an appellate authority in such matters. When two views are possible and if the Expert Body has taken a possible view the same deserves acceptance. It is equally settled legal proposition that an opinion of expert body deserves higher degree of acceptance. [See: *Ganpat Singh Gangaram Singh Rajput Vs. Gulbarga University,* (2014) 3 SCC 767]. Notably, in the instant case, no effort was made to substantiate that the formula evolved by the Board is impermissible. Further, the formula is not the only means to identity the candidates who had indulged in the use of unfair means. The aforesaid enquiry has been made on the basis of other circumstances noted in

the preceding paragraphs year-wise. Therefore, the formula is not the only factor to ascertain whether a candidate had indulged in use of unfair means. In view of the facts stated supra, we are unable to hold that there is no logical basis in respect of the formula evolved by the Board for ascertaining the unfair means score. The petitioners have failed to demonstrate that the formula evolved by the Board is either arbitrary or irrational or by applying the formula it is not possible to ascertain whether the candidate has indulged in use of unfair means in the examination. It could also not be pointed out on behalf of the petitioners that formula evolved by the Board cannot be applied at all to detect the cases of the candidates who had indulged in use of unfair means. The extracts, referred to from websites, namely, www.purplemath.com and en.wikipedia.org on behalf of the petitioners, are of no assistance to the petitioners as on the basis of the aforesaid documents no inference can be drawn that the formula evolved by the Board cannot be applied at all for ascertaining the cases of the candidates who had indulged in use of unfair means. Therefore, it is not necessary for us to appoint any other expert committee or to permit the petitioners to keep the experts present before us. We may reiterate that in the opinion of the experts relied on behalf of the petitioners, the experts have not stated the formula applied by the Board is unworkable or by applying the formula it is not possible to ascertain whether a candidate had indulged in use of unfair means in the examination. The Expert Body of the Board has taken plausible view and has applied the formula with great circumspection. The formula was adopted by the Board after the same was evolved by Expert Body and in such matters the Court cannot sit in judgment and interfere with the same, unless it is proved that it was an arbitrary and unreasonable exercise of power. [See: *Subhash Chandra Dixit* (supra)]. Therefore, the contention raised on behalf of the petitioners that there is no logical basis for evolving the formula is hereby repelled.

62. In *Council of Civil Service Unions (CCSU) Vs. Minister for the Civil Service* (1984) 3 All ER 935 it has been held that any administrative action is subject to control by judicial review only on three grounds namely illegality, irrationality and procedural impropriety. The aforesaid principle has been accepted by the Supreme Court in several decisions. Reference in this connection be made to the decisions in the cases of *Tata Cellular* (supra) and *Heinz India Private Limited and another Vs. State of Uttar Pradesh and Others,* (2012) 5 SCC 443. In the case of *S.R. Tewari Vs. Union of India and another,* (2013) 6 SCC 602, it has been held that the scope of

judicial review is limited to the decision making process and not against the decision itself, and in such a situation the court cannot arrive at on its own independent finding. In *Air India Ltd. Vs. Cochin International Airport Ltd.*, (2000) 2 SCC 617 it has been held that Court must act with great caution and should exercise power of the judicial review only in furtherance of public interest, and not merely on making out of a legal point.

63. In the background of aforesaid well settled legal principles, we may examine whether the action of the Board in canceling the results of the candidates is amenable to judicial review in the facts of the case. Undoubtedly, it is the responsibility of the Board to ensure that free and fair entrance examination is held for admission to professional courses. The Board on receipt of information by the Special Tasks Force has constituted the expert committee, which after due diligence, submitted it's report. In the report, the expert committee has opined that there is sufficient material on record to indicate that candidates have indulged in use of mass scale unfair means in an organized manner. The reports of the expert committee have duly been considered by the competent authority of the Board and thereafter, the orders of cancellation of results of the candidates who had indulged in unfair means have been passed. Thus, the decision making process in the instant cases cannot be said to be illegal, irrational or suffering from any procedural impropriety.

64. So far as the contention raised on behalf of the petitioners that the action against the petitioners was taken in hot haste is concerned, it is necessary to notice few relevant facts before answering the same, which are as under:

> *"1. Computer expert committee was constituted on 30.8.2013 to check allotment of roll numbers in PMT 2013.*
>
> *2. On 27.9.2013, expert committee found mismatch in 876 candidates.*
>
> *3. On 9.10.2013 order of cancellation of 345 candidates was issued.*
>
> *4. On 23.10.2013, STF wrote a letter to Vyapam informing that there has been tampering of roll numbers in 2012.*
>
> *5. On 24.10.2013, Vyapam wrote a letter to STF stating that there is mismatch of roll numbers of about*

700 candidates and requesting the STF to investigate the matter.

6. On 6.12.2013 order passed to cancel eligibility of 70 candidates.

7. On 31.12.2013 letter sent by AIG, STF requesting Vyapam to examine the PMT exam 2009-2010 and 2011in light of the scam done in PMT 2012 and PMT 2013.

8. On 1.2.2014 order passed to blacklist 6 centres and Invigilators and Observers have been restricted from allotment of duties in examinations.

9. On 11.4.2014 order passed by Hon'ble High Court in the case of W.P. No.20342/14 - Pratibha Singh Vs. State

10. On 24.4.2014 order passed by Vyapam cancelling examination of 272 candidates in PMT 2012.

11. On 26.4.2014, order passed by Vyapam constituting internal expert committee to examine roll number tampering in PMT 2009, PMT 2010 and PMT 2011.

12. On 3.5.2014, the internal committee examined possibility of roll number tampering in PMT 2011.

13. On 3.5.2014, order passed by Vyapam further cancelling examination of 42 candidates of PMT 2012.

14. On 3.5.2014, order passed by Vyapam cancelling examination of 98 candidates in PMT 2011, therefore, from 26.4.2014 to 3.5.2014 the exercise was done.

15. Internal committee of Vyapam examined the case of roll number tampering in 2010 from 26.4.2014 and recommended cancellation of examination of 90 candidates.

16. On 6.5.2014, order passed by Vyapam cancelling examination of 90 candidates in PMT 2010 after examining the matter from 26.4.2014 till 6.5.2014.

17. On 7.5.2014, the internal committee examined the

documents in relation to PMT 2009 and recommended cancellation of 85 candidates.

18. On 8.5.2014, order passed by Vyapam cancelling examination of 85 candidates in PMT 2009 after the exercise was done from 7.5.2014.

19. On 15.5.2014, order passed by Vyapam to create an internal committee to examine the case of those students who appeared in PMT 2008 in pairs.

20. On 16.5.2014, committee examined PMT 2008 and recommended cancellation of 42 candidates.

21. On 19.5.2014, order passed by Vyapam cancelling examination of 42 candidates in PMT 2008 after exercise was done from 15.5.2014."

Thus, from perusal of the aforesaid facts, it is crystal clear that the contention of the petitioners that action for cancellation of results has been taken in hot haste, cannot be accepted.

65. So far as the contention raised on behalf of the petitioners that action for cancellation of results taken against the candidates selectively is concerned, the same deserves only to be stated to be rejected, in view of the undertaking given by learned counsel for the respondents that Board is re-examining the possibility of use of unfair means in relation to the candidates who have taken admission in the college but have been left out and action would be taken against such candidates. For yet another reason, the aforesaid submission does not deserve acceptance as even if action has not been taken against some of the candidates inadvertently, the same does not confer the right on the petitioners who have been found guilty of using unfair means during Pre-Medical Tests. It is trite law that Article 14 of the Constitution of India does not envisage negative equality. [*State of U.P. and Others v. Rajkumar Sharma and others,* (2006) 3 SCC 330]

66. Now, we may deal case of the petitioner in W.P. No.7619/2014 (*Puneet Patel Vs. State of M.P. and others*). From perusal of page 43 of the reply, it is evident that at S.No.99, one Mohammad Ashfaq of Indore has been shown to be the Scorer and Raksha Maladhari of Dhar has been shown to be the beneficiary, who has filed writ petition No.8069/2014. From perusal

of S.Nos. 25 and 26, at page No.52 of the return, the following position emerges:-

Examination City - Indore

Examination Centre - R.R.M.B. Gujrati H.S. School

S.No.	Candidate's name and permanent residence	Roll No.	Marks obtained	Match answer	Right match answer	Wrong match answer
25.	Rajesh Yadav, Indore Puneet Patel, Mandla	433993 433994	135 170	147	122	25
26.	Puneet Patel, Mandla Mohammad Ashfaq, Indore	433994 433995	170 163	156	138	18

67. It is pertinent to mention here that roll numbers of Rajesh Yadav, Puneet Patel, Mohammad Ashfaq, Raksha Maladhari are 433993, 433994, 433995, and 433996, respectively. The aforesaid candidates were sitting behind each other. Mohammad Ashfaq has acted as Scorer for Puneet Patel as well as Raksha Maladhari. The aforesaid aspect has been taken into account in order dated 7.5.2014. It is clearly stated that certain candidates whose roll numbers have been mentioned, assisted in copying to those candidates, who were sitting in front of and behind them. The roll number of petitioner in W.P. No.7619/2014 has also been mentioned in the order dated 7.5.2014. In W.P. No.10414/2014, which has been filed by one Gunjeet Nayak, the roll numbers of the candidates who were sitting in front of and behind him, are as follows:-

1. Sant Kumar Maruya Roll No.433086
2. Gunjeet Nayak Roll No.433087
3. Anshuman Singh Roll No.433088
4. Meena Sihore Roll No.433089

It is pertinent to mention that Anshuman Singh has been shown as Scorer for Gunjeet Nayak and Meena Sihore, who had filed writ petitions No.10414/2014 and 4711/2014. It is relevant to mention here that Anshuman Singh did not take admission in the MBBS course. The fact that the candidate sitting as Scorer has helped the candidates sitting in front of him as well as the candidates sitting behind him in copying, has specifically been taken into account in the order dated 7.5.2014. In the said order, the roll number of the petitioner

in W.P. No.10414/2014 has also been mentioned. Learned counsel for the petitioner was unable to show from the aforesaid order, which has been passed after due consideration of the report, that at one place he has been treated as beneficiary and at another place he has been treated as Scorer. Therefore, the contention of the learned counsel for the petitioner that some where he has been treated as Scorer and some where as beneficiary, cannot be accepted.

68. So far as Writ Petition No.7295/2014 is concerned, the same relates to Pre-Medical Test-2013 in which the result of the petitioner has been canelled vide order dated 27.3.2014. The controversy involved in the aforesaid writ petition is covered by the decision rendered by Division Bench of this Court in *Pratibha Singh* (supra). Therefore, for the reasons assigned by Division Bench of this Court in *Pratibha Singh* (supra) and the stand taken by the Board in its return, the inevitable conclusion is that the petitioner in the aforesaid writ petition had indulged in use of unfair means and, therefore, her result has rightly been cancelled.

69. While referring to the documents from the compilation as well as return, it has been contended on behalf of the petitioners that if the right match answers and wrong match answers are added, their score crosses 200 marks which is not possible and, therefore, the formula is erroneous and illogical. The aforesaid submission is noted only to be rejected, as on the basis of the formula, the Board has only ascertained the volume of unfair means score and not the actual marks.

70. Now, we may deal with the contention of the petitioners that there was no material to order inquiry in respect of Pre-Medical Tests, 2009 to 2011 and for constitution of the Committee. If the impugned orders are read carefully, it is evident that the Special Task Force who was investigating the criminal cases from time to time apprised the Board with regard to irregularities committed in previous Pre-Medical Tests on the basis of information furnished by the Special Task Force, the Board constituted the Committee of the experts and after consideration of the report by the Expert Committee, the impugned orders have been issued, therefore, the contention of the petitioners that there was no material to order enquiry does not deserve acceptance. Similarly, the contention that there is no material on record to arrive at the conclusion that candidates were involved in use of unfair means needs only to be rejected as we have already indicated the material available on record against the candidates who had indulged in use of unfair means in preceding paragraphs.

Even otherwise, it is not open for this Court to go into the sufficiency of material and the instant cases are not the cases where no subjective satisfaction has been recorded by the authority with regard to use of unfair means or that it is recorded without there being any material on record.

71. The contention raised on behalf of the petitioners that since formula to identify the candidates was evolved by the Board after examination was held, the same amounts to changing the rules of the game, is misconceived. The candidates had indulged in mass copying in an organised manner by tampering their roll numbers in collusion with officials of the Board and racketeers. The candidates had secured admissions in MBBS course by playing fraud. Therefore, such candidates cannot be permitted to retain an advantage obtained by fraud and mere delay in detection of fraud would not create any equities in favour of such candidates. [See: *Ram Preeti Yadav,* (supra)]

72. We have already held that the candidates had indulged in mass copying in Pre-Medical Tests, 2008 to 2012 therefore, for the reasons assigned by Division Bench in paras 91 to 106 of the decision in the case of *Pratibha Singh,* (supra) the principles of natural justice would have no application in the peculiar fact situation of these cases. In order to examine the contention of the petitioners who had appeared in Pre Medical Test, 2010 that their cases do not fall within the purview of Rule 3.8 of Madhya Pradesh Medical and Dental Under Graduate Entrance Examination Rules, 2010, it is necessary to reproduce the aforesaid rule, which reads as under:-

> *"Rule 3.8 UNFAIR MEANS (UFM)*
>
> *If any candidate is found using unfair means during the examination, which includes, referring to a book/note book/ loose sheets, talking, giving assistance or seeking/receiving help from any source, indulging in any malpractice or misbehavior in any manner in the test hall, harassing or doing harm to other candidates or invigilation or supervisory staff or if any action of the candidate is interpreted by the Observer/Centre Superintendent/ Invigilator as amounting to adopting unfair means, a case will be registered under unfair means and shall be legally dealt with accordingly. The answer sheet of the candidate booked under UFM shall not be valued and his/ her candidature shall be cancelled. Additionally, any case of*

use of unfair means on the part of the candidate may be handed over to the police. Criminal proceedings shall be initiated against such candidates."

Thus, it is evident that definition of 'unfair means' is inclusive and provides that additionally in any case of use of unfair means, enumerated in the rule which would include the case of 'mass copying' as well, under the aforesaid rule and action can be taken against the petitioners. Besides that, in any case, if the Board has power to conduct the examination, it has implicit power to cancel the results of the candidates as well. It has been held by the Division Bench in the case of *Pratibha Singh* (supra) that Board alone has the authority to take action against the candidates for cancellation of results. Therefore, the aforesaid contention cannot be accepted.

73. Now, we may deal with the submission made in the rejoinder reply by way of written submissions in W.P. No.7576/2014 and 7121/2014 - that in case this Court does not agree to exercise power of judicial review in favour of the petitioners, this Court may permit the petitioners to resort to the remedy of civil suit. Notably, the petitioners elected the remedy of writ jurisdiction. Not only that, they chose to argue the matter in *extenso* on all aspects including on the issue of scope of judicial review and also the duty of the Court to interfere with the impugned action of the Authorities on the ground that the same was irrational, unjust, arbitrary, discriminatory, illegal and untenable. It was also argued with vehemence that there was no basis for the formula evolved by the Board, for identifying the erring candidates. Rather, the approach of the Authorities was illogical and unscientific. Each of these argument has been addressed and answered by us hitherto. After having undertaken that exercise, the question of granting liberty to the petitioners to now approach the Civil Court by way of a civil suit would be nothing short of encouraging multiplicity of proceedings. No tangible contention, which has been left out from consideration in this judgment, and needs to be adjudicated by way of a civil suit in the context of challenge to the impugned action, has been brought to our notice. Moreover, as the alternative relief for permission to resort to remedy of civil suit being afterthought and taken at a belated stage after exhausting the marathon arguments by the counsel for the concerned petitioners by engaging the Court for couple of days; coupled with the fact that the petitioners have not pointed out any tangible ground or plea on which the petitioners should be permitted to resort to remedy of civil suit after the decision of this Court on the points dealt with in this judgment (which obviously will be binding on the

Civil Court), the question of acceding to the request under consideration does not arise. Suffice it to observe that the alternative plea taken by the petitioners is an argument of desperation and without any legal basis. As a result, the same will have to be negatived.

74. In view of the preceding analysis, we do not find any merit in the writ petitions. The same fail and are hereby dismissed. However, there shall be no order as to costs. Similarly, all the Interlocutory Applications in the respective writ petitions, are also disposed of.

Petition dismissed.

I.L.R. [2015] M.P., 731
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice Alok Aradhe

W.P. No. 8555/2014 (PIL) (Jabalpur) decided on 8 October, 2014

JEEVANLAL MISHRA & ors. ... Petitioners
Vs.
STATE OF M.P. & ors. ... Respondents

A. ***Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), Section 24*** **- Notifications were issued under sections 4 and 6 of Land Acquisition Act, 1894 - Award was passed on 22.04.2014 i.e., after the commencement of Act, 2013 - Proceedings do not stand lapsed but can be continued as per the provisions of Section 24(1)(a) of Act, 2013 - Proceedings which were initiated under 1894 Act are saved under 2013 Act in view of provisions of Section 114 of 2013 Act. (Paras 7 & 9)**

क. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (2013 का 30), धारा 24 – भूमि अर्जन अधिनियम 1894 की धाराऐं 4 व 6 के अंतर्गत अधिसूचनाएं जारी की गई – 22.04.2014 को, अर्थात् अधिनियम 2013 प्रभावी होने के पश्चात् अवार्ड पारित किया गया – कार्यवाही व्यपगत नहीं होगी अपितु अधिनियम 2013 की धारा 24(1)(ए) के उपबंधों के अनुसार जारी रखी जा सकती है – अधिनियम 1894 के अंतर्गत आरंभ की गई कार्यवाही, अधिनियम 2013 की धारा 114 के उपबंधों को दृष्टिगत रखते हुए सुरक्षित है।

B. Land Acquisition Act (1 of 1894), Section 5-A - Notices - **Petitioners do not disclose the names of the land owners to whom the personal notices were not served under section 5-A of Act, 1894 - Proceedings are not vitiated. (Para 8)**

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 5–ए – नोटिस – याचीगण ने उन भूमि स्वामियों के नाम प्रकट नहीं किये जिन पर अधिनियम 1894 की धारा 5–ए के अंतर्गत व्यक्तिगत नोटिस तामील नहीं किये गये – कार्यवाही दूषित नहीं।

Cases referred :

(2011) 5 SCC 553, (2014) 3 SCC 183.

A.M. Trivedi with *Sudhakar Chaturvedi,* for the petitioners.
Sanjay Dwivedi, G.A. for the respondents no. 1 to 13, 16 & 17.

ORDER

The Order of the Court was delivered by :
ALOK ARADHE, J. :- In this writ petition, filed *pro bono publico,* the petitioners, *inter-alia,* have assailed the validity of the action of respondents in construction of the reservoir dam, namely, Pagra Dam in District Sagar. The petitioners have also prayed for a direction to the respondents to construct the dam at village Pancham Nagar and not to shift the same to village Pagra i.e. at a distance of 13 Kms. from Pancham Nagar. The petitioners also seek quashment of notifications issued under Sections 4 and 6 as well as notice issued under Section 9 dated 6.9.2013, 4.12.2013 and 20.1.2014, respectively, under the provisions of Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act').

2. Facts leading to filing of the writ petition, briefly stated, are that on the basis of survey which was conducted and approved by the State Government, an administrative sanction for the first phase of project for construction of the dam at village Pagra was granted by the State Government on 31.10.2010. Under the aforesaid medium project, as per administrative approval dated 31.1.2012, big reservoir at village Pagra, pick-up dam at village Pancham Nagar and the left bank main canal are proposed to be constructed which emanates from village Pancham Nagar for irrigation of 9,900 hectares of cultivable command area.

3. On an objection being raised by the public in general against

construction of dam at village Pagra, the Water Resources Department constituted a committee comprising two Chief Engineers. The Committee inspected the spot in the presence of Collector and the Chief Engineer, Water Resources Department, Sagar, and explored the possibility whether the dam can be constructed at any other place. However, the Committee in its report dated 15.5.2013 after consideration of objection of the villagers, found that the proposed site for construction of the dam is suitable in all respects. Thereafter, the process of acquisition of land was set in motion by issuance of the notification under Section 4 of the Act, 1894 on 6.9.2013 and an enquiry under Section 5-A of the Act was held. The objections preferred by the villagers were rejected by the Commissioner after due consideration vide order dated 30.11.2013.

4. Thereafter, declaration under Section 6 of the Act was issued on 4.12.2013 and notices under Section 9 of the Act were issued to the land owners on 20.1.2014 and ultimately, an Award was passed on 22.4.2014 in which it was provided that the amount of compensation shall be determined as per the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'). In the aforesaid factual background, the petitioners have approached this Court.

5. Learned senior counsel for the petitioners while inviting our attention to Section 24(1)(a) of the 2013 Act has submitted that the proceeding for acquisition of the land in question on enforcement of 'the 2013 Act' stood lapsed. It was further pointed out that no personal notices were served on the villagers in respect of an enquiry under Section 5-A of the 1894 Act, which is mandatory in nature. It is also submitted that notification under Section 4 of the 1894 Act is not saved by Section 114 of the 2013 Act read with Section 6 of the General Clauses Act, 1897. In support of the aforesaid submissions, learned senior counsel for the petitioners has referred to the decisions of the Supreme Court in *Radhyshyam (dead) through Lrs. and others Vs. State of Uttar Pradesh and others*, (2011) 5 SCC 553 and *Pune Municipal Corporation and another Vs. Harakchand Misirilal Solanki and others*, (2014) 3 SCC 183.

6. On the other hand, learned Government Advocate has submitted that pursuant to the public notice dated 11.10.2013, all the villagers had submitted the joint objections which were dealt with by the Land Acquisition Officer

and were forwarded for consideration to the competent authority namely the Commissioner, Sagar Division, Sagar. In this connection, our attention has been invited to Annexure R/6 to R/8. It is also submitted that an Award has been passed on 22.4.2014 in which a provision has been made that compensation to the affected persons shall be paid in accordance with the provisions of 2013 Act. It is stated that most of the villagers after receipt of the compensation, have handed over the possession of the land. In support of the aforesaid submission, our attention has been invited to document Annexure R/6. Lastly, it is urged that the construction of the dam is in public interest and would be beneficial to the farmers of the Sagar District.

7. We have considered the respective submissions made by learned counsel for the parties. The relevant extract of Section 24 of the 2013 Act reads as under:-

> *"24(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1) of 1894) -*
>
> (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
>
> (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
>
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act."*

Thus, it is evident that the proceeding initiated under the 1894 Act on commencement of 2013 Act, would lapse if the award has been made five years or more prior to commencement of the 2013 Act and the physical possession of the land has not been taken. In the instant case, the award has been passed on 22.4.2014 i.e. after the commencement of 2013 Act and, therefore, sub-section (2) does not apply. In other words, the land acquisition proceeding in question has not lapsed and, in fact, could be continued further in terms of express provision in section 24(1)(a), having been saved subject to determination of compensation as per the Act of 2013.

8. So far as the contention raised on behalf of the petitioners that provisions of Section 5-A of 1894 Act have been violated in as much as, no personal notices were served on the land holders in respect of an enquiry under Section 5-A of the Act is concerned, the same needs to be stated to be rejected, in as much as, the petitioners in the writ petition have failed to disclose the name of the land owners on whom the personal notices under Section 5-A of 1894 Act were not served. On the other hand, from perusal of the material available on record, it is evident that pursuant to the notice dated 11.10.2013, all the land owners submitted a joint objection. In the absence of any specific pleading with regard to the contention raised by learned senior counsel for the petitioners, we are not inclined to deal further with the aforesaid issue.

9. Section 114(2) of the 2013 Act provides that save as otherwise provided in this Act, the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals. Thus, section 6 of General Clauses Act, 1897 has been incorporated in Section 114 of 2013 Act. Therefore, under section 114 of 2013 Act, the proceeding which was initiated under the 1894 Act is saved.

The ratio laid down in *Pune Municipal Corporation,* supra, has no application to the facts of the case, as in that case, the award was passed five years before the commencement of the 2013 Act, which is not the case here. Besides that, the construction of Dam is in public interest as on completion of the Dam water can be supplied for irrigation to 9,900 hectares of land in Sagar District. For this reason also, no interference is called for in exercise of extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

10. However, in accordance with the provisions of Section 24(1) (a) of the 2013 Act, would apply in relation to determination of the compensation. It has also been stated by learned Government Advocate that the compensation of the land owners is being made in accordance with the provisions of 2013 Act and this fact has already been stated in the award dated 22.4.2014.

11. Accordingly, the Land Acquisition Officer will have to ensure that the compensation be madeover to the land owners affected by the project in question is in accordance with the provisions of 2013 Act. Interim order stands vacated. Accordingly, the writ petition is disposed of.

Petition disposed of.

I.L.R. [2015] M.P., 736
WRIT PETITION

Before Mr. Justice Rajendra Menon & Mr. Justice C.V. Sirpurkar
W.P. No. 161/2006 (Jabalpur) decided on 29 October, 2014

NARMADA TRANSMISSION PVT. LTD. (M/S) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

***Commercial Tax Act, M.P., 1994 (5 of 1995), Sections 9, 10A and 19(1)(a) - Surcharge* - Surcharge payable u/s 10A is nothing but a tax payable under the Act - It is only one way of enhancement of the tax - Once the petitioner is permitted composition of tax u/s 19(1)(a), then no liability to pay any surcharge u/s 10A would arise - Impugned orders are quashed - Petition allowed. (Paras 17 & 18)**

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धाराएं 9, 10ए व 19(1)(ए) – अधिभार – धारा 10ए के अंतर्गत देय अधिभार कुछ नहीं बल्कि अधिनियम के अंतर्गत देय कर है – यह मात्र कर की वृद्धि का एक रास्ता है – एक बार याची को धारा 19 (1)(ए) के अंतर्गत कर के प्रशमन की अनुमति प्रदान करने पर धारा 10ए के अंतर्गत कोई अधिभार अदा करने का दायित्व नहीं उत्पन्न होगा – आक्षेपित आदेश अभिखंडित – याचिका मंजूर।

Cases referred :

AIR 1992 SC 1264, AIR 1976 SC 127, 1972(2) SCR 309.

Shekhar Sharma, for the petitioner.
Rahul Jain, Dy.A.G. for the respondents/State.

ORDER

The Order of the Court was delivered by : RAJENDRA MENON, J. :- Challenging the orders dated 1.2.2005 & 22.6.2005 so also the order dated 8.8.2005 passed by the respondents in the Commercial Tax Department, Government of Madhya Pradesh rejecting a claim made by the petitioner, challenging imposition of surcharge under Section 10A of the Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred to as the "Act, 1994"), this writ petition has been filed.

2. Facts in brief go to show that the petitioner M/s Narmada Transmission Private Limited is a company registered under the provisions of the Companies Act and carries out work of erection and manufacturing of conductors and various other electrical items through it's manufacturing unit situated in Govindpura, Bhopal.

3. A contract was awarded to the petitioner by the Madhya Pradesh State Electricity Board for the purpose of Design, Manufacture, Pre dispatch instruction, Testing & supply of materials and Commissioning of APDRP works at Shivpuri. Petitioner's work was subjected to payment of Commercial Tax under the Act, 1994.

4. Under the provisions of the Act, 1994, levy of Commercial Tax is contemplated under Section 9. That apart, Section 10 A contemplates a provision for levy of surcharge on tax payable under various provisions of the Act. Further, Section 19 of the Act, 1994 contemplates a provision for composition of tax by certain registered dealers.

5. Section 19(1)(a) of the Act, 1994 reads as under :-

> **"(1)(a) The Commissioner may, subject to such restrictions and conditions as may be prescribed, permit any registered dealer, who carries on wholly or partly the business of supplying goods in the course of execution of works contract entered into by him, to pay in lieu of tax payable by him under this Act a lumpsum at such rate, not exceeding 15 per cent, as may be prescribed, determined in the prescribed manner, by way composition."**
>
> **(Emphasis Supplied)**

6. For the year in question, petitioner moved an application before the Commercial Tax Officer Circle No.1-Bhopal and indicated their intention for seeking advantage composition of tax as provided under Section 19, reproduced herein above.

7. The petitioner was permitted composition by the Commercial Tax Officer and the composite tax or fee to be payable was determined as 4%. Petitioner accepted the same, paid the tax as ordered by the Assessing Officer by virtue of the powers vested upon him under Section 19 of the Act. Petitioner, after having paid the composition tax as determined under Section 19, received a notice for payment of surcharge under Section 10 A. Petitioners challenged the imposition of surcharge and when the same was rejected, this writ petition has been filed.

8. Shri Shekhar Sharma, learned counsel submitted that the surcharge contemplated under Section 10 A is nothing but a tax within the meaning of the Madhya Pradesh Commercial Tax Act, 1994 and once the payment of tax as contemplated under the Act is paid by composition, and when this is in lieu of all taxes payable under the Commercial Tax Act, all the taxes payable is deemed to have been paid and no further tax, even surcharge under Section 10 A, can be levied. He argues that the surcharge under Section 10 A is nothing but a tax and in support of his contention, he places reliance on a judgment rendered by the Supreme Court in the case of *Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh* AIR 1992 SC 1264 to say that the surcharge in a taxing provision is nothing but a tax itself and once the provisions of Section 9 permits composition of tax and it's payment in lumpsum in lieu of all taxes payable under the Act, the petitioner cannot be further made liable to pay any surcharge under Section 10 A. Accordingly, Shri Sharma, argues that the action of the respondents in claiming surcharge is unsustainable.

9. Shri Sharma, learned counsel invites our attention to the impugned order passed by the Revisional Authority as contained in Annexure-P5 dated 8.8.2005 and submits that the Revisional Authority is demanding the surcharge by construing surcharge to be not a tax as defined under Section 2 (b). It is the case of the petitioner represented by Shri Shekhar Sharma that once the Supreme Court in the case of *Sarojini Tea Co. (P.) Ltd.* (supra) has held that the surcharge is nothing but a tax, the observations made by the learned Revisional Authority that surcharge is not a tax, is contrary to the law laid down by the Supreme Court in the case of *Sarojini Tea Co. (P.) Ltd.* (supra).

10. Shri Rahul Jain, learned Dy. Advocate General refutes the aforesaid and argues that the surcharge payable under Section 10 A is an amount payable over and above the tax, which is to be paid not only under Section 9 A but also under Section 19 and, therefore, in demanding the surcharge, the authorities have not committed any error. It is argued that the definition of tax as appearing in the Act, 1994 and the definition of tax as appearing in the Income Tax Act are different and, therefore, the judgment rendered in the case of *Sarojini Tea Co. (P.) Ltd.* (supra) will not apply in the present case.

11. It is stated by Shri Rahul Jain that Section 10 A is an independent charging clause, which permits the State Government to levy surcharge on the tax payable under any other provisions of the Act. Once the Government is empowered to levy surcharge on the tax payable, no error is committed by the authorities, warranting reconsideration.

12. We have heard learned counsel for the parties and perused the record. Before adverting to consider the rival contentions, we may take note of the judgment rendered by the Supreme court in the case of *Sarojini Tea Co. (P.) Ltd.* (supra). In the said case, the question before the Supreme Court was as to what is the meaning and import of the word 'surcharge' as it appears in various taxing statutes. The Supreme Court has referred to various judgments including judgments pertaining to payment of electricity duty, income tax etc and from Paragraph-10 onwards, discusses the meaning of the word 'surcharge' as it appears in various taxing provisions after referring to the definition of the word 'surcharge', as defined in the Shorter Oxford English Dictionary. It is held by the Supreme Court in the aforesaid case after referring to the dictionary meaning of the word 'surcharge' that the word stands for an addition and extra charge or payment, thereafter, the Supreme Court refers to the judgment in the case of *Bisra Stone Lime Co. Ltd. Vs. Orissa State Electricity Board,* AIR 1976 SC 127 and holds that surcharge is a super added charge, a charge over and above the usual and current dues.

13. In Paragraph-11, the Supreme Court found that when the surcharge is imposed upon a electric tariff, it is nothing but a process for enhancement of the rate of tariff by way of surcharge. The Supreme Court in the case of *Orissa State Electricity Board* (supra) dealt with the matter in the following manner:

> **"Although, therefore, in the present case it is in the form of a surcharge, it is in substance an addition to**

the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act" (p.311 (of SCR) : (at p.130, Para 11 of AIR)"

(Emphasis Supplied)

14. Again with regard to levy of surcharge on income tax, the matter was considered in the case of *Commissioner of Income Tax, Kerela VS. K.Srinivasan* 1972 (2) SCR 309. In the said case, the question was as to whether the term income tax as provided under Section 2 of Finance Act, 1964 would include surcharge or additional surcharge wherever provided. The Supreme Court went into the question and if the judgment rendered is read in it's totality, it would be seem that the Supreme Court has laid down the principle that surcharge on income tax is nothing but an addition and extra charge on the tax and is, therefore, nothing but a tax itself. Various judgments on the question are referred to in the case of *Sarojini Tea Co. (P.) Ltd.* (supra) and finally, the principle laid down is that the expression 'surcharge' in the context of taxation means an additional imposition which results in enhancement of the tax and, therefore, an addition or imposition by way of surcharge is same as tax on which, it is imposed.

15. That be so, we have no hesitation in accepting the contention of Shri Shekhar Sharma to the effect that surcharge is nothing but an addition on the tax already levied and, therefore, it is in the nature of a tax and infact is a tax levied on the consumer. Accordingly, if the principle as laid down by the Supreme Court is applied in the facts and circumstances of the present case, we find that while permitting the composition of tax to be paid by certain registered dealers, Section 19 (1)(a) of the Act, 1994 contemplates that the Commissioner may subject to such restrictions and conditions as may be prescribed, permit any registered dealer to pay in lieu of tax payable by him under the Commercial Tax Act, a lumpsum at such rate, not exceeding 15%.

16. That being so, the provision of Section 19 is a provision for composition of tax and it's payment in a lumpsum manner in lieu of all taxes payable under the Act, 1994. Once a composition of tax under Section 19 (1)(a) is permitted by the competent authority, it amounts to payment of all the taxes payable under the Act, 1994. Infact, composition of tax under Section 19 (1) (a) is tax determined and paid in lieu of all other taxes as are required to be paid under the Act, 1994.

17. Accordingly, once the composition under the aforesaid provision is permitted then all taxes, which include surcharge under Section 10 A is deemed to have been paid and no further surcharge is liable to be paid. Accordingly, we have no doubt that once the petitioner is permitted composition of tax under Section 19 (1)(a), then no liability to pay any surcharge under Section 10 A would arise, as surcharge payable under Section 10 A is nothing but a tax payable under the Act, it is only one way of enhancement of the tax. That apart, if the return filed by the respondents and the averments made in Paragraph-6 are taken note of, we find that the respondents are demanding surcharge under Section 10 A on the assumption that the surcharge is not a tax but a payment over and above the tax. This contention of the respondents is contrary to the meaning of 'surcharge' as laid down by the Supreme Court in the case of *Sarojini Tea Co. (P.) Ltd.* (supra).

18. Accordingly, we allow this writ petition. The orders impugned are quashed.

19. No order as to costs.

Petition allowed.

I.L.R. [2015] M.P., 741
WRIT PETITION
Before Mr. Justice R.S. Jha
W.P. No. 21670/2013 (Jabalpur) decided on 18 November, 2014

YOGIRAJ SHARMA (DR.) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(4) & Rule 32 - Non-supply of inquiry report and non-issuance of show cause notice before termination **- Held - Apparently neither the enquiry report was supplied to the petitioner nor show cause notice was issued to him prior to issuance of impugned order - There is also non-compliance of Rule 32 of the Civil Services Rules - Order of punishment and appellate order is quashed - Petitioner is reinstated - Matter is remitted back to the disciplinary authority to proceed further by strictly following the procedure prescribed. (Paras 13, 14)**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम

9(4) व नियम 32 – सेवा समाप्ति के पूर्व जांच प्रतिवेदन प्रदाय न किया जाना एवं कारण बताओ नोटिस जारी नहीं किया जाना – अभिनिर्धारित – आक्षेपित आदेश जारी होने के पूर्व तक प्रत्यक्षतः याची को न तो जांच प्रतिवेदन प्रदाय किया गया न ही उसे कारण बताओ नोटिस जारी किया गया – साथ ही सिविल सेवा नियम के नियम 32 का भी पालन नहीं किया गया – दंड का आदेश एवं अपीली आदेश अभिखंडित – याची को बहाल किया गया – विहित प्रकिया का कड़ाई से पालन करते हुए आगामी कार्यवाही हेतु मामला अनुशासनिक प्राधिकारी को प्रति–प्रेषित।

Cases referred :

(2011) 4 SCC 591, (2014) 7 SCC 340, (1993) 4 SCC 727.

Sidharth Gupta, for the petitioner.
Kumaresh Pathak, Dy. A.G. for the respondents.

ORDER

R.S. Jha, J. :- The petitioner has filed this petition being aggrieved by order dated 2.04.2013 by which the petitioner, who was working on the post of Director, Health and Family Welfare, M.P., has been dismissed from service as well as order dated 23.11.2013 by which the petitioner's appeal against the order of dismissal has been dismissed.

2. The brief facts, leading to the filing of the present petition, are that the petitioner entered service of the respondents on 29.5.1982 as an Assistant Surgeon and was thereafter appointed afresh through the M.P. Public Service Commission as Chief Medical and Health Officer in the year 1991. On 2.12.1998 the petitioner was promoted as Director, Public Health and Family Welfare, M.P.

On 10.12.2007 the petitioner was subjected to compulsory retirement against which he filed a writ before this Court, W.P No.386/2008, which was allowed by order dated 14.11.2008. The order passed in W.P No.386/2008 was assailed by the State by filing a Writ Appeal, W.A No.134/2009, which was disposed of by order dated 23.7.2009 granting liberty to the respondent/ State to proceed further against the petitioner in accordance with law.

It is stated that thereafter on 26.8.2009 the respondent authorities issued a charge-sheet to the petitioner levelling the following charges:-

"आरोप कमांक – 01

यह कि आपने स्वास्थ्य एवं परिवार कल्याण मंत्रालय, भारत शासन द्वारा परिवार

कल्याण कार्यकम के अंतर्गत प्रदाय मटीज वाहन को योजनाबद्ध तरीके से एवं साजिशपूर्वक तरीके से प्रायवेट रजिस्ट्रेशन कराकर उक्त मटीज वाहन आपके द्वारा हड़प लिया गया था ।

आरोप क्रमांक – 02

यह कि आपने आर..टी.ओ, भोपाल को गुमराह कर गलत जानकारी के आधार पर मटीज वाहन का रजिस्ट्रेशन प्रायवेट नम्बर एम..पी.04–एच.ए. –4684 कराया गया एवं इस हेतु देय शुल्क का भुगतान भी व्यक्तिगत रुप से किया गया ।

आरोप क्रमांक – 03

आपके द्वारा उपरोक्त वाहन का प्रायवेट नम्बर से रजिस्ट्रेशन कराने के पश्चात् यह तथ्य सार्वजनिक होने पर आपने शासकीय अभिलेखों में हेराफेरी कर कूट अभिलेख तैयार किये गये ।"

The Enquiry against the petitioner was concluded and the Inquiry Report was submitted by the respondent authorities on 5.10.2012 and thereafter the impugned order of termination/dismissal of the petitioner from service was passed by the authorities on 2.4.2013. Writ Petition, W.P No.7618/2013, filed by the petitioner against the impugned order of termination, was withdrawn on 13.5.2013 with liberty to file an appeal before the authorities. Thereafter the petitioner filed an appeal before the Appellate Authority which has been dismissed by the second impugned order dated 23.11.2013. The petitioner, being aggrieved, has filed the present petition assailing the same.

3. It is contended by the learned counsel for the petitioner that the entire enquiry initiated against the petitioner is vitiated on account of the fact that the charges levelled against the petitioner are vague and unsubstantiated; that the documents on the basis of which the charge-sheet has been issued have not been supplied; that important witnesses have not been examined by the department; that three preliminary enquiry reports which were conducted prior to initiation of disciplinary proceedings have not been considered; that charge nos.2 & 3 levelled against the petitioner have not been considered and decided in detail by taking into consideration the evidence adduced in the enquiry and; that charge no.1 is held to have been proved inspite of the fact that there was no evidence in support thereof.

4. The learned counsel for the petitioner has also contended that the enquiry report was not supplied to the petitioner and that proper show cause

notice before passing the impugned order of termination/dismissal was not issued to the petitioner nor was he informed that his past conduct and record would be taken into consideration while determining the quantum of punishment. It is also contended that though the respondents took advise from the Public Service Commission on the enquiry report, the same was not given to the petitioner in order to enable him to submit his response thereto before taking a decision in the disciplinary enquiry and passing the impugned order of termination. Al (sic:All) these issues have been raised by the petitioner in the present petition and several decisions of the Supreme Court have been cited in support thereof.

5. Having heard the learned counsel for the petitioner at length, this Court proposes to take up the issue of non-supply of enquiry report and non-issuance of show cause notice before termination for decision, as the first issue, as they go to the root of the matter.

6. The learned Dy. Advocate General appearing for the respondents/ State was specifically asked as to the response of the State in respect of these two issues. The learned Dy. Advocate General, in response, submitted that though there are note sheets and letters on record to indicate that orders to supply the inquiry report to the petitioner were made, however there is no specific proof of service of inquiry report upon the petitioner though the modes of service have been prescribed in the Rules and nothing in respect of this aspect has been clarified or stated by the respondents in the return whereas it appears from the document filed by the petitioner in the petition itself that the report was supplied to the petitioner when he sought for the same under the Right to Information Act vide covering memo dated 7.6.2013.

7. Having heard the learned Dy. Advocate General on this issue, it becomes evident that admittedly, the inquiry report was furnished to the petitioner on 7.6.2013 after issuance of the impugned order of punishment dated 2.4.2013.

8. As far as the issue relating to the issuance of a show cause notice for punishment is concerned, the learned Dy. Advocate General, on the basis of the reply and affidavit filed by the State and after perusing the petition, fairly states that there is nothing on record to indicate that a show cause notice was ever issued to the petitioner before passing the impugned order of punishment as required under the procedure prescribed by the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as

'the Civil Service Rules').

9. From the aforesaid analysis, it is clear that apparently the inquiry report was not supplied to the petitioner and no show notice notice was issued to him prior to issuance of the impugned order of punishment dated 2.4.2013. It is also clear that the respondents have also not complied with the provisions of Rule 32 of the Civil Service Rules or given any opportunity to the petitioner to respond to the advise of the Commission as required by the provisions of law as well as the decision of the Supreme Court rendered in the cases of *S. N. Narula vs. Union of India and Others,* (2011) 4 SCC 591 and *Union of India and others vs. R. P. Singh,* (2014) 7 SCC 340. It is also evident that the respondents did not inform the petitioner that his past conduct would be considered while deciding the punishment to be imposed upon him.

10. In view of the aforesaid facts and circumstances it is clear that the impugned order of dismissal and punishment has been passed by the respondent authorities without supplying the inquiry report and without giving a show cause notice to the petitioner before issuing the impugned order of punishment as required by the provisions of the Rules. Had the petitioner been given such an opportunity, he would have taken up all the issues that he has taken up before this Court in his reply thereto which would have been duly examined by the authorities before taking a decision in this regard and in such circumstances I am of the considered opinion that the non-supply of the inquiry report and non-giving of show cause notice has seriously prejudiced the rights of the petitioner to defend himself.

11. The procedure required to be followed in such cases has been prescribed and provided by a Five Judges Bench decision of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and others,* (1993) 4 SCC 727, which is to the following effect:-

> "30(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have

prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.

The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of

punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

12. The same view has also been reiterated on several occasions including in the decision rendered in the case of *R. P. Singh* (supra).

13. From a perusal of the aforesaid law laid down by the Supreme Court it is clear that in case the Court decides to set aside the punishment on account of non-supply of the inquiry report and non-issuance of the show cause notice after recording a finding that it would have made a difference to the result of the case, the relief that is required to be given to the petitioner is to direct his reinstatement with liberty to the authorities/management to proceed with the inquiry by placing the employee under suspension and continuing the enquiry

from the stage of furnishing him with the report. The Supreme Court has further held that the question whether the employee would be entitled to backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending upon the final outcome and the authority would also be at liberty to decide according to law how it would treat the period from the date of dismissal till the date of reinstatement and to what benefits, if any, and the extent of the benefits to which he would be entitled. The Supreme Court has further held that the reinstatement in such cases should be treated as a reinstatement for the purpose of holding fresh inquiry from the stage of furnishing the report and no more where such fresh inquiry is held.

14. In view of the findings recorded by this Court in the present case and in view of the law laid down by the Supreme Court in the case of *B. Karunakar* (supra) as well as keeping in mind the provisions of Rule 9(4) of the Civil Service Rules, the petition filed by the petitioner is allowed to the extent of setting aside the impugned order of punishment dated 2.4.2013 as well as the appellate order dated 23.11.2013 and the matter is remitted back to the disciplinary authority for proceeding further from the stage of furnishing of the enquiry report and thereafter strictly following the procedure prescribed by the provisions of the Civil Service Rules as well as by the Supreme Court in the cases of *Managing Director, ECIL, Hyderabad and Others* (supra) and *R. P. Singh* (supra) and the Government instructions issued from time to time in this regard including instructions regarding the steps to be taken after obtaining the opinion and advise of the Public Service Commission. It is further ordered that while the matter is remitted back for the aforesaid purpose, the petitioner would be reinstated in service and would be treated to have been placed under suspension from the date of the impugned order of dismissal. It is further ordered that the authority while taking a final decision in the matter shall also take a decision regarding the consequential benefits, if any, to which the petitioner would be entitled including payment of the period under suspension, backwages, etc. as held by the Supreme Court in the above cited cases.

15. It is further made clear that this Court has not expressed any opinion on any of the other issues raised by the petitioner before this Court and, therefore, the petitioner would be at liberty to take up all these issues before the authority as well as in any subsequent proceedings taken up by him. In other words, as I propose to set aside the impugned order only upon the

grounds stated above, I do not think it necessary to advert to the other issues and grounds raised by the petitioner in the present petition which are left open to be decided at the appropriate stage.

16. With the aforesaid observation and direction the matter is remitted back to the authorities after setting aside the impugned orders dated 2.4.2013 and 23.11.2013 and the petition, filed by the petitioner, stands allowed to the extent indicated above. There shall be no order as to the costs.

Petition allowed.

I.L.R. [2015] M.P., 749
ELECTION PETITION
Before Mr. Justice G.S. Solanki
E.P. No. 26/2014 (Jabalpur) decided on 12 December, 2014

RAM KHELAWAN PATEL ... Petitioner
Vs.
DR. RAJENDRA KUMAR SINGH & ors. ... Respondents

Representation of the People Act (43 of 1951), Section 82, Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Non-joinder of contesting candidates **- Petitioner sought declaration that he be declared as elected candidate without joining the contesting candidates as respondents - Petition liable to be dismissed u/o 7 Rule 11 CPC - Petition dismissed. (Para 6)**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 82, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – प्रतिस्पर्धी प्रत्याशियों का असंयोजन – याची ने घोषणा चाही कि प्रतिस्पर्धी प्रत्याशियों को प्रत्यर्थी के रूप में जोड़े बिना उसे निर्वाचित प्रत्याशी घोषित किया जाये – सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत याचिका खारिज किये जाने योग्य – याचिका खारिज।

Cases referred :

AIR 1958 SC 687, AIR 1973 SC 2513, (1998) 8 SCC 564.

Amit Singh, for the petitioner.
R.N. Singh with *Arpan J. Pawar* for the respondent no.1.

ORDER

G.S. Solanki, J. :- This order shall govern disposal of I.A. No. 22/

2014, which is an application filed by respondent No. 1 under Order VII Rule 11 of the CPC read with Section 86 of the Representation of People Act, 1951 (hereinafter referred to as the Act of 1951) inter alia on the ground that the petitioner has called in question the election of respondent No. 1 from Assembly Constituency No. 66, Amarpatan on the following grounds :

(i) Suppression of material facts while submitting the nomination papers.

(ii) Indulging in corrupt practices

(iii) exceeding permissible limit of expenditure

2. It is further submitted that though in the instant election petition, the petitioner is seeking his own declaration as the returned candidate but as per the mandatory requirement of Section 82 of the Act of 1951, the petitioner has not arrayed all the contesting candidates as the respondents in the election petition, therefore, on the ground of non-joinder of all the candidates, the election petition is liable to be dismissed at threshold. It is further submitted that the pleadings contained in the election petition do not disclose any cause of action because no specific pleading in any paragraph of the election petition discloses any cause of action. The pleadings of election petition are vague and trial cannot not be proceeded on such pleadings. Verification and affidavit filed along with the election petition are not in accordance with law. It is further submitted that there is an apparent non compliance of the provisions of Section 81, 82, 83 and 86 of the Act of 1951, therefore, this election petition is liable to be dismissed at threshold without trial.

3. In the reply, the petitioner has denied all the contentions raised in the application and it is submitted that in compliance of Section 83(b) of the Act of 1951, the petitioner has set forth full particulars of corrupt practice including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and date and place of commission of such corrupt practices. It is further submitted that the petitioner has filed the affidavit in the prescribed format in support of the allegations of aforesaid corrupt practices and particulars thereof. So far as non-compliance of Section 82(1) of the Act of 1951 is concerned, a bare perusal of Section 82(a) makes it ample clear that the petitioner is required to implead all the contesting candidates in the array of respondents, if he claims a declaration to the effect that he himself or any other candidate has been duly elected. However, in the instant

election petition, the petitioner has not prayed that he or any other candidate be declared as duly elected candidate and as such there is no requirement to implead all the contesting candidates as respondents in the election petition. In fact the petitioner has prayed that he be declared as the returned candidate. 'Returned candidate' is completely and totally different from the candidate who has been duly elected and therefore, in the light of strict construction of the Act of 1951, the election petition cannot be said to be in contravention with Section 82(a) of the Act of 1951. It is further submitted that as per definition provided in Section 79(f) of the Act of 1951, the returned candidate means the candidate whose name has been published under Section 67 of the Act of 1951 as duly elected. The expression 'returned candidate' is in the context of the candidate who has been declared elected under the previous part of the Act of 1951 and it makes obvious that publication of duly elected candidate in the gazette makes him the returned candidate, therefore, expression 'returned candidate' is only for the purpose of the election dispute and for all other purposes, this expression cannot be used, therefore, in the Act the expression used by the legislature as duly elected candidate not the returned candidate. It is further submitted that in the instant petition, the petitioner has claimed that he be declared as returned candidate, which is a kind of prayer, which cannot be granted by the High Court and as such for this reason itself, the case of the petitioner does not fall within the purview of Section 82(1) and consequently Section 86 of the Act of 1951. On the basis of the aforesaid submissions, the petitioner has prayed for dismissal of the application filed by respondent No. 1 under Order VII Rule 11 of the CPC read with Section 86 of the Representation of People Act, 1951.

4. I have gone through the entire pleadings made by the petitioner. The petitioner has specifically pleaded in Paragraph 15 of the Election Petition that respondent No. 1 adopted the corrupt practices for winning the election. He distributed money for buying the voters. The election agent of respondent No. 1 has offered money to the tune of `50,000/- to one Vinod Sharma on 22.11.2013 at about 10:00 PM at his house and this incident was witnessed by Omkar Sharma. It is further submitted that respondent No. 1 has also offered money to one Manoj Sharma S/o Ramsaroj Sharma at his residence on 20.11.2013 at about 8:00 AM. Similarly one Narendra Singh S/o Balkaran Singh was also offered money for giving votes in favour of respondent No. 1 on 18.11.2013 by respondent No. 1 himself, which has been witnessed by one Rakesh Pandey. It is further submitted that respondent No. 1 wanted to

win the election by hook or crook and tried to win the election by unfair means. There is specific pleading in regard to Yashwardhan S/o respondent No. 1 who tried to inflict undue influence upon one Vijay Kumar Chaturvedi to cast votes in favour of respondent No. 1. He also extended threats for casting votes in favour of respondent No. 1. Considering the aforesaid material facts on record and keeping in view that the petition cannot be dismissed merely on the non specific pleadings on other grounds, I am of the view that it is not a case wherein no cause of action is disclosed but when the prayer clause is perused the petitioner has prayed for the following reliefs :

> **A.** Declare that, the election of respondent No. 1 as null and void and consequently the notification dated 8.12.2013 declaring respondent No. 1 as returned candidate.
>
> **B.** Declare the petitioner as returned candidate.
>
> **C.** Award suitable punishment to those found to be involved in irregularities.
>
> **D.** Award appropriate and suitable cost to the petitioner.

5. Since the relief clause is based on the pleadings made in the election petition, when the pleadings made in paragraphs 15 and 16 of the election petition are considered, the petitioner has specifically pleaded that respondent No. 1 as well as his son Yashwardhan offered money for giving votes in favour of respondent No. 1 and respondent No. 1 wanted to win the election by hook or crook, which shows that the petitioner has made the pleadings for declaring him as duly elected candidate. Mere non-mentioning of Section 101 of the Act of 1951 in the grounds of petition, do not absolve the controversy. Thus, in my opinion, the petitioner has prayed to declare him as elected candidate under the garb of claiming the relief to declare him as returned candidate, which cannot be done without declaring him as elected candidate.

6. It is undisputed that the petitioner has not impleaded all the contesting candidates as respondents in the election petition as provided under Section 82 of the Act of 1951. Section 82 and the relevant extracts of Section 86 of the Act of 1951 read thus :-

> **"82. Parties to the petition.** - A petitioner shall join as respondents to his petition -
>
> (a) where the petitioner, in addition to claiming a

declaration that the election of all or any of the returned candidates is void claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

86. Trial of election petition. - (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

7. Section 82 of the Act provides that where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected then he must join as respondents to his petition all the contesting candidates. If the provisions of Section 82 are not complied with, this Court is directed by Section 86 to dismiss the election petition. In *K. Kamaraja Nadar Vs. Kunju Thevar and others* – AIR 1958 SC 687, the Supreme Court held that when the provisions of Section 82 were not complied with, the Election Tribunal, enjoined under Section 90(3) to dismiss such an election petition, was bound to dismiss the same as Section 90(3) was mandatory. Section 90(3) has been substituted by Section 86 of the Amendment Act, 1966 with the same mandatory obligation to dismiss such an election petition. Similar view has been taken by the Apex Court in *Krishna Chander Vs. Ram Lal* – AIR 1973 SC 2513 and *Ram Pratap Chandel Vs. Chaudhary Lajjaram* (1998) 8 SCC 564.

8. As the petitioner admittedly did not join all the contesting candidates as respondents in the petition wherein he has prayed for a further declaration that he be declared as returned candidate, in which the prayer to declare him as elected candidate is implied, his petition is bound to be dismissed under Section 86, which is mandatory. In these circumstances, petition is liable to dismiss at threshold.

Accordingly, I.A. No. 22/2014 is allowed, as a consequence thereof, this election petition is dismissed.

No order as to costs.

Petition dismissed.

I.L.R. [2015] M.P., 754
REVIEW PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice Shantanu Kemkar
R.P.No. 667/2014 (Jabalpur) decided on 28 October, 2014

STATE OF M.P. THROUGH SECRETARY, URBAN ADMINISTRATION & DEVELOPMENT DEPTT. & anr. ...Petitioners
Vs.
ABHINESH MAHORE & ors. ... Respondents

(Alongwith R.P. No. 668/2014, R.P.No.669/2014)

***Constitution - Article 243Q, Municipal Corporation Act, M.P. (23 of 1956), Section 405, Municipalities Act, M.P. (37 of 1961), Section 5-A - Consideration of objection by Governor* - Whether he has to act on aid or advise of Council of Ministers or has to exercise discretion on his own - Held - It is for Governor to consider the objections as he deem fit - Final decision to accept or reject objections must be that of Governor - However, he is not precluded from requisitioning aid and advise of Council of Ministers - Review petition dismissed.**

(Paras 10, 11 & 12)

संविधान – अनुच्छेद 243Q, नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 405, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5–ए – राज्यपाल द्वारा आक्षेप का विचारण – क्या उसे मंत्री परिषद् की सहायता या परामर्श पर कार्यवाही करना होती है अथवा उसे स्वयं अपने विवेकाधिकार का प्रयोग करना होता है – अभिनिर्धारित – यह राज्यपाल के लिये है कि वह आक्षेपों को विचार में ले, जैसा कि वह उचित समझे – आक्षेपों को स्वीकार करने का अथवा अस्वीकार करने का अंतिम निर्णय राज्यपाल का ही होना चाहिए – अपितु, वह मंत्री परिषद् की सहायता एवं परामर्श तलब करने से प्रवारित नहीं – पुनर्विलोकन याचिका खारिज।

Cases referred :

AIR 1995 SC 1512, (2004) 8 SCC 524, 2004 (8) SCC 329, 2004 (8) SCC 788, 2005(2) SCC 92.

R.D. Jain, A.G., *and P.K. Kaurav*, Addl. A.G. with *Samdarshi Tiwari*, G.A., *Swapnil Ganguly*, Dy.G.A. for the petitioners.

A.M. Trivedi with *Ashish Trivedi, Vivek Rusia, Shekhar Sharma, R. Gupta* for the respondents.

(Supplied: Paragraph numbers)

ORDER

The Order of the Court was delivered by : **A.M. KHANWILKAR, CHIEF JUSTICE.** :- Heard counsel for the parties.

2. These review petitions have been filed for recalling of order passed by us on 14.10.2014 in Writ Petition No.12777/2014 and companion cases heard on that day.

3. The principal objection of the State and which is the ground for review is about the observation found in the order that the Governor must consider the objections "himself" before forming subjective satisfaction about the necessity to exclude or include certain areas within the limits of Municipal area.

4. The argument proceeds that all decisions of the Governor are essentially on the basis of aid and advise of the Council of Ministers as is the mandate of Article 163 of the Constitution of India. According to the learned Advocate General, keeping in mind the observations of the Apex Court in paragraphs 8 and 9 in the case of State of *Uttar Pradesh Vs. Pradhan Sangh Kshetra Samiti*[1], the observations in our order that the Governor must consider the objections "himself", need to be recalled and in any case be explained or modified accordingly.

5. On the other hand, the argument of the respondents (writ petitioners) is that the observation found in our order is most appropriate and needs no modification, much less deserve to be recalled at the instance of the State. It is argued by the counsel for the respondents that the exercise of powers by the Governor by virtue of Article 243Q is an exceptional and exclusive function of the Governor. Therefore, it is ascribable to the second part of Clause (1) of Article 163 of the Constitution. In that, he exercises this power by or under the Constitution and which discretion cannot be delegated or made dependent on the aid and advise of the Council of Ministers as such. To buttress this submission reliance is placed on five decisions of the Apex Court, in the case of *Clariant International Ltd. and another Vs. Securities & Exchange Board of India* [2] (Para 26); *Sudha Rani Garg (Smt.) Vs. Jagdish Kumar (Dead) and others*[3] (Para 9); *M.P. Special Police Establishment Vs. State of M.P. and others* [4] (Constitutional Bench) (Paras 11 and 12); and *lastly Pu Myllai Hlychho and others Vs. State of Mizoram and others*[5] (Paras 12 and 13).

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1. AIR 1995 SC 1512 2. (2004) 8 SCC 524
3. 2004 (8) SCC 329 4. 2004 (8) SCC 788 5. 2005 (2) SCC 92

6. To analyse the controversy brought before us, it may be apposite to advert to Article 163 of the Constitution of India which reads thus :-

> **"163. Council of Ministers to aid and advise Governor :-**
>
> (1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
>
> (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
>
> (3) The question whether any, and if so what, advise was tendered by Ministers to the Governor shall not be inquired into in any court."
>
> (emphasis supplied)

7. Clause (1) of this provision is in two parts. The first part predicates exercise of functions by the Governor on the basis of aid and advise of the Council of Ministers with the Chief Minister as the head of that Council. That is the ordinary rule. However, the second part provides for excepted category in which the Governor may have to exercise discretion on his own and without the aid and advise of the Council of Ministers. For, it is provided that when the Governor exercises any function which is by or under the Constitution required to be "exercised by him" or any of them "in his discretion", he may do so, without the aid and advise of the Council of Ministers. That is the settled legal position expounded in all the decisions pressed into service by both the sides.

8. The core question, therefore, is : whether the exercise of powers by the Governor to effectuate the action under Article 243Q falls in the first or second part of Article 163 (1) of the Constitution?

9. As observed by us in our earlier order, we have no hesitation in

reiterating that the exercise of power or discharge of function by the Governor in the context of Article 243Q, which has been introduced consequent to Constitution (Seventy - Fourth Amendment) Act, 1992, is the function or discretion to be exercised by the Governor falling under the second part of Clause (1) of Article 163 of the Constitution of India. This position is reinforced from the very language of Article 243Q, which stipulates that the Governor may specify the area "as he may deem fit". The expression "as he may deem fit" leaves no manner of doubt that the discretion must be exercised by the Governor and no one else. Further, if the provision in Article 243Q in Part IXA of the Constitution, concerning constitution of Municipalities is juxtaposed with Article 243C read with Article 243 (e) of the Constitution concerning the Panchayat in Part IX of the Constitution, it is amply clear that there is marked distinction between the procedure to be followed in the case of constitution of Municipalities.

10. Be that as it may, considering the provisions of the M.P. Municipal Corporation Act, 1956 or be it M.P. Municipalities Act, 1961, it is noticed that the Governor has to take the final decision and consider the objections regarding inclusion or exclusion of certain areas in the limits of Corporation or the Municipalities, as the case may be, as can be seen from Section 405 of the Act of 1956 and Section 5-A of the Act of 1961.

11. A priori, there is no room for argument that the discretion to be exercised by the Governor by virtue of Article 243Q is not ascribable to the second part of Clause (1) of Article 163 of the Constitution of India. The concomitant of this finding, is that, it is for the Governor to consider the objections and take a final decision, as he may deem fit. While doing so whether he should call for the aid and advise of the Council of Ministers before taking any decision on the objections received qua the proposed change of limits of the Corporation or Municipal area, as the case may be, is also his prerogative. That discretion inheres in the Governor and is ascribable to Clause (2) of Article 163 of the Constitution. Indeed, the final decision to accept or reject the objections must be that of the Governor. Thus, it is not as if the Governor is precluded from requisitioning aid and advise of the Council of Ministers on the question of inclusion or exclusion of certain areas in the limits of the Corporation or the Municipality, as the case may be.

12. Suffice it to observe that the grievance of the State brought before this Court in the form of present review petitions is untenable. Rather the provisions referred to above make it amply clear that the "objections must be

considered by the Governor" before exercising "his discretion" to specify any area as excluded or included in the limits or Corporation or Municipality, as the case may be.

13. As a result, we decline to entertain these review petitions, with the above observations. Disposed of accordingly.

Petition disposed of.

I.L.R. [2015] M.P., 758
REVIEW PETITION
Before Mr. Justice R.S Jha
R.P. No. 702/2014 (Jabalpur) decided on 1 December, 2014

IFFCO TOKYO GENERAL INSURANCE CO. LTD. ... Petitioner
Vs.
SMT. MEENA MAHESH & ors. ...Respondents

***Employees' State Insurance Act (34 of 1948), Section 53, Motor Vehicles Act (59 of 1988), Section 166 - Motor Accident Claim - Maintainability* - Review sought by the Insurance Company on the ground that the claim under the Motor Vehicle Act was not maintainable and was statutorily barred - Held - There is no pleading, proof or evidence whatsoever to indicate that the injury as sustained by the applicant was an employment injury sustained by him as an employee under the ESI Act - The case has been dealt with as a plain and simple case of motor accident in which compensation has been awarded - Review petition dismissed. (Paras 2, 4 &10)**

कर्मचारी राज्य बीमा अधिनियम (1948 का 34), धारा 53, मोटर यान अधिनियम (1988 का 59), धारा 166 – मोटर दुर्घटना दावा – पोषणीयता – बीमा कंपनी द्वारा इस आधार पर पुनर्विलोकन चाहा गया कि मोटरयान अधिनियम के अंतर्गत दावा पोषणीय नहीं था और कानूनी रूप से वर्जित था – अभिनिर्धारित – यह दर्शाने के लिये कोई अभिवचन, सबूत या साक्ष्य नहीं कि आवेदक द्वारा सहन की गई क्षति उसके द्वारा कर्मचारी राज्य बीमा अधिनियम के अंतर्गत एक कर्मचारी के रूप में सहन की गई नियोजन क्षति है – प्रकरण को मोटर दुर्घटना के एक सीधे सादे प्रकरण के रूप में निपटाया गया जिसमें प्रतिकर अवार्ड किया गया – पुनर्विलोकन याचिका खारिज।

Cases referred :

(2009) 13 SCC 361, (1996) 6 SCC 1.

Amrit Kaur Ruprah, for the petitioner.

(Supplied: Paragraph numbers)

ORDER

R.S. JHA, J. :- Counsel for the applicant has filed this application for review stating that in view of the law laid down by the Supreme Court in the case of *National Insurance Company Limited vs. Hamida Khatoon and others* (2009) 13 SCC 361, the impugned order passed by this Court in M.A. No.485/2014 dismissing the appeal filed by the Insurance Company deserves to be reviewed and recalled.

2. It is submitted that in view of the bar created by Section 53 of the Employees' State Insurance Act, 1948 (in short ESI Act), the claim under the Motor Vehicle Act was not maintainable and was statutorily barred.

3. Having heard learned counsel for the applicant, it is observed that Section 53 of the ESI Act is in the following terms:-

> "53. Bar against receiving or recovery of compensation or damages under any other law;- An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923) or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under the Act."

From bare perusal of this Section it is clear that the Act bars receiving compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise "in respect of an employment injury sustained by the insured person as an employee under this Act i.e. ESI Act".

4. In the instant case, as has been observed by this Court in the previous order, there is no pleading, proof or evidence whatsoever to indicate that the injury as sustained by the applicant was an employment injury sustained by him as an employee under the ESI Act. The case has been dealt with as a plain and simple case of motor accident in which compensation has been awarded.

5. It is undisputed that the applicant/Insurance Company has neither pleaded,

proved or established that the accident arose out of and in the course of employment and was therefore in respect of the employment injury sustained by the insured employee. As stated above, for the purpose of the bar under Section 53 of the ESI Act to be applicable, it is necessary for the person invoking the same to establish that the compensation or damages has been claimed in respect of employment injury sustained by the insured person as an employee under the Act.

6. In the instant case, the facts as stated in the claim case and which have emerged from a perusal of award clearly indicate that the present case is a plain and simple motor accident case and is not one where the accident has its origin in the employment or is arising out of and in the course of employment.

7. The aforesaid view taken by me is in consonance with the law laid down by three Judges Bench of Supreme Court in case of *Regional Director, E.S.I. Corporation and Another vs. Francis De Costa and another* (1996) 6 SCC 1.

8. in view of the aforesaid law laid down by the Supreme Court and the facts and circumstances of the present case, it is clear that the bar against receiving and recovering of compensation or damages contained in Section 53 of the ESI Act is not attracted in the present case and consequently the decision relied upon by the learned counsel for the applicant i.e. *Hamida Khatoon* (supra) has no applicability to the present case and does not render any assistance to the case of applicant/Insurance Company.

9. In view of the aforesaid, I do not find any reason to review or recall the order passed by this Court in M.A. No.485/2014.

10. The review petition is accordingly dismissed.

Review petition dismissed.

I.L.R. [2015] M.P., 760
APPELLATE CIVIL
Before Mr. Justice G.D. Saxena
M.A. No.560/2011 (Gwalior) decided on 1 August, 2013

UNION OF INDIA & ors. ...Appellants
Vs.
SMT. GIRJA SAHU & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 166 - Claim Petition - Involvement of vehicle **- It is not discernible that from whom and from**

which vehicle belonging to BSF, the accident took place - Held - Matter remitted back with a direction to ascertain the involvement of offending vehicle - Tribunal shall also insist the appellants to produce the fact finding report and shall also examine the drivers who were deployed at relevant time - A fresh award be passed against the person involved in the accident. (Para 13)

मोटर यान अधिनियम (1988 का 59), धारा 166 – दावा याचिका – वाहन की संलिप्तता – यह स्पष्ट नहीं कि बी.एस.एफ. के किस वाहन से और किससे दुर्घटना कारित हुई है – अभिनिर्धारित – इस निदेश के साथ मामला प्रतिप्रेषित कि दोषी वाहन की संलिप्तता को सुनिश्चित किया जाये – अधिकरण, अपीलार्थीगण से तथ्य के निष्कर्ष का प्रतिवेदन प्रस्तुत करने के लिये आग्रह करेगा और सुसंगत समय पदस्थ वाहन चालकों का परीक्षण भी करेगा – दुर्घटना में शामिल व्यक्ति के विरूद्ध नये सिरे से अवार्ड पारित किया जाये।

Cases referred :

2001 (2) MPLJ 27, AIR 2007 SC 1609.

Yogesh Singhal, for the appellants.
H.K. Shukla, for the respondents.

ORDER

G.D. SAXENA, J. :- Being aggrieved by the Award dated 13th December 2010 passed in Claim Case No. 31/2009 by the Second Additional Member of the Motor Accident Claims Tribunal, Dabra (Gwalior), appellant Union of India through Secretary, Govt. of India Ministry of Home Affairs, New Delhi and the Director BSF Academy Tekanpur, district Gwalior has preferred an appeal under Section 173 of the Motor Vehicles Act 1988 with a prayer to set aside the impugned findings awarding thereby compensation in the sum of Rs. 3,82,000/- alongwith 7% interest p.a. to the claimants.

2. The facts in short are that on 31st August 2007 at about 7-45 a.m., Om Prakash Sahu (since deceased) was riding as a pillion driver on a motorbike driven by Neeraj Dhakad towards Gwalior. When they passed through Jorasi Temple at Jhansi Highway, green coloured bus hit them from back side causing serious injuries to Om Prakash Sahu. Thereafter the police with the help of other bystanders shifted the injured for treatment to J.A. Hospital Gwalior. The injured died during treatment. A Dehati Nalish was lodged by Neeraj Dhakad in J.A. Hospital, just after reaching the injured for treatment in the

Hospital with the Head Constable of the Police Station Bilaua, alleging involvement of bus of green coloured belonging to BSF. Thereafter, the FIR was lodged on the basis of said Dehati Nalish which was written in J.A. Hospital Gwalior. After investigation, the Final Report, for want of the person who caused the accident was filed before the criminal court. The claimants, who happened to be the wife and children filed a claim petition before the learned tribunal seeking Award of Rs. 44,86,000/-. The learned tribunal after considering the evidence as adduced by the parties passed the award of Rs. 3,82,000/- against the owner and the driver of the bus No. PB 08 AJ 6980 involved in accident which is sought to be challenged in the present appeal on the sole ground that the alleged bus was not involved in the accident.

3. The contention of the learned counsel appearing for the appellants is that the award passed by the learned tribunal on vicarious liability of the BSF employee, i.e., the driver involved in road accident is in contravention of the relevant provisions of law and the facts as adduced by the parties. It is submitted that the offending BSF School bus which was alleged to have caused the accident, had already reached at the place of destination at Central School Premises and after allowing the kids of BSF personnels was in rest timings for its return journey back to the BSF Headquarter Premises at Tekenpur. It is contended that the relevant time on which the accident had happened there was not at all possible for picking up the school students and thereafter coming at the root from Tekanpur to Gwalior and hit the on-going bike and caused injuries to a pillion rider of the bike. It is submitted that the learned tribunal has failed to assess that an unknown motor vehicle was involved in the accident and the school bus owned by the BSF was involved on mere assumption expressed by some of the eye witnesses. It is submitted that the tribunal did not properly consider the evidence as adduced by the respondents/appellants, herein. Therefore, on the basis of above submissions, it is prayed that the Award passed by the tribunal may be set aside by discharging the appellants from the liability of making payment of the Award.

4. On the other hand, the learned counsel appearing for the claimants submitted that the learned tribunal has rightly found that the offending vehicle was involved in accident and rightly passed the award, which does not require to be disturbed. It is therefore prayed that the appeal may be dismissed by upholding the findings arrived at by the learned tribunal while passing the award.

5. Heard the learned counsel for both the sides and also perused the

record and the law applicable to the case at hand.

6. Now, the question for consideration before this court is whether there is any involvement of BSF school bus bearing No. PB 08 AJ 6980 in causing accident and death of Om Prakash Sahu ?

7. At this stage, it would be appropriate to quote that there are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise and the splendor of the stars, beyond the reach of monetary tape- measure. The determination of the damages for loss of human life is an extremely difficult task. Different formulas are carved and calculations are made, but no amount of compensation could restore the human life. Similarly, the man is like a bubble on flowing water on the heavy trafficking roads. A little negligence some times results into vanishing of the same as a whole, rendering their as helpless orphans and leave dependents to collect his remains and also to look forward to the owners, drivers and insurer to compensate them for such deaths gently living in castles come on the roads and cry for help. That apart, if a scratch is made on the bubble then this human frame stand disturbed having gone crippled for the rest of his life. No amount of compensation could restore the physical frame of such a person having a sufferer from an accident, that is why it has been said by the Courts that whenever any amount is determined as compensation payable for an injury suffered during accident, the object is to compensate such injury so far as the money can compensate because it is impossible to equate the money with the human sufferings and personal deprivations. Money cannot renew a broken and shattered physical frame.

8. On perusal of the record of the case containing the evidence led by the claimants and non-applicants, it appears that on 31st August 2007 at about 7-45 a.m. deceased Om Prakash being a pillion rider on motorcycle driven by a witness Neeraj Dhakad was going towards Gwalior. As they crossed Jorasi Hanuman temple, one green coloured bus owned by the BSF while coming from the side of Tekanpur to Gwalior hit the motorbike driven by Neeraj Dhakad from back side and caused severe injuries to Om Prakash Sahu. Om Prakash Sahu was immediately shifted to J.A. Hospital Gwalior, where he succumbed to injuries. The Dehati Nalish was lodged by Neeraj Dhakad driver of the motorbike. Thereafter, in the noon, the FIR was also registered on the basis of said Dehati Nalish against un-known driver of the offending BSF vehicle. Witnesses Pawan Shrivastava (AW-4) and Santosh

Dubey (AW-2) deposed that after accident the bus involved stopped for a moment and then moved to the destination and these witnesses chased the bus by their motorbikes and could be able to know the actual reason. They stated that after incident, the driver of the bus drove away the bus very fast from the spot and therefore could not be arrested. But in the case diary statement of Pawan Shrivastava which was recorded by the I.O., the registration number of the bus involved in the accident was disclosed by the witness. Despite the request letter dated 17th September 2007 (Ex.P/12) and by an order dated 6th November 2007 of the Judicial Magistrate Dabra to the Director of BSF Tekanpur for rendering co-operation in the investigation by providing requisite information of the bus involving in accident and its driver, no information in this regard was provided. The Investigating Officer was not disclosed the name of the driver responsible for the death of Om Prakash Sahu. Moreover, the authority concerned also not did not make available the bus involved for mechanical examination to the Investigating Officer for fair investigation. It is true that in connection of the offending vehicle, the police made a query from the bus drivers of the BSF buses while crossing the site at the time of accident and the certified copies of documents prepared during investigation clearly mentioned that the BSF green coloured bus was involved but the authority remained silent and did not disclose the particulars of the offending vehicle and its driver. From the evidence of Santosh Shukla, Head Constable of BSF, Keshav Singh, Sub-Inspector and Phoola Ram, driver of the offending bus it appears that after knowledge of accident causing by the BSF vehicle, the fact finding inquiry was conducted by the BSF officers and after inquiry it was concluded that the bus No. PB 08 AJ 6980 was not involved in the accident on 31st August 2007 in which Om Prakash Sahu was dead. After informing such conclusion to the police, the investigation came to an end with the result the bus involved in accident could not be traced out and under these circumstances, the final report for closing investigation was filed before the criminal court which later on was accepted. On minute scrutiny of Inward/ outward register of buses depot dated 31st August 07 (Ex.D/2-C) filed and proved by Santosh Shukla, Head Constable of BSF, it reveals that on that day first bus No. 9870 driven by driver Oma Ram was shown to be time out at 06.15 a.m. for Gwalior which returned back at 9-30 a.m. Second bus No. 6980 driven by Phoola Ram was shown to be time out at 6-20 a.m. to Gwalior but in the column of Time In no time of return of bus is mentioned. Third Bus No WB 73 9895 driven by driver Paler Singh was shown to be out at 6-45 a.m. from depot to Gwalior which returned back at 11-00 a.m. and fourth bus

No. HR 38 D 4348 was shown to be out from depot at 7-35 a.m. to Gwalior, however, the time of return of the vehicle was not mentioned in the relevant column.

9. On perusal of the award under appeal it seems that the learned tribunal without minute scrutiny of this aspect and without compelling for production of the fact finding report conducted by the BSF officers in this regard that which vehicle was involved in the accident straightway came to hold that bus No PB 08 AJ 6980 was involved in the accident which was not correct. Looking to the death of citizen involved caused by the vehicle belonging to BSF, the free and fair fact finding inquiry was necessary to be conducted by the BSF officers for fixing the liability of unknown BSF bus which passed at the relevant point of time through the accident spot so as to know about driver of that ill-fated bus who caused death of innocent citizen, by his rash and negligent driving.

10. In the case of *State of M.P. Vs. Magilal* 2001 (2) MPLJ 27 this court on vicarious liability of the State i.e. employee of State had made observation as follows :-

> "Where one citizen has lost his life due to negligence of State i.e. employer of State. Obviously the State is vicariously liable for action of their servants. A compensation of Rs 60000/- fixed by the tribunal for loss of hunal (sic:human) life ios (sic:is) most reasonable and fair one. Even under the Act, the parliament has come forward to fix a sum of Rs. 50000/- on the principle of no fault liability. I therefore fail to appreciate as to why even the state should file appeal to challenge the grant of compensation of Rs. 60000/-. The apt observation of his Lordship Mr. M.C. Chagla CJ in the case of *Firm Kaluram Sitaram Versus The Dominion of India* AIR 1954 Bombay 50 squarely appeals to this case. His Lordship while deciding a lis between citizen on the one hand and State on the other hand observed in his concluding paragraph :
>
> (d) Practice State and citizen technical pleas–" Where the State with the citizen it should not ordinarily rely on technicalities and is the State if satisfied that a case of the citizen is a just one even though legal defences may be open to it, it must act as an honest person".

The state owes a duty to ensure safety of human being and not to fight litigation on such trifle matters. It has to respect the verdict of the competent Tribunal. Merely because, a right of appeal is available to State like a ordinary litigant it does not mean that in every case such right has to be exercised. "

11. In *Oriental Insurance Co. Ltd. Vs. Meena Variyal* (AIR 2007 SC 1609) the Hon. Apex court had observed as follows :-

"It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a

claim for compensation which is still based on a tortuous liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself."

Thus impleadment of the driver of the offending vehicle is necessary is an application under Section 166 Motor Vehicle Act 1988. His impleadment is not an empty formality nor a driver is a pro forma defendant. The liability of insurer and owner arises only when negligence of the driver is not only pleaded but is also established. If the driver is not found to be rash and negligent, no liability can arise either of owner or of the Insurance company . Negligence of the owner is a sin qua non for such liability. Another question for consideration is that the act of drivers engaged in driving BSF buses cause accident in public place by their rash and negligent driving and causing death of individual in that case the BSF being the employer, on vicarious liability is responsible for payment of award amount under Motor Vehicle Act. If the tortuous act has been committed by a public servant in discharge if duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose."

12. Now, coming back on present scenario of the case as mentioned earlier from the evidence following picture emerges:-

(i) that, on 31st August 2007 at about 7-45 a.m., deceased Om Prakash being a pillion rider on motorcycle driven by witness Neeraj Dhakad was going towards Gwalior. As they passed through Jorasi Hanuman temple, one green coloured bus owned by BSF coming from Tekanpur to Gwalior hit the motorbike driven by Neeraj Dhakad from back side causing severe injuries to Om Prakash Sahu. Om Prakash Sahu was immediately shifted in the police vehicle to J.A. Hospital Gwalior, where he succumbed to injuries;

(ii) that, by the time of lodging the FIR in police station Bilaua, the identity of the bus was not known to concerning police. The crime was registered against un-known driver of BSF bus, but during case diary statement of Pawan Shrivastava which was recorded by the I.O., he mentioned about the registration number of bus involved in accident;

(iii) that, it is true that in connection of involvement of the BSF vehicle, the police made the queries from the bus drivers of BSF buses while they were crossing the site. The certified copies of documents prepared during investigation clearly disclosed that the BSF green coloured bus was involved but the responsible authority remained silent and did not disclose the particulars of the bus and its driver which caused the accident;

(iv) that, on informing the conclusion of the inquiry by the BSF officials that the Bus No PB 08 AJ 6980 driven by Phoolaram was not involved in the alleged accident to the police, the investigation unfortunately came to an end with result that the bus involved in accident and the driver of the BSF bus could not be traced out and in that eventuality final report for closing investigation was filed before the criminal court which was accepted;

(v) that, non-cooperation from the side of BSF officers has resulted in closing of the investigation for want of identity of the bus involved and the driver causing the accident;

(vi) that, on minute scrutiny of the relevant page of the Inward and Outward register of buses dated 31st August 2007 marked as Ex.D/2-C proved by Santosh Shukla, Head Constable of BSF, it reveals that on that day first bus No. 9870 driven by driver Oma Ram was shown to be time out at 6.15 a.m. for Gwalior which returned back at 9-30 a.m. Second bus No. 6980 driven by Phoola Ram was shown to be time out at 6-20 a.m. to Gwalior but in the column of Time In no time of return of bus is mentioned. Third Bus No WB 73 9895 driven by driver Paler Singh was shown to be out at 6-45 a.m. from depot to Gwalior which returned back at 11-00 a.m. and fourth

bus No. HR 38 D 4348 was shown to be out from depot at 7-35 a.m. to Gwalior, however, the time of return of the vehicle was not mentioned in the relevant column;

(vii) that, on perusal of the award it seems that the learned tribunal without going into these aspects and without compelling for production of the fact finding report conducted by the BSF officers in this regard that which vehicle was involved in the accident formed an opinion that bus No PB 08 AJ 6980 was involved in the accident which was not correct.

13. Since, at this stage, it is not discernible that from whom and from which vehicle the accident has caused. This being so, the question of the appellants being liable for amount in respect of the accident in respect of the present driver of the offending vehicle does not arise. In this view of the matter and having considered the principles as laid down in the aforementioned cases by Hon. Apex Court as well as this court coupled with the provisions contemplated under Order 41 Rule 25 of C.P.C., this court thinks it appropriate to remit the matter to learned MACT for taking a fresh decision after ascertaining the involvement of the offending vehicle which came from Tekanpur to Gwalior on the fateful day on 31st August 2007 at about 7-45 a.m. and met with an accident, causing injuries to Om Prakash Sahu resulting his death. The learned MACT shall insist the appellants for production of the fact finding report as mentioned in the deposition of the witnesses examined by the non-applicants and shall also examine the drivers of the appellants who were deployed at the relevant time for driving the buses on the route in question and thereafter shall decide the case in accordance with law. The learned MACT shall decide the case as directed above within a period of six months from the date of receipt of the record alongwith copy of this order. After taking the decision on the issue referred to above, the learned MACT shall pass fresh award against the person involved in the case. Both the parties shall co-operate with the learned tribunal to comply with the direction of this Court. It is needless to mention that both sides would be afforded ample opportunity of hearing.

14. Record of the case shall be dispatched to the learned MACT forthwith, alongwith a copy of this remand order.

15. In view of the aforementioned findings, the appeal stands allowed.

Appeal allowed.

I.L.R. [2015] M.P., 770
APPELLATE CIVIL
Before Mr. Justice R.S. Jha
M.A.No. 3668/2013 (Jabalpur) decided on 27 June, 2014

ORIENTAL INSURANCE CO. LTD. ... Appellant
Vs.
SANDELAL & ors. ... Respondent

***Motor Vehicles Act (59 of 1988), Section 147 - Liability of Insurance Company - Fake driving licence* - If owner was vigilant enough to examine the driving licence of the driver and examined his competence at the time of engaging him, Insurance company is liable to indemnify the insured even if the licence is subsequently found fake.** **(Para 4)**

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कंपनी का दायित्व – फर्जी ड्राइविंग लाइसेंस – यदि वाहन चालक के ड्राइविंग लाइसेंस का परीक्षण करने में स्वामी पर्याप्त रूप से सतर्क था और उसके नियोजन के समय उसकी सक्षमता का उसने परीक्षण किया था, यदि बाद में लाइसेंस को फर्जी पाया गया तब भी बीमा कंपनी बीमित की क्षतिपूर्ति के लिए उत्तरदायी है।

Cases referred :

2004 (1) SCCD 520.

Chaudhary Rahul Singh for the appellant.

(Supplied: Paragraph numbers)

ORDER

R.S. Jha, J. :- Heard Shri Chaudhary Rahul Singh, learned counsel for the appellant on the question of admission.

2. The appellant/insurance company has filed this appeal against the award dated 28-9-2013, passed by Ist Additional Motor Accidents Claims Tribunal, Seoni, in Claim Case No. 127/2011, whereby a sum of ` 2,64,000/- has been awarded to the claimants on account of death of deceased Kishore Uike in an accident that occurred on 16-5-2011.

3. Learned counsel appearing for the appellant/ insurance company assails

the impugned award on the ground that the licence issued to the driver concerned was found to be fake and it is, therefore, stated that in such circumstances, the insurance company cannot be held to be liable.

4. Having heard the learned counsel for the appellant and after perusing the record it is observed that the Claims Tribunal has discussed this issue extensively in paragraphs 14 and 15 of the impugned award. The Tribunal has taken note of the decision of the Supreme Court rendered in the case of *National Insurance Company Vs. Swarn Singh,* reported in 2004 (1) SCCD 520 wherein it has been held that where the owner is vigilant enough to examine the driving licence of the driver and examined his competence at the time of engaging him, the insurance company is liable to indemnify the owner's liability even if subsequently the licence held by the driver is found to be false, invalid or incorrect.

5. The Tribunal has also analysed the statement of the owner of the vehicle wherein he has specifically stated that he had looked into the licence of the driver which appeared to be valid and had also taken note of the fact that he was an erstwhile employee of the M.P. State Road Transport Corporation at Seoni Depot and was possessing his driving licence. The owner has also stated that competence of the driver was examined and looking to his experience he was engaged by the owner. The Tribunal, on the basis of the aforesaid statement of the owner and in view of the law laid down by the Supreme Court in the above mentioned case, has allowed the claim of the claimants.

6. Having perused the impugned award as well as the judgment of the Supreme Court in the case of *Swarn Singh* (surpa), I do not find any illegality or perversity in the impugned award warranting interference of this Court more so as the award has been passed on proper analysis of the evidence on record and on proper application of the law laid down by the Supreme Court and, therefore, the impugned award dated 28-9-2013 is hereby upheld and the appeal filed by the appellant/ insurance company, being meritless is accordingly dismissed.

Appeal dismissed.

I.L.R. [2015] M.P., 772
APPELLATE CRIMINAL
Before Mr. Justice Shantanu Kemkar & Mr. Justice M.C. Garg
Cr.A. No.702/2001 (Indore) decided on 23 July, 2013

HARJI ... Appellant
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Section 302/34 - Murder - **Death of the deceased took place on account of septicaemia due to injury caused by axe by appellant before 30 days - There is direct evidence - Challenge is made on the ground that there is only one injury that too was caused without premeditation as such the case falls under exception 4 of Section 300 of IPC - Held - Testimony of eye-witness as well as evidence of doctor prove that the injuries were caused by appellant - Ultimate effect of injuries which led to infection can be co-related with injuries caused by appellant - Considering over all facts and evidence, conviction of appellant u/s 302 IPC is converted in section 304 Part-I of IPC - Sentence of life imprisonment is reduced to 10 years R.I. - However fine amount is increased from Rs. 500 to 5000. (Paras 6, 9,12,13)**

दण्ड संहिता (1860 का 45), धारा 302/34 – हत्या – मृतक की मृत्यु अपीलार्थी द्वारा उसे 30 दिवस पूर्व कुल्हाड़ी से कारित क्षति के कारण सेप्टीसेमिया से हुई – प्रत्यक्ष साक्ष्य है – चुनौती इस आधार पर दी गई कि केवल एक क्षति वह भी बिना किसी पूर्व चिंतन के कारित की गई थी इस तरह प्रकरण भा.द.सं. की धारा 300 के अपवाद 4 के अंतर्गत आयेगा – अभिनिर्धारित – चक्षुदर्शी साक्षी की परिसाक्ष्य के साथ ही चिकित्सक की साक्ष्य से यह सिद्ध होता है कि क्षतियां अपीलार्थी द्वारा कारित की गई – वह क्षतियां जिनके समुचित प्रभाव से संक्रमण हुआ था, उन्हें अपीलार्थी द्वारा कारित क्षतियों से परस्पर संबंधित किया जा सकता है – सभी तथ्यों एवं साक्ष्य पर विचार करते हुए भा.द.सं. की धारा 302 के अंतर्गत अपीलार्थी की दोष सिद्धि भा.द.सं. की धारा 304 भाग–I में परिवर्तित की गई – आजीवन कारावास के दण्डादेश को 10 वर्ष के कठोर कारावास तक घटाया गया – अपितु अर्थदण्ड की राशि को 500 रूपये से बढ़ाकर 5000 किया गया।

Cases referred :

1994 Sup (1) SCC 304, 2013 Cr.L.R. (SC) 216.

Sunil Yadav, for the appellant.
R.S. Parmar, P.L. for the respondent.

JUDGMENT

The Judgment of the Court was delivered by : **M.C. GARG, J. :-** This judgment shall dispose of the aforementioned criminal appeal filed by appellant Harji assailing the judgment delivered by the learned Additional Sessions Judge in Sessions Trial no. 36/2000, whereby the appellant who was sent for trial along with other accused persons, was asked to face trial under section 302/34, 294 and 506 of IPC, but he has been convicted under section 302 of IPC and has been sentenced to undergo R.I for life with fine of Rs.500/-; in default of payment of fine, to further undergo three months additional imprisonment.

2. Appellant Harji was sent for trial along with Babu to face charges under section 302/34 of IPC on the allegation that on 06th of October, 1999 at about 9:45 pm, in Rekha Colony, Depalpura, he along with other accused persons caused death of Shantilal, the deceased by causing such injuries upon his person which caused his death or which were sufficient to cause his death. Rangji is the complainant in this case. In the complaint Ex.-P/1 which was registered soon after the incident, he informed the police that his elder son Laxman used to stay with Harji. Shantilal used to object Laxman to be taken along with Harji, Babu and Ramesh. On such objection being taken by him, besides abusing the complainant, appellant also caused injuries on the head of Shantilal by using an axe while Babu and Ramesh caught hold of him. At that time, Kalu, Mangliya and Harish came and tried to mediate. Thereafter, Shantilal was taken to hospital in a Thela. On the basis of the statement made by Rangji, the case was registered under sections 294, 324 and 506 of IPC. Later on, Shantilal expired after 18 days, therefore, offence under section 302/34 was also added. After the case was committed to sessions, Harji was charged for the offence under section 302/34 of IPC as also under section 294 and 506 of IPC, but later on while accused Babu and Ramesh who was absconder, were sent for trial and acquitted, but the appellant Harji has been convicted under section 302 of IPC. He has been acquitted of the other offences. The evidence against the appellant consists of statement made by complainant Rangji who has supported what he has stated in the FIR. During the course of investigation, police had recorded the statement of Rangji and other witnesses, who gathered at the spot including that of Mangliya, Kalu and Harish. They also recorded the statements of doctors who prepared MLC and conducted the postmortem on the dead body of the deceased after his death.

3. In so far as the appellant is concerned, he denied his involvement in this case as alleged that he was falsely implicated in this case. However, the trial Court, on the basis of the statement made by Rangji PW-1, Laxman PW-2, Raghunath PW-4 and Kailash PW-5 and after taking help from the statement made by Dr. Anchal Kumar Silawat PW-6 who prepared MLC and Dr. Anand Kapse PW-7 who conducted postmortem of the deceased as also the statement of the police officer, convicted the appellant under section 302/34 of IPC. The reasons which have been given by the trial Court for reaching to the aforesaid conclusion find mention in para 21 onwards of the impugned judgment. While relying upon the statement made by Rangji, Laxman, Sunita,, Raghunath and Kailash, the trial Judge has come to the conclusion that the statements prove that the injuries were caused by appellant Harji upon the person of the deceased Shantilal by using an axe. The injuries which were caused, were noticed by Dr. Anchal Kumar Silawat at the time of his examination on 06th of October, 1999. Dr. Anchal Kumar Silawat has deposed as under :

> 22/– (अ0सा06) अंचल कुमार सिलावट का कथन है कि वह दिनांक 6/10/99 को मेडिकल आफिसर के पद पर प्राथमिक स्वास्थय केन्द्र देपालपुर में पदस्थ था । उक्त दिनांक कोही थाना देपालपुर से रात्रि साढ़े ग्यारह बजे आरक्षक क्र0(731 सूर्यनाथ ने शांतिलाल को प्र0पी06 की तहरीर के साथ परीक्षण हेतु इस साक्षी के पास लाया था तथा इसने उसका परीक्षण किया था तथा उसके शरीर पर निम्नांकित चोट पाया था :–
>
> चोट कमांक–1 मरीज बेहोशी की अवस्था में था ।
>
> चोट कमांक–2 मरीज के नाक के दोनों छेदों से रक्त बह रहा था ।
>
> चोट कमांक–3 मरीज किसी भी स्थिति में रिसपान्स नहीं दे रहा था क्योंकि वह पूर्णतः अचेतन अवस्था में था । उसकी आंखों की पुतलियां फैली हुई थीं ।
>
> उक्त साक्षी का पुनः कथन है कि परीक्षण के उपरांत इसने आहत शांति लाल की हालत अत्यधिक चिंतनीय पाया था । इसलिए इसने परीक्षण के उपरांत एक्सपर्ट ओपिनियन एवं उपचार हेतु शांतिलाल को एम0वाय0 हास्पिटंल इंदौर भेजा था । इस साक्षी द्वारा लिखित परीक्षण रिपोर्ट प्र0पी07 है, जिसके ए से ए भाग पर इस साक्षी के हस्ता0 हे ।

4. On the basis of the statement made by Dr. Anchal Kumar Silawat, the trial Judge formed the following opinion.

> 23/– इस प्रकार (अ0सा06) डा0 अचंल सिलावट की साक्ष्य से

यह स्पष्ट होता है कि दिनांक 6/10/99 को उनके द्वारा किये गये परीक्षण में शांतिलाल को चोटें कारित होना पाया था तथा उसकी हालत चिंतनीय थी, जिसके कारण उसे एम0वाय0हास्पिटल प्रेषित किया गया था ।

5. Dealing with the question as to whether, the death of the deceased took place on account of injuries caused with the axe on 06th of October, 1999, the trial Court has discussed the issue in para-25 to 27 of the impugned judgment while eliminating the possibility of wrong treatment of the deceased by the doctors namely Dr. Vivek Kesarwani, Dr. Rakesh Gupta, Dr. Farid Khan and Dr. G.L. Sodhi who conducted operation on the person of deceased Shantilal. The testimony of Dr. Anand Kapse has been noticed by the trial Court in para – 28 to 31 of the impugned judgment which read as under :

28/– (अ0सा07) डा0 आनंद कापसे का कथन है कि वे दिनांक 5/11/99 को सामुदायिक स्वास्थ्य केन्द्र देपालपुर में मेडिकल आफिसर के पद पर पदस्थ थे । उक्त दिनांक को थाना देपालपुर से आरक्षक क0 1340 केसरसिंह ने शांतिलाल आ0 रंगजी उम्र 18 वर्ष जाति भीलनि0 देपालपुर का शव परीक्षण हेतु इस साक्षी के पास लाया था, जिसका परीक्षण इसने उसी दिन चार बजकर 20 मिनिट पर किया था । शव की पहचान रंगजी तथा आरक्षक केसरसिंह ने किया था । शव परीक्षण में इसने पाया था कि मृतक का शरीर ठण्डा एवं बिना सड़ा हुआ था तथा चित्त लेटी हुई अवस्था में था । शरीर में जकड़न नहीं थी । आंख तथा मुंह दोनों बंद थे । मृतक के सिर में बांये पैराईटल रीजन पर पुरानी चोट का निशान था एवं सिर में आक्सीपिटल रीजन में पुरानी चोट का निशान था । मृतक के दोनों हाथों में खरोंच के निशान थे । इस साक्षी के मतानुसार मृतक शांतिलाल की मृत्यु पोस्टमार्टम के पूर्व 6 से 12 घण्टे के बीच कारित हुई थी । मृतक की बाहरी चोटों का परीक्षण करने के उपरांत इसका कथन है कि इसने निम्नांकित चोटें पाया था :–

1– आहत के बांये टेंपोरेल पैराईटल रीजन में 3X 1/2 इंच की पुरानी इनसाईज्ड बून्ड का निशान था जो कि बांई आंख के उपर है । उक्त चोट धारदार हथियार से मृत्यु से लगभग 30 दिन पहले कारित की गयी थी ।

2– आहत के सिर में दाहिने आक्सीपिटल भाग पर 3 इंच X3 इंच लेसरटेड बून्ड का निशान था । उक्त चोट किसी सख्त व बोथरे हथियार से लगभग 30 दिन पूर्व कारित की गयी थी । गले में रस्सी के फंदे का निशान नहीं था तथा नाखून का भी निशान नहीं था ।

29/– उक्त साक्षी का पुनः कथन है कि इसने शांतिलाल का आंतरिक परीक्षण किया था तथा निम्नांकित् चोट पायी थीं ।

1– कंपाल के आंतरिक परीक्षण में कपाल की लेफट टेंपोरेल हडडी में

बांई आंख के उपर 1 इंच x1–1/2 इंच गोलाकार फ्रेक्चर का छिद्र था (अर्थात उस स्थान पर छिद्र के स्थान की हडडी गायब थी) उस छिद्र के पास हडडी में छोटी सी फ्रेक्चर लाईन थी । सिर के अंदर खून जमा हुआ था तथा साथ में पत पस भी जमा था।

2– सीने के आंतरिक परीक्षण में श्वास नलिका फेफडे, हृदय आदि में कोई चोट नहीं थी ।

3– पेट के आंतरिक परीक्षण में आहार नली खाली थी एवं लीवर, पित्ती की (पीलीन) तथा किडनी में कोई चोट नहीं थी एवं सामान्य थे ।

4– आहत का मूत्राशय खाली था ।

29/– इस साक्षी के मतानुसार मृतक की मृत्यु का कारण उसके सिर में आयी चोट जो कि घोर एवं मानव वध की कोटि की थी तथा ब्रेन मटेरियल के इन्फेक्शन के कारण कारित हुई थी। डा0 कापसे ने पुनः स्पष्ट किया है कि मृतक की मृत्यु उसे मृत्यु के लगभग 30 दिन पूर्व कारित उसके सिर में कारित चोट तथा उसके कारण ब्रेन मटेरियल के इन्फेक्शन के कारण कारित हुई थी । डा0 कापसे का कथन है कि उनके द्वारा लिखित पो0मा0 रिपोर्ट प्र0पी0 है जिसके ए से ए भाग पर उनके हस्ताक्षर हैं ।

30/– इस प्रकार डा0 आनंद कापसे की साक्षय से यह स्पष्ट होता है कि मृतक शांतिलाल की मृत्यु उसकी मृत्यु से तीस दिन पूर्व उसके सिर में कारित चोट तथा उसके कारण ब्रेन मटेरियल के इन्फेक्शन से कारित हुई थी । बचाव पक्ष के अभिभाषक द्वारा बार बार प्रतिपरीक्षण किये जाने के उपरांत भी इसने यह उल्लेख नहीं किया है कि मृतक की आंतरिक चोट क0 । डा0 की लापरवाही से कारित हुई थी । (अ0सा01) डा0 विवेक केसरवानी ने भी चिकित्सक की लापरवाही से स्पष्ट इंकार एवं खण्डन किया है ।

31/– (अ0सा06) डा0 अंच0ल कुमार सिलावट ने अपनी साक्ष्य में आहत की अवस्था का वर्णन किया था, किन्तु किसी विशेष अंग पर कारित चोट का विवरण नहीं दिया था। अ0सा010 डा0 विवेक केसरवानी की साक्ष्य के अनुसार डा0 राकेश गुप्ता, डा फरीद खान तथा डा0 जी0एल0 सोढ़ी द्वारा आहत के सिर की चोट का आपरेशन किया गया था । (अ0सा07) डा0 आनंद कापसे की साक्ष्य में बाह्य चोटों का जो विवरण दिया गया है, उसके अनुसार तो आहत के सिर में बांये टेंपोरेल पैराईटल एवं दाहिने आक्सीपिटल भाग पर तीस दिन पुरानी दो चोटों का उल्लेख है, किन्तु उन्होनें चोटों के आंतहिरक परीक्षण में सिर पर मात्र एक चोट जो कि कपाल की लेफट टेम्पोंरेल हडडी में बांयी आंख के उपर 1 इंच डेढ़ इंच के गोलाकार फ्रेक्चर का छिद्र होने का उल्लेख किया है । अर्थात आंतरिक परीक्षण के अनुसार सिर में एक ही चोट थी जो कि धारदार हथियार से कारित हुई थी । बचाव पक्ष की ओर से न्यायदृष्टांत एम0पी0 वीकली नोट 1991 नोट संख्या 88

दकालसिंहबनाम म0प्र0 राज्य अवलोकनार्थ प्रस्तुत किया गया है, जिसमें माननीय म0प्र0 उच्च न्यायालयने अभिनिर्धारित किया है कि:–

"दांडिक प्रथा– साक्षी ने यह साक्ष्य दी कि तेज धार वाला शस्त्र प्रयुक्त किया गया– उपधारणा यह की जाएगी कि उसका तेज धार वाला सिरा क्षति पहुंचाने के लिए प्रयुक्त किया गया था ।"

6. In the light of the conclusion which has been drawn from the aforesaid deposition of Doctor, the trial Court has reached to the conclusion that the death of the deceased took place on account of septicaemia because of the infection caused in his brain due to the injuries sustained by the deceased which were inflicted upon him 30 days ago by the appellant.

7. Para 33 of the impugned judgment is also relevant which is reproduced hereunder for the sake of reference

33/– यहां वर्तमान प्रकरण में यह अवलोकनीय है कि (अ0सा07) डा0 आनंद कापसे की साक्ष्य के अनुसार जिस चोट से मृतक शांतिलाल की मृत्यु कारित हुई थी वह उसके सिर में मृत्यु से तीस दिन पूर्व धारदार हथियार द्वारा कारित की गयी थी । इसी प्रकम पर अभियोजन साक्षी रंगजी, लक्ष्मण, सुनीता, आदि की साक्ष्य भी अवलोकनीय है, जिसके अनुसार अभियुक्त हरजी ने शांतिलाल के सिर में कुल्हाड़ी से मारकर चोट कारित कियाथा, जिसके परिणामस्वरूप उसकी मृत्यु हुई थी । इसी प्रकार पो0मा0 रिपोर्ट के साक्षी डा0 आनंद कापसे (अ0सा07) की साक्ष्य द्वारा इस बिन्दु पर अभियोजन कथानक का समर्थन एवं पुष्टि होती है । चूंकि चिकित्सक साक्षी के मतानुसार मृतक के सिर में धारदार हथियार से चोट कारित की गयी थी । अतएव ऐसी स्थिति में उक्तन्यायदृष्टांत अभियोजन कथानक के अनुकूल ही हैं तथा उनका कोई विशेष लाभ अभियुक्त को प्राप्त नहीं हो सकेगा ।

8. From the aforesaid, while there is direct evidence about infliction of the injuries by the appellant upon the deceased with an axe, the effect of the injuries caused upon the deceased led to his death on account of septicaemia after about 30 days.

9. Learned counsel appearing for the appellant has argued that in this case, from the nature of injuries which have been noticed during the postmortem report, it cannot be said that the death of the deceased has been caused on account of blows given on the deceased by appellant Harji with an axe. He therefore submits that the conviction of the appellant under section 302 of IPC cannot be sustained. Moreover, it is also argued on behalf of the appellant that in this case, even otherwise, the injuries caused by the appellant upon the deceased does not make out the offence of murder, because the injuries have

been caused without premediation (sic:premeditation) . Moreover, there is only one injury allegedly caused by the appellant upon the deceased. He has also not taken undue advantage or acting in a cruel or unusual manner. The injuries were committed without pre-mediation (sic:premeditation). As such, the case was covered by exception 4 of section 300 of the IPC.

10. The question which has been raised before us by learned counsel for the appellant is that considering all the facts of this case, no offence under section 302 of IPC has been committed by the appellant. At the most, this can be under section 326/34 of IPC. They have relied upon the judgment of the Hon'ble Supreme Court in the case of *B.N. Kavatakar and another Vs. State of Karnataka* reported in 1994 Sup (1) SCC 304. In this case also, death of the deceased took place after 4-5 days because of septicaemia. Relying upon the testimony of the doctor who opined in that case also that the death was a result of speticaemia secondary to injuries caused and peritonitis and that the deceased died after five days of the occurrence, the Apex Court held that in this case punishment at the most could have been awarded against the accused only under section 326/34 of IPC.

11. In that case, however, there was no direct evidence regarding causing of injuries by the appellant. Some paragraphs of that judgment which also throw light upon the controversy as before us are reproduced hereunder for the sake of reference.

> 7. Mr Lalit after taking us through the recorded evidence and the impugned judgment challenged the finding of the court below on two grounds. According to him, the evidence is inadequate and insufficient to warrant the conviction against the appellants and secondly if the evidence even is accepted the offence would not amount to one punishable under Section 302 read with Section 34 IPC but would be only under Section 326 read with Section 34 IPC.
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> 8. It may be noted, in this connection, that the High Court convicted them only under Section 302 read with Section 34 IPC. The occurrence has taken place on a moonlit night. Admittedly, PWs 8 and 9 did not sleep near the deceased but they came to the scene of occurrence after hearing the screams of the deceased and PW 7. As already stated, PW 7 is a star witness whose evidence establishes the presence of

PW 7 at the scene of occurrence. Therefore, even if the evidence of PWs 8 and 9 is eschewed, we can safely rely upon the evidence of PW 7 which corroborates Ex. P-22, the statement recorded by PW 21 in the hospital. Therefore, we have no hesitation in accepting the finding of the High Court that the appellants participated in the occurrence and they are the perpetrators of the offence.

9. The next question that comes up for our consideration is what is the nature of the offence that the appellants have committed. The Medical Officer who conducted autopsy on the dead body of the deceased has opined that the death was as a result of septicaemia secondary to injuries and peritonitis. As we have indicated above, the deceased died after five days of the occurrence in the hospital. On an overall scrutiny of the facts and circumstances of the case coupledwith the opinion of the Medical Officer, we are of the view that the offence would be one punishable under Section 326 read with Section 34 IPC.

12. However, in the present case, the testimony of eye witnesses prove that the injuries were caused upon the deceased by the appellant by using axe. Of course, there is no injuries which may show that the axe was used, but the impact of axe on the body of the deceased was found by the doctor who prepared MLC and has also found when the postmortem was conducted. The description of the body soon after the injuries were caused and the ultimate effect of the injuries which led to the infection inside the body and the impact of old injuries found on occipital region of the deceased which certainly can be co-related to the injuries caused by the appellant to the deceased at the relevant time, it can safely be said that while this may not be a case where the appellant should be convicted under section 302 of IPC, but he is certainly liable to be convicted under section 304 of IPC as has been done in the case of *Surajit Sarkar Vs. State of West Bengal* reported in 2013 Cr.L.R. (SC) 216.

13. Considering all over the facts and the evidence which has come on record including the testimony of eye witnesses as well as the evidence of doctors, we are of the considered view that it is a fit case where conviction of the appellant is required to be converted to offence under section 304 Part-I

of IPC. Consequently, conviction of the appellant under section 302 of IPC is converted in section 304 Part-1 of IPC and the sentence of life imprisonment awarded to the appellant is reduced to the period of ten years R.I. However, the fine imposed upon the appellant is increased from Rs. 500/- to Rs. 5000/-, which amount on being recovered shall be paid to the legal representatives of the deceased and in case, it is not paid by the appellant, the same shall be recovered as arrear of land revenue. The appellant is already in custody for about ten years. Since the appellant has already undergone the sentence of ten years R.I, he is directed to be released forthwith, if not wanted in any other case.

Order accordingly.

I.L.R. [2015] M.P., 780
ARBITRATION CASE
Before Mr. Justice Alok Aradhe
Arb.Case No. 4/2014 (Jabalpur) decided on 13 October, 2014

WIG BROTHERS (INDIA) PVT. LTD. ...Applicant
Vs.
DEVI SHAKUNTALA THAKRAL CHARITABLE FOUNDATION ...Non-applicant

A. Arbitration and Conciliation Act (26 of 1996), Section 14 - Termination of Mandate of Arbitration **- Three Arbitrators were appointed as per the arbitration agreement - Trial Court terminated the mandate of arbitrator appointed by respondent on the ground that arbitrator has expressed his unwillingness - Order of termination of mandate attained finality - Respondent cannot challenge the constitution of Arbitral Tribunal. (Paras 6, 9)**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 14 – माध्यस्थम की आज्ञा का पर्यवसान – माध्यस्थम् करार के अनुसार तीन मध्यस्थ नियुक्त किये गये – विचारण न्यायालय ने प्रत्यर्थी द्वारा नियुक्त मध्यस्थ की आज्ञा को इस आधार पर समाप्त किया कि मध्यस्थ ने अपनी अनिच्छा व्यक्त की है – आज्ञा के पर्यवसान के आदेश ने अंतिमता प्राप्त की – माध्यस्थम् अधिकरण के गठन को प्रत्यर्थी चुनौती नहीं दे सकता।

B. Arbitration and Conciliation Act (26 of 1996), Section 11 **- Respondent did not appoint arbitrator after termination of mandate of arbitration even after expiry of 30 days - Although the right of the respondent to appoint arbitrator stands waived - However, the Court**

while making appointment of an arbitrator shall bear in mind the requirement contained in arbitration clause for appointment of arbitrator - Arbitrator on behalf of respondent appointed. (Para 7)

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 – प्रत्यर्थी ने माध्यस्थम् की आज्ञा के पर्यवसान उपरांत् 30 दिन समाप्त होने के पश्चात भी मध्यस्थ को नियुक्त नहीं किया – यद्यपि, मध्यस्थ को नियुक्त करने का प्रत्यर्थी का अधिकार अधित्यजित हुआ है – अपितु, मध्यस्थ की नियुक्ति करते समय न्यायालय मध्यस्थ की नियुक्ति हेतु माध्यस्थम् खण्ड में अंतर्विष्ट अपेक्षा को ध्यान में रखेगा – प्रत्यर्थी की ओर से मध्यस्थ नियुक्त किया गया।

Cases referred :

(2000) 8 SCC 151, (2006) 2 SCC 638, (2012) 5 SCC 152, (2008) 10 SCC 240, (2012) 2 SCC 759, 2013 (4) SCC 35, (2007) 5 SCC 304, (2009) 2 SCC 337, (1996) 1 SCC 435.

Jeevesh Nagrath, for the applicant.
Deepesh Joshi, for the non-applicant.

ORDER

ALOK ARADHE, J. :- This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") for appointment of arbitrator on behalf of the respondent.

2. Background facts leading to filing of the petition briefly stated are that the petitioner is engaged in the business of civil construction. The petitioner agreed to carry out the construction work of various buildings for the respondent at Oriental Institute of Science and Technology and Oriental Engineering College in Jabalpur, Madhya Pradesh. A Letter of Intent was issue on 21.04.2009. Clause 27 of the aforesaid Letter of Intent contains an arbitration clause, which reads as under :

> "All dispute and differences of any kind whatever arising out of or in connection with the Contract or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the Contract) shall be referred to and settled by the Architect who shall state his decision in writing. Such decision may be in the form of a Final Certificate or otherwise. The decision of the Architect with respect of any of the Excepted Matters

shall be final and without appeal ; but if either the Employer or the Contractor be dissatisfied with the decision of the Architect on any matter, question or dispute of any kind (except any of the Expected Matters) or as to the withholding by the Architect of any certificate to which the Contractor may claim to be entitled then and in any such case either party (The Employer or the Contractor) may within 28 (twenty eight) days after receiving notice of such decision give a written notice to the other party through the Architect requiring that such matters in dispute be Arbitrated upon. Such written notice shall specify the matters which are in dispute and such dispute or difference of which such written notice has been given and no other shall be and is hereby referred to the Arbitration and final decision of a single Arbitrator being a Fellow of the Indian Institute of Architects to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single Arbitrator to the Arbitration of two Arbitrators both being Fellows of the Indian Institute of Architects one to be appointed by each party, which Arbitrators shall before taking upon themselves the burden of reference appoint an Umpire."

3. The dispute arose between the parties. The petitioner thereupon invoked arbitration clause and vide communication dated 25.08.2011 nominated Mr. Abhijit Ray as an arbitrator whereas the respondent nominated one Mr. Amogh Kumar Gupta as an arbitrator. The aforesaid two arbitrators unanimously appointed one Mr. K. Rajagopalan as presiding arbitrator and the communication in this regard was sent to the parties on 19.01.2012. Thus, the Arbitral Tribunal was constituted in terms of arbitration clause.

4. Thereafter the respondent file an application under Section 14 of the Act for termination of the mandate of the Arbitral Tribunal comprising Mr. Abhijit Ray, Mr. Amogh Kumar Gupta and presiding arbitrator Mr. K. Rajagopalan. The trial Court vide order dated 13.07.2013 terminated the mandate of the arbitrator appointed by the respondent on the ground that the aforesaid arbitrator by communication dated 17.03.2012 has expressed his unwillingness to proceed with the arbitration. Admittedly the aforesaid order has attained finality.

5. The petitioner thereafter vide communication dated 19.09.2013 requested the respondent to nominate its arbitrator. However, the respondent

failed to nominate the arbitrator within a period of 30 days from the date of receipt of communication sent by the petitioner. In the aforesaid factual background the petitioner has approached this Court seeking appointment of the arbitrator on behalf of the respondent.

6. Learned counsel for the petitioner submitted that the respondent has forfeited its right to nominate an arbitrator. It is further submitted that once the constitution of the Arbitral Tribunal is complete, the Court has no power to replace the arbitrator merely because one arbitrator has expressed his inability to function as such. It is further submitted that the order dated 13.07.2013 passed by the trial Court has attained finality and is binding on the parties. In support of his submissions, learned counsel for the petitioner has placed reliance on the decision of Supreme Court in the cases of *Datar Switchgears Ltd. Vs. Tata Finance Ltd. And another,* (2000) 8 SCC 151, *Punj Lloyd Ltd. Vs. Petronet MHB Ltd.* , (2006) 2 SCC 638, *Dakshin Shelters Private Limited. Vs. Geeta S. Johari,* (2012) 5 SCC 152. On the other hand, learned counsel for the respondent submitted that on termination of the mandate of the arbitrator appointed by the respondent, the mandate of the presiding arbitrator also stands terminated as per the arbitration agreement. It is further submitted that since the respondent has failed to appoint an arbitrator, therefore, the Court can appoint an independent arbitrator on behalf of the respondent. In support of aforesaid submissions, learned counsel for the respondent has placed reliance on the decision of Supreme Court in the cases of *Northern Railway Administration, Ministry of Railway, New Delhi Vs. Patel Engineering Company Limited,* (2008) 10 SCC 240, *Denel (Proprietary) Limited Vs. Ministry of Defence,* (2012) 2 SCC 759.

7. I have considered the submissions on both sides. Admittedly, the respondent despite service of notice dated 19.09.2013 has failed to nominate its arbitrator. Therefore, it has forfeited its right to nominate an arbitrator in view of law laid down by the Supreme Court in the case of *Datar Switchgears Ltd. and Punj Lloyd Ltd* (supra) and *Deep Trading Company Vs. Indian Oil Corporation,* 2013 (4) SCC 35. The aforesaid legal position has fairly not been disputed by learned counsel for the respondent. However, it is well settled in law that even in a case where a party forfeits its right to appoint an arbitrator, yet the Court while making appointment of an arbitrator shall bear in mind the requirement contained in arbitration clause for appointment of the arbitrator. [[See : *ACE Pipeline Contracts (P) Ltd., Vs. Bharat Petroleum Corpn., Ltd.,* (2007) 5 SCC 304 and *Bharat Sanchar Nigam Limited and*

another Vs. Motorola India Private Ltd., (2009) 2 SCC 337.]

8. The contention raised by learned counsel for the respondent that on termination of the mandate of the arbitrator appointed by it, the mandate of presiding arbitrator also stands terminated as per the arbitration agreement need not be examined in the facts of the case as admittedly the respondent had sought termination of the mandate of Arbitral Tribunal comprising Mr. Abhijit Ray, Mr. Amogh Kumar Gupta and presiding arbitrator Mr. K. Rajagopalan. Admittedly the trial Court vide order dated 13.07.2013 terminated the mandate appointed by the respondent only and did not terminate the mandate of the arbitrator appointed by the petitioner as well as of the presiding arbitrator. Admittedly, the aforesaid order has attained finality. It is well settled in law that even a void order or a decision rendered between the parties will the bind the parties, until and unless the same is challenged successfully in higher forum. [See : *State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil and Others,* (1996) 1 SCC 435.]

9. In other words, the challenge to the constitution of the Arbitral Tribunal comprising Mr. Abhijit Ray and presiding arbitrator namely Mr. K. Rajagopalan at the instance of the respondent has failed. In any case, the respondent is estopped from challenging the constitution of the Arbitral Tribunal. Therefore, the aforesaid contention need not be examined in the facts of the present case. It is also relevant to notice Section 15 (2) of the Act which reads as under :

> **"15. Termination of mandate and substitution of arbitrator :-**
>
> (1) -------
>
> (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced."

10. For the aforesaid reasons Mr. Jitendra Mehta, Architect, resident of 185, Saket Nagar, Indore, who is fellow of the Indian Institute of Architects is hereby appointed as an arbitrator on behalf of the respondent. Let a copy of this order be sent by the Office to Mr. Jitendra Mehta.

Accordingly, the petition is disposed of.

Petition disposed of.

I.L.R. [2015] M.P., 785
CIVIL REVISION
Before Mr. Justice U.C. Maheshwari
C.R. No.332/2012 (Jabalpur) decided on 12 August, 2013

COMMISSIONER, M.P. HOUSING BOARD & ors. ... Applicants
Vs.
M/S MOHAN LAL & CO. ... Non-applicant

Arbitration and Conciliation Act (26 of 1996), Section 34, Limitation Act (36 of 1963), Sections 5 & 14 - Exclusion of period - Applicability of Section 5 **- Applicant filed an application for appointment of arbitrator - Application was rejected on the ground that appointment of arbitrator is not necessary & applicant may challenge the award - Delay in filing objection u/s 34 of Act, 1996 can be condoned by excluding the period spent for prosecuting u/s 11 - Revision dismissed. (Para 7)**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34, परिसीमा अधिनियम (1963 का 36), धाराएं 5 व 14 – अवधि का अपवर्जन – धारा 5 की प्रयोज्यता – आवेदक ने माध्यस्थ की नियुक्ति के लिये एक आवेदन प्रस्तुत किया – आवेदन इस आधार पर अस्वीकार किया गया कि माध्यस्थ की नियुक्ति आवश्यक नही है एवं आवेदक अवार्ड को चुनौती दे सकता है – धारा 11 के अंतर्गत अभियोजन में व्यपगत हुई अवधि को अपवर्जित करते हुए अधिनियम 1996 की धारा 34 के अंतर्गत आपत्ति प्रस्तुत करने में हुआ विलंब माफ किया जा सकता है – पुनरीक्षण खारिज।

Cases referred :

AIR 2010 Chhattisgarh, 87, (2008) 7 SCC 169, (2001) 8 SCC 470, (2007) 10 SCC 742, (2008) 7 SCC 169.

Vivekanand Awasthy, for the applicants.
Shekhar Sharma, for the non-applicant.

ORDER

U.C. MAHESHWARI, J. :- Applicants, the authorities of Housing Board have filed this revision under Section 115 of the Code of Civil Procedure being aggrieved by the order dated 4.7.2012 passed by the Xth Additional District Judge, Bhopal in Arbitration Case No. 45/2011, whereby in the proceeding of the respondent filed under Section 34 of the Arbitration &

Conciliation Act 1996, in short "The Act" by allowing the application of the respondent filed under Section 14, r/w Section 5 of the Limitation Act, the period spent by it under the bonafide advise in prosecuting some proceeding before some other forum has been excluded in assessing the period of limitation in filing the aforesaid proceedings under Section 34 of the Act.

2. The applicants' counsel after taking me through the averments of the petition as well as impugned order, by referring Sub Section (2) of Section 14 of the Limitation Act, so also Sub Section (3) of Section 34 of the Act argued that the alleged other proceeding was not prosecuted by the respondent bonafidely for the same prayer before other appropriate forum and, therefore, the respondent was not entitled to extend the benefit of exclusion of the period in limitation to file the proceeding under Section 34 of the Act. In continuation he said that contrary to the above mentioned provision of Limitation Act as well as of the Act, the impugned order has been passed by the trial court under the wrong premises. As such the provision of Section 14 of the Limitation Act was wrongly taken into consideration to exclude the alleged period from limitation.

3. In continuation by referring the order dated 13.9.2011 passed by the Coordinate Bench of this Court in Arbitration Case No. 135/2010, (Ann. R-1), the proceeding filed by the respondent under Section 11 (5) of the Act for appointment of the Arbitrator, said that such earlier proceeding was filed before this Court for appointment of Arbitrator and not for challenging the award passed by the Arbitrator. In such premises, it could not have been deemed that the respondent was prosecuting the proceeding against the award of arbitrator before the wrong forum with the same prayer, as prayed in the impugned proceeding of Section 34 of the Act. Consequently, the respondent was not entitled to get the benefit of exclusion of the period in limitation to file such proceeding and prayed for admission and allowing this revision. In support of his contention he also placed his reliance on the following reported cases:-

(a) In the matter of *Muralilal Vishwakarma & anr. Vs. Smt. Meena Sharma,* reported in AIR 2010 CHHATTISGARH, 87,

(b) In the matter of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others,* reported in (2008) 7 SCC 169,

(c) In the matter of *Union of India Vs. Popular Construction Co.* reported in (2001) 8 SCC 470,

(d) In the matter of State of *Arunachal Pradesh Vs. Damani Construction Co.,* reported in (2007) 10 SCC 742.

4. Responding the aforesaid arguments, Shri Shekhar Sharma, learned counsel for the respondent by justifying the impugned order said that in view of aforesaid earlier order of this court passed in Arbitration Case No. 135/2010, (Ann. R-1), so also in view of the principle laid down by the Apex Court in the matter of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others* reported in (2008) 7 SCC 169, the impugned order does not require any interference at this stage. In continuation by referring the aforesaid order, Annexure R-1, he said that undisputedly after passing the order on dated 11.11.2010 by the authorities of the applicants, the respondent has come to this court with the aforesaid Arbitration Case No. 135/2010 for appointment of Arbitrator but on consideration the aforesaid order dated 11.11.2010 passed by the authorities itself was held to be arbitration award by this court in such arbitration case and pursuant to that on such technical ground his arbitration case for appointment of Arbitrator was not allowed. It was observed that if the respondent is aggrieved by the adjudication of its dispute by the aforesaid award, he can now challenge the same in accordance with law. So in any case the impugned proceeding being filed by the respondent under Section 34 of the Act alongwith the impugned application in compliance of the aforesaid observation of this court, the Arbitration Court has not committed any error in allowing its application and excluding the period spent by the respondent in prosecuting the aforesaid Arbitration case before this Court and prayed for dismissal of this revision.

5. Having heard the counsel at length, keeping in view their arguments, I have carefully gone through the papers placed by the parties on record.

6. It is undisputed fact on record that on the basis of some agreement, some work order was given to the respondent by the department of the applicants and while carrying out such work, some dispute has arisen between them, on which the respondent has first approached to applicant no. 3, Dy. Housing Board Commissioner to resolve its alleged grievance. The same was dismissed by the authorities, on which it approached to applicant no.2, the Additional Housing Board Commissioner. On consideration such authorities

also dismissed its dispute, vide order dated 11.11.2010, on which it had given a notice to the applicants authorities for appointment of Arbitrator in accordance with Section 11 of the Act. Inspite service of the same within one month no response was given by the applicants – department on such notice, then the respondent came to this court with the aforesaid Arbitration Case No. 135/2010 under Section 11 (5) of the Act for appointment of the Arbitrator. On consideration, in the aforesaid Arbitration Case, vide order dated 13.9.2011, (Ann. R-1), it was held that the aforesaid order dated 11.11.2010 passed by the applicant no.2, Additional Commissioner being passed under Clause 29 of the agreement is an arbitration award of the Arbitrator, therefore further appointment of Arbitrator is not necessary in the matter. Simultaneously, it was also observed that if the respondent, herein is aggrieved by the aforesaid award, then it can now challenge the same in accordance with law.

7. It appears that subsequent to aforesaid order of this court, dated 13.9.2011, (Ann. R-1) the respondent herein approached the Arbitration Court under Section 34 of the Act to challenge the aforesaid award dated 11.11.2010 alongwith impugned application under Section 14, r/w Section 5 of the Limitation Act with a prayer to exclude the period in limitation in filing such proceeding, which has been spent by it in prosecuting the aforesaid proceeding of the Arbitration Case No. 135/2010. The averments of aforesaid application were opposed on behalf of the applicants before the Arbitration Court but on consideration in view of the aforesaid observation of this court in the order dated 13.9.2011, (Ann. R-1) and the principle laid down by the Apex Court in the aforesaid cited case of *Consolidated Engineering Enterprises,* (supra), holding that Section 14 of the Limitation Act could be invoked in such matter, by allowing such application the period spent by the respondent in prosecuting the aforesaid Arbitration Case has been excluded in computing the period of limitation for filing the proceeding under Section 34 of the Act and in such premises the matter was directed to be decided on merits.

8. After perusing the aforesaid earlier order dated 13.9.2011, (Ann. R-1), so also the cited case of Apex Court, in the matter of *Consolidated Engineering Enterprises,* (supra), I am of the considered view that the aforesaid Arbitration Court has not committed any error in allowing the application of the respondent and excluding the aforesaid period from limitation to file the proceeding under Section 34 of the Act.

9. So far the case laws cited on behalf of the applicants are concerned,

the same were decided on some different facts and circumstances, which are not the subject matter of the case at hand. Thus, the same being distinguishable are not helping to the applicants. Even otherwise in view of the aforesaid cited case of *Consolidated Engineering Enterprises,* (supra) being decided by the Larger Bench of the Apex Court presided over Hon'ble Three Judges, the cases cited on behalf of the applicants are not helping to them.

10. In view of the aforesaid discussion, I have not found any perversity, irregularity, illegality or anything against the propriety of law in the order impugned requiring any interference at this stage in the order impugned. Consequently this revision being devoid of any merit is hereby dismissed. There shall no order as to cost.

Revision dismissed.

I.L.R. [2015] M.P., 789
CRIMINAL REVISION
Before Mr. Justice M.K. Mudgal
Cr. Rev. No. 2167/2013 (Jabalpur) decided on 15 December, 2014

SHEIKH ISMAIL ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

A. ***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Triable by Court of Sessions*** **- Magistrate has power u/s 156(3) to issue direction for registration of F.I.R. and investigation. (Para 8)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – सत्र न्यायालय द्वारा विचारणीय – धारा 156 (3) के अंतर्गत मजिस्ट्रेट के पास प्रथम सूचना प्रतिवेदन पंजीबद्ध करने एवं अन्वेषण के लिये निदेश देने की शक्ति है।

B. ***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3)*** **- Order u/s 156(3) was issued 3 years back and charge-sheet has also been filed - Order u/s 156(3) of Cr.P.C. cannot be challenged after three years. (Para 9)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – धारा 156(3) के अंतर्गत 3 वर्ष पूर्व आदेश जारी किया गया एवं आरोप–पत्र भी प्रस्तुत किया गया – द.प्र.सं. की धारा 156(3) के अंतर्गत आदेश को 3 वर्ष पश्चात् चुनौती नहीं दी जा सकती।

C. Penal Code (45 of 1860), Sections 467, 468, & Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Framing of Charge - **No allegation that any document was forged or fabricated - No charge u/s 467, 468, I.P.C. can be framed. (Para 10)**

ग. दण्ड संहिता (1860 का 45), धाराऐं 467, 468, व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किये जाना – यह अभिकथन नहीं कि कोई दस्तावेज कूटरचित थे या गढ़े गये थे – मा.दं.सं. की धारा 467, 468 के अंतर्गत आरोप विरचित नहीं किये जा सकते।

D. Penal Code (45 of 1860), Section 420 - Cheating - **Applicant entered into agreement to sell land by pretending himself to be the owner and received advance money - In fact father of applicant was the owner of land - Prima-facie case of cheating made out - Charge u/s 420 of I.P.C. rightly framed. (Para 11)**

घ. दण्ड संहिता (1860 का 45), धारा 420 – छल – आवेदक ने स्वयं को स्वामी बताते हुए भूखंड के विक्रय का अनुबंध किया एवं अग्रिम राशि प्राप्त की – वास्तविक रूप से आवेदक का पिता भूखंड का स्वामी था – प्रथम दृष्टया छल का प्रकरण बनता है – मा.दं.सं. की धारा 420 के अंतर्गत आरोप उचित रूप से विरचित।

Cases referred :

2005(3) MPHT 426, ILR (2010) MP 707, 2007(1) MPWN 107.

Mukhtar Ahmad, for the applicant.
D. Shukla, P.L. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

M.K. MUDGAL, J. :- The applicant/accused has filed this criminal revision under Section 397/401 of Code of Criminal Procedure being aggrieved by the order dated 20-09-2013 passed by the Court of Additional Sessions Judge, Piparia in ST No. 09/2013 framing the charges under Sections 420, 467 and 468 of IPC.

2. As per the allegations of the complaint which was filed by respondent No. 2/complainant, a contract for sale of a plot situated at Lohia Ward, Piparia admeasuring 30x60= 1800 Sq. ft for a consideration of Rs. 80,000/was made by the applicant/accused on 03-03-1994 after receiving the part payment of

Rs. 10,000/. After the said agreement of sale, the father of the applicant/ accused Abdul Suhan, now deceased executed a registered sale deed dated 20-12-1994 in favour of the complainant/respondent No.2 after receiving the remaining consideration of Rs. 8,000/. After registration of the sale deed, the said plot ie, the same was sold by the applicant-accused to another person namely Sabir Irani. When the complainant/respondent No. 2 went to the said plot on 02-03-2011 purchased by him from the applicant/accused and his father, it was found that the said land had been purchased by Sabir Irani three or four months before ie., 02-03-2011 from the applicant-accused. In this manner, the applicant/accused cheated the complainant by receiving a sum of Rs. 18,000/and executing a fake and forged documents in favour of Sabir Irani. A private complaint filed by the respondent/complainant was sent by the Judicial Magistrate First Class under Section 156(3) of Cr.P.C for registration of the offence and investigation of the same. After investigation, the charge-sheet was filed.

3. Learned counsel for the applicant/accused submits that the impugned order passed by the learned Trial Court is contrary to law as there is no sufficient evidence on record against the applicant/accused for framing the said charges. Learned Counsel further submits that it is a case of civil nature.

4. Learned counsel further placing reliance upon the judgment of this Court in *Kamlesh Pathak and others Vs. State of M.P and another* 2005 (3) MPHT 426, has submitted that the learned Judicial Magistrate First Class has no power to issue direction for registration of an FIR and investigation under Section 156(3) of Cr.P.C as the alleged offences are triable by Court of Sessions. Therefore, directions issued by the learned Judicial Magistrate First Class were without jurisdiction.

5. Learned counsel further pleads that no fake or forged documents was executed either by the applicant/accused or his father, owing to which, the offence under Sections 467 and 468 of IPC are not *prima facie* made out against him. Hence, the applicant-accused be discharged.

6. Learned Panel Lawyer opposing the submissions made by the applicant/accused has prayed for rejection of the revision.

7. Heard the arguments and perused the record.

8. As far as the submission made by the learned counsel for the applicant-

accused that the Judicial Magistrate First Class has no power to issue direction for registration of an FIR and investigation thereof under Section 156(3) of Cr.P.C are concerned, they have no substance as the direction was issued under Section 156(3) of Cr.P.C which comes under Chapter XII of Cr.P.C whereas the procedure for taking cognizance on the basis of private complaint has been provided in Sections 200 to 204 of the Chapter XV of Cr.P.C. There is no rider under Chapter XII of Cr.P.C prohibitting the judicial Magistrate First Class from issuing direction for registration of an FIR and investigation thereof for offences triable by Court of Sessions. The view taken in the cited judgment is based on the provisions of Section 202 of Cr.P.C which is not applicable for the proceedings of Section 156(3) of Cr.P.C. In this regard, the judgment of this Court in the case of *Arun Kumar Jain Vs. Dinesh Tripathi and ors.* ILR (2010) MP 707 and *Damodar Sharma Vs. Narthram* 2007(1) MPWN 107 may be referred to.

9. Secondly, the order for direction of registration of the FIR was issued in the year 2011 on which basis the FIR was registered and after investigation, charge-sheet was filed by the concerned police Station. The legality and proprietary of the said order was not challenged by the applicant-accused at that time. After three years, the said order cannot be challenged before this Court along with impugned order.

10. The learned trial Court has framed the charges under Sections 467 and 468 of the IPC however, no reasons has been assigned in the impugned order for framing the charges under the above sections. It has not been mentioned which document has been faked and fabricated by the applicant-accused. As per allegations, the applicant-accused made the contract for sale on 03-03-1994 as regards the plot with the respondent/complainant. The said document of agreement to sale was executed by himself i.e, applicant-accused. Similarly, the document of sale deed dated 20-12-1994 was executed by his father Abdul Suhan in his own name. Both the documents were executed by the persons concerned. Moreover, there is no specific allegations in complaint about the documents being forged and fabricated. In view of the above, the offences under Sections 467 and 468 are not made out.

11. So far as the charge under Section 420 of IPC is concerned, *prima facie,* it is made out because the agreement to sell dated 03-03-1994 was executed by the applicant-accused pretending himself to be the owner of the

plot and received a sum of Rs. 10,000/- from the respondent no. 2/complainant whereas his father was owner of the plot and not he. Thus, by misrepresenting the facts the applicants-accused induced the complainant to purchase the plot which was subsequently sold by him to Sabir Irani and hence, no interference is required in the charge under Section 420 of IPC levelled against him.

12. In view of the above, the revision is partly allowed and the charges under Sections 467 and 468 are set aside. The remaining charge under Section 420 of IPC is hereby confirmed. The trial Court is directed to remit the case to the Court of Committal as the offence under Section 420 of IPC is not triable by the Court of Sessions.

13. The revision is disposed of accordingly.

14. Copy of the order be sent to the trial court immediately for compliance.

Revision partly allowed.

I.L.R. [2015] M.P., 793
MISCELLANEOUS CIVIL CASE
Before Mr. Justice U.C. Maheshwari
M.C.C.No. 979/2013 (Jabalpur) decided on 14 August, 2013

ARCHNA SINGH (SMT.) ... Applicant
Vs.
DILIP SINGH ... Non-applicant

Civil Procedure Code (5 of 1908), Section 24 - Transfer of the case - Matrimonial dispute between the applicant and the respondent **- Applicant is residing with her parental family at Sagar - No competent male member is available to come with her to attend the case at Damoh and she is also under apprehension of some unhappy incident by the respondent at Damoh because he is a practicing lawyer of Damoh - She could not contest the matter properly at Damoh because no competent Advocate is available to accept her brief - Held - Distance between Sagar and Damoh is 200 Kms. and applicant can easily go by bus and can come back in evening - Trial court may direct the payment of travelling and other expenses by respondent - No material that she approached any competent lawyer and he refused to accept her brief - Apprehension that some unhappy incident may take place, the trial**

court on application of applicant may direct the police authorities to provide security if her apprehension is found to be correct - Petition dismissed. (Paras 2 & 3)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – प्रकरण का अंतरण – आवेदिका एवं प्रत्यर्थी के मध्य वैवाहिक विवाद – आवेदिका अपने पैतृक परिवार के साथ सागर में निवासरत् है – दमोह में प्रकरण में उपस्थित होने हेतु उसके साथ जाने के लिये कोई सक्षम पुरूष सदस्य उपलब्ध नहीं है साथ ही दमोह में उसे प्रत्यर्थी द्वारा हमेशा किसी अप्रिय घटना की आशंका भी बनी रहती है क्योंकि वह दमोह में वकालत कर रहा है – वह दमोह में उचित रूप से मुकदमा नहीं लड़ सकती क्योंकि उसका पक्ष पत्र स्वीकार करने वाला सक्षम अधिवक्ता उपलब्ध नहीं है – अभिनिर्धारित – सागर एवं दमोह के मध्य 200 किलोमीटर का फासला है और आवेदिका आसानी से बस द्वारा जाकर शाम को वापस लौट सकती है – विचारण, न्यायालय प्रत्यर्थी द्वारा यात्रा एवं अन्य व्यय के भुगतान हेतु निदेश दे सकता है – कोई तथ्य नहीं कि वह किसी सक्षम अधिवक्ता के पास गई और उसने उसका पक्ष पत्र स्वीकार करने से मना कर दिया – अप्रिय घटना घटित होने की आशंका के मद्देनजर आवेदिका के आवेदन पर विचारण न्यायालय यदि उसकी आशंका को सही पाता है तो वह उसे सुरक्षा प्रदान करने हेतु पुलिस प्राधिकारियों को निदेशित कर सकता है – याचिका खारिज।

Mahendra Dubey, for the applicant.

ORDER

U.C. MAHESHWARI, J. :- The applicant/ wife has filed this petition under section 24 of the CPC for transferring the HMA No.66-A/13 pending in the Court of District Judge, Damoh filed by the respondent under section 13 of the Hindu Marriage Act, from such Court to some court of District Judge, District Sagar.

2. As per averments of the petition, on account of some matrimonial dispute between the applicant and the respondent, under compulsion, the applicant is residing with her parental family at Sagar and in her parental family, no competent male member is available to come with her to attend the aforesaid case at Damoh and she is also under apprehension of some unhappy incident by the respondent at Damoh because he is a practicing lawyer of Damoh. In such premises, she has also apprehension that she could not contest the matter properly at Damoh because no competent Advocate is available to accept her brief. With these averments prayer for transfer of the case from

Damoh to Sagar is made.

3. Keeping in view the aforesaid averments of the petition and the arguments advanced by the counsel, I have carefully gone through the papers available on the record. It is apparent fact that district Sagar is at a distance of near about 200 km from district Damoh and it takes two hours for the journey by bus and, in such premises, the person like applicant may easily go by bus in the morning and may come back in the evening. If she wants any other person to accompany her then she can do that also. So far the expenses of such traveling and other expenses, are concerned, the trial court may be directed to pass appropriate order in this regard with a direction that unless such payment is made by the respondent to the applicant she could not be persuaded to come and attend the case at Damoh. So far the apprehension in the mind of the applicant that some unhappy incident may happen with her on going to Damoh is concerned then, in that regard, the trial court is at liberty to consider the prayer of the applicant if any application in the matter is filed by her and if *prima facie* the apprehension of the applicant is found correct then the trial court may give appropriate direction to the police authorities to give protection to the applicant whenever she come to Damoh in connection of the aforesaid case.

4. So far the contention that respondent is an Advocate and therefore, she is not in a position to engage any competent lawyer at Damoh is concerned, I do not find any merit in this contention because there is no papers on record to show that any competent advocate was approached by the applicant and he refused to accept her brief. So, in the lack of it, mere on vague allegations, such ground could not be a foundation to transfer the case. In such premises the prayer to transfer the aforesaid case from Damoh to Sagar is hereby rejected. Pursuant to it, this petition is hereby dismissed at this stage.

5. However, in the available circumstances, the trial court is directed, that before calling or pursuing the applicant to come and attend the case at Damoh, to give appropriate direction to the respondent to pay her reasonable expenses and send the same to her through money order before some days of the first date of hearing at Damoh and also direct the respondent to pay the expenses of further dates in advance to the next date. The trial court is further directed that on filing the appropriate application on behalf of the applicant on the basis of some apprehension of unhappy incident at the instance of the

respondent at Damoh then, if such allegations are *prima facie* found to be correct then appropriate direction be given to the police authorities to provide the protection to the applicant while coming to Damoh.

6. So far the ground regarding non-availability of the counsel is concerned, the applicant is extended a liberty to file the appropriate application by mentioning the name of the Advocates who refused to accept her brief at Damoh. On filing such application, the trial court is directed to verify the position and pass appropriate order in that regard and if Advocate refuses to accept the her brief before the court then the applicant shall be at liberty to file the fresh application under section 24 of the CPC before this court.

7. Accordingly, this petition is dismissed with aforesaid observations, liberty and direction.

Petition dismissed.

I.L.R. [2015] M.P., 796
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No.8139/2014 (Jabalpur) decided on 15 September, 2014

RUAAB AHMED ... Applicant
Vs.
STATE OF M.P. ... Non-Applicant

***Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18, Criminal Procedure Code, 1973 (2 of 1974), Section 457 - Supurdnama of Vehicle* - Vehicle in question was seized as it was transporting illegal coal - No intimation to Magistrate as per the provisions of Rule 18 is given by authorized person - Magistrate has no power to release the vehicle unless and until intimation is given by authorized person - Application rejected. (Para 9)**

खनिज (अवैध खनन, परिवहन तथा भण्डारण निवारण) नियम, म.प्र. 2006, नियम 18, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 – वाहन का सुपुर्दनामा – प्रश्नगत वाहन को जप्त किया गया क्योंकि उसमें अवैध रूप से कोयले का परिवहन किया जा रहा था – प्राधिकृत व्यक्ति द्वारा नियम 18 के उपबंधों के अनुसार मजिस्ट्रेट को सूचित नहीं किया गया – मजिस्ट्रेट को वाहन मुक्त करने की शक्ति नहीं थी जब तक कि प्राधिकृत व्यक्ति द्वारा सूचना नहीं दी जाती – आवेदन

अस्वीकार किया गया।

Cases referred :

2013 (5) MPHT 233, 2011 (4) MPHT 140, 2011(4) MPLJ 165.

Sushil Tiwari, for the applicant.
Rajneesh Choubey, P.L. for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This application under Section 482 of Cr.P.C. is directed against the order passed by learned First Additional Sessions Judge, Katni in Criminal Revision No.97/14 on 27.05.14 whereby the learned Additional Sessions Judge dismissed the Criminal Revision filed by the present applicant against the order passed by learned Judicial Magistrate First Class, Katni under Section 457 of Cr.P.C. by which the learned Judicial Magistrate dismissed the application filed by the present applicant for granting interim custody of truck bearing registration No. MP-18-GA-0510.

2. The learned Panel Lawyer states that the case diary in present case is not available as it is only a complaint (Istgasa) under Section 102 of Cr.P.C.

3. The facts giving rise to this petition are that on 08.05.2014 Police Station Badwara District Katni, received an information through informant that a truck bearing registration No. MP-18-GA-0510 is coming from Umariya to Katni. In the said vehicle illegal coal was being transported. On this information the truck was stopped and checked by Badwara Police. The driver Rammit Yadav could not produce any valid documents and, therefore, the truck was seized under Section 102 of Cr.P.C. and Istgasa No.1/14 was registered. Intimation of seizure of the vehicle was sent to Mining Officer, of the district.

4. The present applicant filed an application under Section 457 of Cr.P.C. before the concerning Magistrate at Katni. The learned Magistrate rejected the application on 15.05.14 against which the revision was filed before the First Additional Sessions Judge. The Additional Sessions Judge observed that intimation was sent by the police to the authorized person under Madhya Pradesh Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006. The Rule 18 provides that the authorized person may release

the property seized under sub-rule 2 of Rule 18 on execution of a bond to the satisfaction of the authorized person by the person, from whose possession such property was seized on a condition that such person shall produce the property whenever asked to do so by the authorized person. Sub-section 3 of Rule 18 provides that the authorized person shall sent intimation of such seizure to the Magistrate having jurisdiction to try such offence and proviso to sub-section 4 provides that where report has been given to the concerning Magistrate the property seized shall be released only under the orders of such Magistrate.

5. Accordingly, the learned Additional Sessions Judge found that no intimation is received by the concerning Magistrate in this case and, therefore, the Magistrate had no jurisdiction to release the property. On this premise the revision was dismissed.

6. The moot question in this revision is whether under the said rules, the Magistrate had jurisdiction to release the seized property.

7. The learned counsel for the applicant cited the orders of this Court passed in M.Cr.C. No.12083/2009 on 29.07.11 and M.Cr.C.No.15099/2013 on 21.04.2014, where the vehicles were seized under Indian Forest Act. He has also cited by the order of this Court passed in *Raees Vs State of M.P.* 2013 (5) M.P.H.T. 233, where the vehicle was seized under M.P. Govansh Vadh Pratishedh Adhiniyam, 2004 and also under prevention of cruelty to Animals Act, 1960. Similarly he has also cited the order of this Court in *Dilip Vs. State of M.P.* 2011(4) M.P.H.T. 140, where the vehicle was seized under Wild Life (Protection) Act, 1972, and M.P. Excise Act, 1915. Further, he has also placed reliance on order of this Court in *Yadwinder Singh Vs. State of M.P.* 2011(4) M.P.L.J. 165. In all these cases the vehicles were seized under the provision of different Acts.

8. However, the present vehicle was seized in the provisions of aforementioned rules. The relevant portion of Rule 18 may be quoted below:-

> **Rule 18: Penalty for unauthorized Transportation or Storage of Minerals and its products.-** (1) Whenever any person is found transporting or storing any minerals or its products or on whose behalf such transportation or storage is being made otherwise than in accordance with these rules, shall

be presumed to be a party to the illegal transportation or storage of mineral or its products and every such person shall be punishable with simple imprisonment for a term, which may extend to one year or with fine, which may extend to Rupees Five Thousand or with both.

(2) Whenever any person is found transporting or storing any mineral or its products in contravention of the provisions of these rules, the authorised person may seize the mineral or its products together with tools, equipment and carrier used in committing such offence.

(3) The authorised person seizing illegally transported or stored mineral or its products, tools, equipment and carrier shall give a receipt of the same to the person, from whose possession such things were so seized and shall make report to the Magistrate having jurisdiction to try such offence.

(4) The property so seized under sub-rule (2) may be released by the authorised person, who seized such property on execution of a bond to the satisfaction of the authorised person by the person, from whose possession such property was seized on the condition that the same shall be produced at the time and place, when such production is asked for by the authorised person.

Provided that where a report has been made to the Magistrate under sub-rule (3), then the property so seized shall be released only under the orders of such Magistrate;

(5) .....

(6) All property seized under sub-rule (2) shall be liable to be confiscated by order of the Magistrate trying the offence, if the amount of the fine and other sum so imposed are not paid within a period of one month from the date of order:

Provided that on payment of such sum within one month of the order, all property so seized, except the mineral or its products shall be released and the mineral or its products so

seized under sub-rule (2) shall be confiscated and shall be the property of the State Government.

(7) .....

9. Going through the provisions of Rule 18 of the said rules, it is clear that till intimation is sent to the Magistrate, the authority to release the property on interim custody lies only with the authorised person. It also implies that only when the authorised person is satisfied that minerals were being transported illegally in the vehicle, he sent an intimation to the Magistrate with a view that further proceeding for prosecution of the person concerned would be taken. In this case, however, as the Magistrate had not received any intimation from the authorised person which was Mining Officer, District Katni, he had no jurisdiction to release the vehicle on interim custody.

10. It is apparent that the Mining Officer was not satisfied that the minerals were being transported illegally and as such he did not choose to send an intimation to the Magistrate. In such circumstances, in my considered opinion, the learned Magistrate and the learned Additional Sessions Judge did not commit any error of law.

11. This petition under Section 482 is devoid of merit, and liable to be dismissed.

12. Accordingly, the petition is dismissed.

Petition dismissed.

I.L.R. [2015] M.P., 800

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Subhash Kakade

M.Cr.C. No.16153/2014 (Jabalpur) decided on 30 October, 2014

TIKKU @ PUSHPESH KHARE ... Applicant

Vs.

STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Grant of bail - **Earlier rejection of bail is not conclusive adjudication as prior rejection is no bar to consideration of subsequent bail application - Court will not be within its competence to bar consideration of a**

subsequent bail application which may be necessitated on account of subsequent events and developments - Circumstances may change and a person earlier found not entitled to be released on bail, may subsequently become so entitled due to those changed circumstances - Repeat bail application allowed. (Para 11 & 13)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत प्रदान की जाना – जमानत को पूर्व में अस्वीकार किया जाना अंतिम न्यायनिर्णयन नहीं क्योंकि पूर्वतः अस्वीकृति से पश्चात्वर्ती जमानत आवेदन का विचारण वर्जित नहीं होता है – पश्चात्वर्ती जमानत के आवेदन का विचारण वर्जित करने के लिये न्यायालय की सक्षमता नहीं होगी, जोकि पश्चात्वर्ती घटनाऐं और प्रगतियों के कारण आवश्यक हो सकता है – परिस्थितियां बदल सकती हैं और किसी व्यक्ति को पूर्व में जमानत पर छोड़े जाने के लिये हकदार नहीं पाया गया हो, वह तत्पश्चात् उन बदली हुई परिस्थितियों के कारण हकदार बन सकता है – जमानत का पुनः आवेदन मंजूर।

Cases referred :

AIR 2008 SC 1680, (2005) 2 SCC 42, AIR 1978 SC 527.

S.C. Datt with *R.K. Chaturvedi,* for the applicant.
V.K. Pandey, P.L. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

SUBHASH KAKADE, J. :- This is repeat bail application filed by the applicant Tikku @ Pushpesh Khare under Section 439 of the Cr.P.C. for grant of bail. His first bail application was rejected vide order dated 12.08.2014 passed in M.Cr.C. No.8644/2014 by this Bench.

2. The applicant is in custody in connection with Crime No.142/2014, registered at Police Station City Kotwali, Chhatarpur, for the offences punishable under Sections 364, 302, 201 and 120-B of IPC.

3. According to the case of the prosecution on 17.03.2014, at around 7:00 p.m. applicant Tikku @ Pushpesh Khare and co-accused persons under the pretext of celebrating the party invited Harendra Singh in presence of his wife Pinki at his house. Because applicant, co-accused persons and Harendra Singh having good relation so he joined the company of said persons and accompanied on a Maruti car. On dated 18.03.2014 a written report was

lodged by Pinki in which it was alleged that the applicant and co-accused took his husband with them since then he is not traceable. After registration of the Crime No.142/2014 Police Kotwali, Chhatarpur started to search Harendra Singh. During this an information received from the police Mauranipur, District Jhansi (UP) that a dead body has found in their territory then police persons put up the body for identification and body identified as of Harendra Singh.

4. Shri S.C. Datt, learned Senior Counsel for the applicant submits that applicant has been falsely implicated in the case which is rest upon circumstantial evidence and chain of circumstances is not complete.

5. Learned Senior Counsel for the applicant further submits that after recording the statements of witnesses Kanhaiyalal Niranjan (PW/1), Suresh Ramrati (PW/2), Rambai Namdeo (PW/3) on 06.09.2014 and the statements of witnesses Pinki Singh (PW/4) wife of deceased and Amar Singh (PW/5) father of deceased were recorded on 29.09.2014 and both were declared hostile as did not support the case of prosecution. The applicant is in custody since 24.03.2014, having no past criminal antecedents. In view of the aforesaid materially changed circumstances, prayer is made to enlarge the applicant on bail.

6. On the other hand, Shri V.K. Pandey, learned Panel Lawyer for the State has vehemently opposed the application for grant of bail on the ground that applicant is involved in murder of Harendra Singh who also vanquished by Maruti.

7. Heard learned counsel for the parties, perused the deposition of above named prosecution witnesses and also perused the case diary. After reflecting over the matter, I am implicitly satisfied that this repeat bail application deserves to be allowed.

8. The grant of bail is illegal when previous applications were dismissed and no substantial change of circumstances have arisen. *Akhilesh Kumar Singh v. State of U.P.,* AIR 2008 SC 1680.

9. A second bail application cannot be allowed unless some new points have been made out.

10. Ordinarily issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds. *Kalyan Chandra Sarkar v.*

Rajesh Ranjan, (2005) 2 SCC 42.

11. But, earlier rejection of bail is not conclusive adjudication as prior rejection no bar to consideration of subsequent bail application. The Court will not be within its competence to bar consideration of a subsequent bail application which may be necessitated on account of subsequent events and developments. Circumstances may change and a person earlier found not entitled to be released on bail, may subsequently become so entitled due to those changed circumstances.

12. Refusal of an application for bail does not necessarily preclude another on a later occasion from giving more materials, further developments and different considerations - *Babu v. State* AIR 1978 SC 527.

13. On due consideration of the contentions raised in the application, nature of allegation, overall facts and materially changed above mentioned circumstances of the case, I am of the considered view that this repeat bail application deserves to be allowed to release the applicant on bail, hence it is directed that the applicant Tikku @ Pushpesh Khare shall be released on bail on his furnishing a personal bond in a sum of Rs. 50,000/- (Fifty Thousand only) with one surety in the like amount to the satisfaction of the trial Court for securing his presence before the said Court on all the dates of hearing fixed in this regard during trial.

14. Certified copy as per rules.

Application allowed.

I.L.R. [2015] M.P., 803

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Subhash Kakade

M.Cr.C.No. 19327/2014 (Jabalpur) decided on 20 December, 2014

OMKAR ...Applicant

Vs.

STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Conditions for granting bail **- Held - While granting bail the Courts will keep in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, and the accused can be released**

on his own bond, with or without sureties - When sureties should be demanded and what sum should be insisted on are dependent on variables - Condition imposed by ASJ for two local sureties through Rin Pustika in which previously no bail was furnished is modified. (Para 8)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत प्रदान करने हेतु शर्तें – अभिनिर्धारित – जमानत प्रदान करते समय न्यायालय, सामाजिक न्याय के क्षेत्रों में उदार निर्वचन हेतु व्यक्ति स्वातंत्र्य एवं निर्धन के अधिकारों की आवश्यकता को ध्यान में रखेगा और अभियुक्त को स्वयं के बंधपत्र पर, जमानतदार के साथ अथवा उसके बिना मुक्त किया जा सकता है – जमानतदार की मांग कब की जानी चाहिए और कितनी राशि पर जोर दिया जाना चाहिए यह परिवर्तनशीलता पर निर्भर है – अतिरिक्त सत्र न्यायाधीश द्वारा ऋण पुस्तिका, जिसमें पूर्व में कोई जमानत प्रस्तुत नहीं की गई हो, के द्वारा दो स्थानीय जमानतदारों हेतु अधिरोपित की गयी शर्त उपांतरित की गयी।

K.K. Kushwaha, for the applicant.
Vijay Kumar Pandey, P.L. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

SUBHASH KAKADE, J. :- This petition is filed by the applicant under the provisions of Section 440 of the Code of Criminal Procedure, 1973, hereinafter as Code, for reduction modification of conditions imposed vide Order dated 07.11.2014 by learned 2nd Additional Sessions Judge, Piparia, while granting bail to the applicant.

2. The applicant was arrested on 03.11.2014 in connection with Crime No.86/40/14, registered by PS- GRP, Piparia for offence punishable under Section 379 of IPC.

3. The applicant filed a bail application which was considered on its merit and allowed by the learned Additional Sessions Judge with the following conditional directions order:-

"प्रकरण एवं केस डायरी का अवलोकन किया गया। केस डायरी के अवलोकन से यह प्रकट होता है कि आरोपी को दिनांक 03.11.2014 को गिरफ्तार कर लिया है। प्रकरण मजिस्ट्रेट द्वारा विचारण है। ऐसी स्थिति में यदि आरोपी संबंधित मजिस्ट्रेट के समझ रूपये 20,000–20,000 की दो समझ स्थानीय जमानते पेश करें, जिनकी ऋण पुस्तिकाओं में पहले से कोई जमानत

तस्दीक न की गयी हो एवं उक्त ऋण पुस्तिकाएँ कम से कम 5–5 एकड़ की हो। एतद् द्वारा जमानत आवेदन पर स्वीकार किया जाता है।"

4. Two local solvent sureties of Rs.20,000/- through the Rin Pustika in which previously no bail was granted/furnished and the book holder must possess about 5-5 acres of land.

5. Having heard learned counsel for the applicant as well as learned Panel Lawyer, Section 440 of the Code lays down as under:-

> *(1) The amount of every bond executed under the Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.*
>
> *(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.*

6. The object for imposing condition while granting bail is primarily to see that the accused is readily available for trial. It is also indubitable that the condition for granting bail should not be so excessively onerous as to amount to denial of right of a citizen guaranteed by the Constitution.

7. Mandate of this Section is to impose reasonable conditions, not so harsh conditions so the applicant would be unable to fulfill such conditions. To impose harsh conditions for furnishing surety is amount to denial of the bail application.

8. While granting the bail the Courts will keep in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, and the accuse can be released on his own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

9. As a result, the applicant detained in the custody for want of not furnishing bail bonds, contrary to his cherished fundamental rights i.e. right to life and personal liberty as guarantee under Article 21 of the Constitution of India from date of order of the learned trial Court till today.

10. In view of aforesaid, it is directed that applicant Omkar shall be released on bail on his furnishing a personal bond in a sum of Rs.20,000/-

(Rs. Twenty Thousand only) with one surety to the satisfaction of the committal Court/trial Court for securing his presence before the said Court on all the dates of hearing fixed in this regard during trial.

11. With the aforesaid modification in the impugned order dated 07.11.2014, this application stands disposed of.

Certified copy as per rules.

Application disposed of.