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देती है और शेष अवधि के लिये मध्यस्थ को धारा 31 के अंतर्गत समुचित आदेश पारित करने की शक्ति दी गई है – जिला न्यायाधीश द्वारा आर्थिक स्थिति और सुधारों के आधार पर ब्याज की दर 15% से घटाकर 9% किया जाना उचित प्रतीत होता है – यह दर्शाने के लिये कुछ नहीं कि ब्याज को घटाया जाना आदेशित करना मनमाना एवं अवैध निर्णय है जो बिना किसी कारण के दिया गया है। (मशीन्स इंडिया (मे.) वि. चीफ इंजीनियर, जबलपुर जोन) (DB)...1834

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Cantonment Electoral Rules, 2007, Rules 10(3) & 28 – Preparation of Electoral Roll – Exclusion of encroacher from electoral roll **– In earlier round of litigation, it was directed that Voter list should**

be prepared strictly in accordance with Rule 10 –As per Rule 10, Voter list is to be arranged according to house numbers – House numbers are not allotted to encroachers /unauthorized construction – Inclusion of names of encroachers in voter list is bad – Respondents directed to prepare the voter list removing the names of encroachers and residents residing in illegal constructed house without house number given by Cantonment Board – Petition allowed. [Gopal Das Kabra Vs. Union of India] ...*35

छावनी निर्वाचन नियम, 2007, नियम 10(3) व 28 – मतदाता सूची तैयार की जाना – मतदाता सूची से अतिक्रमणकारी का अपवर्जन – मुकदमेबाजी के पूर्ववर्ती दौर में यह निदेशित किया गया था कि मतदाता सूची को कठोरता से नियम 10 के अनुसार तैयार किया जाये – नियम 10 के अनुसार, मतदाता सूची को मकान नंबरों के अनुसार क्रमांकित किया जाना चाहिए – अतिक्रमणकारियों /अप्राधिकृत निर्माण को मकान नंबर आबंटित नहीं किये जाते – मतदाता सूची में अतिक्रमणकारियों के नामों का समावेश अनुचित – केन्टोनमेंट बोर्ड द्वारा बिना मकान नंबर दिये अतिक्रमणकारी एवं अवैध रूप से निर्मित मकान में निवासरत रहवासियों के नाम हटाकर मतदाता सूची तैयार करने के लिए प्रत्यर्थीगणों को निदेशित किया गया। (गोपाल दास काबरा वि. यूनियन ऑफ इंडिया) ...*35

Caste Certificate – Cancellation **– State Level Committee granted opportunities to the petitioner – In evidence petitioner has stated that he belongs to Bhadbhunjia caste which is a OBC – Petitioner has fraudulently obtained caste certificate that he belongs to Bhunjia Caste – No malafides alleged against Committee – Caste Certificate rightly cancelled – Petition dismissed. [Satya Narayan Kaushal Vs. State Level Committee] ...2415**

जाति प्रमाण पत्र – निरस्तीकरण – राज्य स्तरीय समिति ने याची को अवसर प्रदान किये – साक्ष्य में याची ने कहा कि वह भड़भूंजिया जाति का है जो कि एक अन्य पिछड़ा वर्ग है – याची ने कपटपूर्वक जाति प्रमाणपत्र प्राप्त किया कि वह भूंजिया जाति का है – समिति के विरूद्ध कदाशय अभिकथित नहीं – जाति प्रमाणपत्र उचित रूप से निरस्त – याचिका खारिज। (सत्य नारायण कौशल वि. स्टेट लेवल कमेटी) ...2415

Central Excise Act (1 of 1944), Section 35-G – Small Scale Industry – Exemption **– 2 small scale industries owned by one person availed the benefit of exemption – Held – Both units have different entrances and end produce is different – However, Income Tax Account**

is in name of one unit – Administrative staff is one and expenses of both units are borne by unit no. 1 – Consolidated profit and loss account is prepared for both units – Income tax assessment was made jointly – Not entitled for exemption – Appeal dismissed. [Parag Fans & Coolings Vs. Commissioner, Customs] (DB)...1845

केंद्रीय उत्पाद–शुल्क अधिनियम (1944 का 1), धारा 35–जी – लघु उद्योग – छूट – एक व्यक्ति के स्वामित्व के दो लघु उद्योगों ने छूट के लाभ का उपभोग किया – अभिनिर्धारित – दोनों इकाईयों के प्रवेश मार्ग एवं अंतिम उत्पाद भिन्न है – यद्यपि, आयकर खाता एक इकाई के नाम पर है – प्रशासनिक स्टाफ़ एक ही है और दोनों इकाईयों के खर्चों का वहन इकाई क्रं. 1 द्वारा किया जाता है – दोनों इकाईयों के लिये समेकित लाभ–हानि लेखा तैयार किया गया – आयकर निर्धारण संयुक्त रूप से किया गया – छूट के लिये हकदार नहीं – अपील खारिज। (पराग फेन्स एण्ड कूलिंग्स वि. कमिश्नर, कस्टम्स) (DB)...1845

Civil Practice – Scope of interference by High Court in orders passed by the subordinate courts in exercise of jurisdiction vested in it by law **– Right to cross examine witness is closed in a very speaking manner by the trial court in which the conduct of the petitioner is shown – Such order has been passed by the trial court under its vested discretionary jurisdiction – It is settled law that such orders passed by the subordinate courts under the vested discretionary jurisdictions of such courts, should not be interfered at the stage of revision or writ petition under Article 227. [Radha Bai (Smt.) Vs. Shankar Lal Kachhi] ...2352**

सिविल कार्यपद्धति – अधीनस्थ न्यायालयों द्वारा विधि द्वारा उनमें निहित अधिकारिता के प्रयोग में पारित किये गये आदेशों में उच्च न्यायालय द्वारा हस्तक्षेप की परिधि – विचारण न्यायालय द्वारा बहुत सकारण ढंग से साक्षी के प्रतिपरीक्षण के अधिकार को समाप्त किया गया जिसमें याची के आचरण को दर्शाया गया है – उक्त आदेश को विचारण न्यायालय द्वारा उसमें निहित वैवेकिक अधिकारिता के अंतर्गत पारित किया गया है – यह स्थापित विधि है कि अधीनस्थ न्यायालयों द्वारा उक्त न्यायालयों में निहित वैवेकिक अधिकारिता के अंतर्गत पारित किये गये आदेशों में पुनरीक्षण या अनुच्छेद 227 के अंतर्गत रिट याचिका के प्रक्रम पर हस्तक्षेप नहीं किया जाना चाहिए। (राधा बाई (श्रीमती) वि. शंकर लाल काछी) ...2352

Civil Procedure Code (5 of 1908), Section 10 – Matter in issue, directly and substantially – Means **– The same must be necessary for the decision of previously instituted suit. [Govind Prasad Vs. Sandeep Kumar] ...1683**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – विवाद्य विषय, प्रत्यक्षतः और सारतः – अर्थात् – यह पूर्व में संस्थित वाद के निर्णयन हेतु आवश्यक होना चाहिए। (गोविन्द प्रसाद वि. संदीप कुमार) ...1683

Civil Procedure Code (5 of 1908), Section 10 – Matter in issue – Means – **All the material disputed questions. [Govind Prasad Vs. Sandeep Kumar]** ...1683

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – विवाद्य विषय – अर्थात् – सभी महत्वपूर्ण विवादित प्रश्न। (गोविन्द प्रसाद वि. संदीप कुमार) ...1683

Civil Procedure Code (5 of 1908), Section 10 – Stay of suit – Object – **To prevent trying of two suits in respect of the same matter in issue. [Govind Prasad Vs. Sandeep Kumar]** ...1683

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – वाद पर रोक – उद्देश्य – समान विवाद्य विषय के संबंध में दो वादों का विचारण रोकना है। (गोविन्द प्रसाद वि. संदीप कुमार) ...1683

Civil Procedure Code (5 of 1908), Section 11 – Res-judicata – **In previous suit relief claimed was that of declaration and in subsequent suit relief claimed is partition although the parties are same and subject matter is same – As cause of action is different therefore subsequent suit is not hit by Principle of Res-judicata – Petition dismissed. [Sabdal Singh Vs. Shivraj Singh Thakur]** ...2487

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व निर्णय – पूर्ववर्ती वाद में किया गया दावा अनुतोष घोषणा का था और पश्चात्वर्ती वाद में विभाजन के अनुतोष का दावा किया गया है यद्यपि पक्षकार समान है और विषय वस्तु समान है – चूंकि वाद हेतुक भिन्न है इसलिए पश्चात्वर्ती वाद, पूर्व निर्णय के सिद्धांत से प्रभावित नहीं होता – याचिका खारिज। (सबदल सिंह वि. शिवराज सिंह ठाकुर) ...2487

Civil Procedure Code (5 of 1908), Section 100 and Transfer of Property Act (4 of 1882), Section 58 – Sale deed or Mortgage deed – **Document written for the purpose of executing mortgage – There was a condition that in case the loan amount is not paid by the plaintiff the mortgagee would be entitled to get a sale deed executed and the land given in the possession of the appellant – There is no evidence that the land was ever purchased by the appellant – Held – There is no perversity or illegality in recording the finding by Courts below that the respondent/plaintiff was the owner of suit land and the document**

Ex.P-1 was the document of mortgage and not of sale – Courts below have rightly decreed the suit – No interference is warranted – Appeal is dismissed. [Muhammad Ayoob Khan (Since Deceased) Through L.Rs. Samsunnisha (Smt.) Vs. Krishnapratap Singh] ...1788

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 एवं सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 58 – विक्रय विलेख या बंधक विलेख – बंधक निष्पादित किये जाने के प्रयोजन हेतु दस्तावेज लिखा गया – इसमें शर्त थी कि वादी द्वारा ऋण की रकम अदा नहीं किये जाने की स्थिति में बंधकदार विक्रय विलेख निष्पादित करवाने का हकदार होगा और अपीलार्थी को भूमि का कब्जा दिया गया – कोई साक्ष्य नहीं कि अपीलार्थी द्वारा कभी भी भूमि क्रय की गई थी – अभिनिर्धारित – निचले न्यायालयों द्वारा यह निष्कर्ष अभिलिखित करने में कोई विपर्यस्तता या अवैधता नहीं कि प्रत्यर्थी/वादी, वादभूमि का स्वामी था और दस्तावेज प्रदर्श पी.1 बंधक का दस्तावेज था और न कि विक्रय का – निचले न्यायालयों ने उचित रूप से वाद डिक्रीत किया – हस्तक्षेप की आवश्यकता नहीं – अपील खारिज। (मोहम्मद अयूब खान (पूर्व मृतक) द्वारा विधिक प्रतिनिधि शमसुन्निशा (श्रीमती) वि. कृष्णप्रताप सिंह) ...1788

Civil Procedure Code (5 of 1908), Section 115 & Order 9 Rule 13 – Civil Revision – Other Proceedings **– There is no reason to restrict the meaning of "Proceedings" akin to the suit – Proceeding under Order 9 Rule 13 would be covered by expression "other proceedings" as used in proviso to Section 115(1) – Any interlocutory order passed in such proceedings, would not be amenable to Revisional jurisdiction – Revision does not lie against the order rejecting application filed under Section 45 of Evidence Act – Revision dismissed as not maintainable. [Kamar Mohammad Khan Vs. Nawab Mansoor Ali Khan Pataudi] ...1877**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 व आदेश 9 नियम 13 – सिविल पुनरीक्षण – अन्य कार्यवाहियां – वाद के समान "कार्यवाहियां" के अर्थ को सीमित करने का कोई कारण नहीं – आदेश 9 नियम 13 के अंतर्गत कार्यवाही, पद "अन्य कार्यवाहियां" द्वारा आच्छादित होगी जैसा कि धारा 115(1) के परंतुक में प्रयोग किया गया है – ऐसी कार्यवाहियों में पारित किया गया कोई अंतवर्ती आदेश पुनरीक्षण अधिकारिता के अध्यधीन नहीं होगा – साक्ष्य अधिनियम की धारा 45 के अंतर्गत प्रस्तुत किये गये आवेदन की खारिजी के आदेश के विरूद्ध पुनरीक्षण नहीं होगा – पुनरीक्षण खारिज क्योंकि पोषणीय नहीं। (कमर मोहम्मद खान वि. नवाब मन्सूर अली खान पटौदी) ...1877

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Acquisition Act, 1894, Sections 30, 53 & 54 [Surendra Kaur (Smt.) Vs. Satinder Singh Chhabra] ...1867

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – देखें – भूमि अर्जन अधिनियम, 1894, धाराऐं 30, 53 व 54 (सुरेन्द्र कौर (श्रीमती) वि. सतिन्दर सिंह छाबड़ा) ...1867

Civil Procedure Code (5 of 1908), Section 151 & 152 – Correction in the decree – Mistake committed in the pleadings cannot be corrected in exercise of powers either u/s 151 or 152 CPC – Revision dismissed. [Muniya Bai Vs. Golman] ...*23

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 व 152 – डिक्री में सुधार – अभिवचनों में कारित की गई गलती को सि.प्र.सं. की या तो धारा 151 या 152 के अंतर्गत शक्तियों का प्रयोग करते हुए सुधारा नहीं जा सकता – पुनरीक्षण खारिज। (मुनिया बाई वि. गोलमन) ...*23

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Petitioners being sisters of deceased, born before coming in force the amended provisions of Section 6 of Hindu Succession Act, 1956 and their parent still being alive – Whether necessary party – Held – No – Suit filed for declaration and injunction by L.Rs. of deceased (one of the co-parcener) against the parents and brothers of deceased, then the petitioners who got birth prior to 2005 before coming in force the amended provisions of section 6 of the Act are neither necessary nor proper parties – The same could be adjudicated by passing the effective decree only in presence of respondents no. 1 and 2, the plaintiffs and the respondents no. 3 to 7 the defendants. [Shanti Bai Vs. Sushila Bai] ...1679

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – याचीगण, मृतक की बहनें होते हुए, हिंदू उत्तराधिकार अधिनियम, 1956 की धारा 6 के संशोधित उपबंध प्रभावी होने के पूर्व जन्में हैं और उनके माता–पिता अभी जीवित हैं – क्या आवश्यक पक्षकार हैं – अभिनिर्धारित – नहीं – मृतक के विधिक प्रतिनिधिगण (सहदायिक में से एक) द्वारा मृतक के माता–पिता एवं भाईयों के विरूद्ध घोषणा एवं व्यादेश हेतु वाद प्रस्तुत किया, तब याचीगण जो अधिनियम की धारा 6 के संशोधित उपबंध प्रभावी होने से पूर्व, 2005 से पहले जन्में हैं, न तो आवश्यक न ही उचित पक्षकार हैं – उक्त का न्यायनिर्णयन केवल प्रत्यर्थी क्र. 1 व 2, वादीगण तथा प्रत्यर्थी क्र. 3 से 7, प्रतिवादीगण की उपस्थिति में प्रभावी डिक्री पारित कर किया जा सकता है। (शांति बाई वि. सुशीला बाई) ...1679

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Civil Procedure Code (5 of 1908), Order 21 Rule 97 – Objection to Execution of Decree – Recording of Evidence – **While deciding objection detailed enquiry is not required – Court may decide the objection on the basis of averments and documents on record – Executing Court while exercising discretion has rejected the application**

for recording evidence – Any order passed by Executing Court in exercise of discretionary jurisdiction could not be interfered under Article 227 of Constitution of India – No error committed by Executing Court – Petition dismissed. [Jamuna Prasad Vs. Balkishan] ...2363

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 – डिक्री के निष्पादन के विरूद्ध आक्षेप – साक्ष्य अभिलिखित किया जाना – आक्षेप का विनिश्चय करते समय विस्तृत जांच अपेक्षित नहीं – अभिलेख के प्राक्कथनों एवं दस्तावेजों के आधार पर न्यायालय आक्षेप का विनिश्चय कर सकता है – निष्पादन न्यायालय ने विवेकाधिकार का प्रयोग करते हुए साक्ष्य अभिलिखित किये जाने हेतु आवेदन को अस्वीकार किया है – निष्पादन न्यायालय द्वारा वैवेविक अधिकारिता के प्रयोग में पारित किये गये किसी आदेश में भारत के संविधान के अनुच्छेद 227 के अंतर्गत हस्तक्षेप नहीं किया जा सकता – निष्पादन न्यायालय द्वारा कोई त्रुटि कारित नहीं की गई – याचिका खारिज। (जमुना प्रसाद वि. बालकिशन) ...2363

Civil Procedure Code (5 of 1908), Order 39 Rule 2-A – Punishment **– Trial court imposed fine of Rs. 5,000/-after having found that respondents have violated the temporary injunction order – Held – Either the property can be attached or a person can be sent to jail or both – There is no provision for imposition of fine only – Order set-aside only to the extent of punishment and remanded back to consider the question of punishment in the light of provision of Order 39 Rule 2-A and judgment of Apex Court after giving opportunity of hearing to the respondents. [Gendalal Vs. Chagganlal] ...2168**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 2–ए – दंड – विचारण न्यायालय ने यह पाये जाने के पश्चात् कि प्रत्यर्थीगण ने अस्थाई व्यादेश के आदेश का उल्लंघन किया है, रू. 5,000/– का अर्थदंड अधिरोपित किया – अभिनिर्धारित – या तो संपत्ति कुर्क की जा सकती है या व्यक्ति को कारागृह भेजा जा सकता है या दोनों – केवल अर्थदंड अधिरोपित करने के लिए कोई उपबंध नहीं – केवल दंड की सीमा तक आदेश अपास्त और आदेश 39 नियम 2–ए का उपबंध तथा सर्वोच्च न्यायालय के निर्णय के आलोक में, प्रत्यर्थीगण को सुनवाई का अवसर दिये जाने के पश्चात् दंड के प्रश्न पर विचार करने हेतु प्रतिप्रेषित। (गेंदालाल वि. छग्गनलाल) ...2168

Civil Procedure Code (5 of 1908), Order 41 Rule 23A and Transfer of Property Act (4 of 1882), Section 44 – Transfer of undivided share by coparcener **– Respondent filed the suit for declaration of title, partition and mesne profits – Suit was decreed – Objection was filed**

before executing Court that appellants have purchased a part of disputed land from a coparcener – Appellate Court remanded the matter to ascertain the title of decree holder in respect of 1/2 share by collecting evidence – Held – Transferee from a co-owner would not be in a better position than the co-owner and does not have any right to exclusive possession – Appellate Court rightly remanded the case back – Appeal dismissed. [Tilak Education Research & Development Society Vs. Smt. Phoolwati] ...1801

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 23ए एवं सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 44 – सहदायिक द्वारा अविभाजित हिस्से का अंतरण – प्रत्यर्थी ने स्वत्व की घोषणा, विभाजन एवं अंतःकालीन लाभों हेतु वाद प्रस्तुत किया – वाद डिक्रीत किया गया – निष्पादन न्यायालय के समक्ष आपत्ति प्रस्तुत की गयी कि अपीलार्थीगण ने सहदायिक से विवादित भूमि का एक भाग क्रय किया – अपीली न्यायालय ने 1/2 हिस्से के संबंध में साक्ष्य एकत्रित कर डिक्रीदार के स्वत्व को अभिनिश्चित करने के लिये मामला प्रतिप्रेषित किया – अभिनिर्धारित – सहस्वामी से अंतरिती, सहस्वामी से बेहतर स्थिति में नहीं होगा और उसे अनन्य कब्जे का कोई अधिकार नहीं है – अपीली न्यायालय ने उचित रूप से प्रकरण प्रतिप्रेषित किया– अपील खारिज। (तिलक एजुकेशन रिसर्च एण्ड डव्हेलपमेन्ट सोसायटी वि. श्रीमती फूलवती) ...1801

Civil Procedure Code (5 of 1908), Order 47 Rule 1 – Review – **Decree for eviction was passed against applicant – In First Appeal, while granting interim order, applicant was directed to pay the monthly rent @ Rs. 5692 per month as directed by Trial Court – Held – Applicant is required to pay the monthly rent strictly in accordance with the provisions of Section 13 of M.P. Accommodation Control Act, 1961 – Impugned order does not suffer from any error apparent on the face of record nor any jurisdictional infirmity – Review application dismissed. [Satya Pal Anand Vs. Bal Neketan Nyas] (DB)...2462**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – पुनर्विलोकन – आवेदक के विरूद्ध बेदखली की डिक्री पारित की गई – प्रथम अपील में, अंतरिम आदेश प्रदान करते समय आवेदक को रू. 5692 प्रतिमाह मासिक भाड़े का भुगतान करने के लिये निदेशित किया गया जैसा कि विचारण न्यायालय द्वारा निदेशित किया गया था – अभिनिर्धारित – म.प्र. स्थान नियंत्रण अधिनियम 1961 की धारा 13 के उपबंधों का कड़ाई से पालन कर मासिक भाड़े का भुगतान करना आवेदक से अपेक्षित है – आक्षेपित आदेश अभिलेख की किसी प्रकट त्रुटि से ग्रसित नहीं और न ही किसी अधिकारिता की कमी से – पुनर्विलोकन आवेदन खारिज। (सत्यपाल

आनंद वि. बाल निकेतन न्यास) (DB)...2462

Civil Procedure Code (5 of 1908), Order 47 Rule 1 – Review – In the guise of review, rehearing is not permissible – In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record – The Court while deciding review application cannot sit on appeal over the judgment or decree passed by it – Application rejected. [Satya Pal Anand Vs. Bal Neketan Nyas] (DB)...2456

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – पुनर्विलोकन – पुनर्विलोकन की आड़ में पुनः सुनवाई अनुज्ञेय नहीं – पुनर्विलोकन चाहने के लिए यह दर्शाना होगा कि आदेश, अभिलेख पर प्रकट त्रुटि से ग्रसित है – न्यायालय, पुनर्विलोकन का आवेदन निर्णीत करते समय उसके द्वारा पारित निर्णय या डिक्री को अपील के तौर पर नहीं ले सकता – आवेदन अस्वीकार किया गया। (सत्यपाल आनंद वि. बाल निकेतन न्यास) (DB)...2456

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Departmental Enquiry – Withholding of material – If the material evidence is available to prove the charges or to rebut the allegations in defence but the same is not deliberately produced, this fact will go against the disciplinary authority and it has to be held that the enquiry was not properly held. [Shyam Sharma (Dr.) Vs. State of M.P.] ...2014

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – विभागीय जांच – तथ्यों को रोक कर रखना – यदि आरोप साबित करने के लिये या बचाव में अभिकथनों का खंडन करने के लिये तात्विक साक्ष्य उपलब्ध है परंतु उसे जानबूझकर प्रस्तुत नहीं किया गया है, तब यह तथ्य अनुशासनिक प्राधिकारी के विरूद्ध जायेगा और यह अभिनिर्धारित किया जाना होगा कि जांच समुचित रूप से नहीं की गई है। (श्याम शर्मा (डॉ.) वि. म.प्र. राज्य) ...2014

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Punishment – Judicial Review – Penalty can be interfered by Courts if it is shockingly disproportionate to alleged misconduct. [Shyam Sharma (Dr.) Vs. State of M.P.] ...2014

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – दण्ड – न्यायिक पुनर्विलोकन – शास्ति में न्यायालय द्वारा हस्तक्षेप किया जा सकता है यदि वह अनुचित रूप से अभिकथित अवचार के अननुपातिक है। (श्याम शर्मा (डॉ.) वि. म.प्र. राज्य) ...2014

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Right of Governor to withhold or withdraw Pension – **Governor may impose a penalty of withholding or withdrawing the pension or part thereof if case of misconduct is proved which is of such a nature that a penalty of dismissal could be imposed on Government Servant – Not only charges are to be levelled in such manner indicating such a grave misconduct but a finding is also to be recorded that such a grave misconduct is found proved so that the power of withdrawing or withholding the pension of a retired Government servant may be exercised. [Shyam Sharma (Dr.) Vs. State of M.P.] ...2014**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – पेंशन रोकने या वापस लेने का राज्यपाल का अधिकार – यदि अवचार का प्रकरण सिद्ध होता है जिसका स्वरूप ऐसा है कि सरकारी कर्मचारी पर पदच्युति की शास्ति अधिरोपित की जा सकती है, राज्यपाल पेंशन या उसका भाग रोकने या वापस लेने की शास्ति अधिरोपित कर सकता है – न केवल इस प्रकार के घोर अवचार को दर्शाते हुए आरोपों को लगाया जाना चाहिए बल्कि यह निष्कर्ष भी अभिलिखित किया जाना चाहिए कि इस प्रकार का घोर अवचार सिद्ध पाया गया है जिससे कि सेवानिवृत्त सरकारी कर्मचारी की पेंशन वापस लेने या रोकने की शक्ति का प्रयोग किया जा सके। (श्याम शर्मा (डॉ.) वि. म.प्र. राज्य) ...2014

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 – See – Service Law **[Toofan Singh Vs. M.P. State Civil Supplies] ...1729**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 – देखें – सेवा विधि (तूफान सिंह वि. एम.पी. स्टेट सिविल सप्लाईस्) ...1729

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b), District and Sessions Judges (Death-cum-Retirement Benefits) Rules, M.P. 1964, Rule 1-A & Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 14 – Compulsory retirement – **Administrative Committee made recommendation that 'suitable to continue in service' – Held – Full Court is the final authority and the decision of Full Court will prevail over the recommendation of Administrative Committee. [Shailendra Singh Nahar Vs. State of M.P.] (DB)...1754**

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(बी), जिला एवं सत्र न्यायाधीश (मृत्यु सह सेवानिवृत्ति लाभ) नियम, म.प्र., 1964, नियम 1–ए एवं उच्चतर न्यायिक सेवा (भर्ती और सेवा शर्तें) नियम, म.प्र., 1994, नियम 14 – अनिवार्य

सेवानिवृत्ति – प्रशासनिक समिति ने अनुशंसा की कि 'सेवा में बने रहने के लिये योग्य' – अभिनिर्धारित – फुल कोर्ट अंतिम प्राधिकारी है और फुल कोर्ट का निर्णय प्रशासनिक समिति की अनुशंसा पर अध्यारोही होगा। (शैलेन्द्र सिंह नाहर वि. म.प्र. राज्य) (DB)...1754

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b), District and Sessions Judges (Death-cum-Retirement Benefits) Rules, M.P. 1964, Rule 1-A and Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 14 – Compulsory retirement **– Petitioner – Additional District and Sessions Judge – Grant of selection grade – Previous adverse entries "Integrity Doubtful" – Held – After considering entire service record, even if judicial officer was awarded selection grade that would not wipe the previous adverse entries – Petition dismissed. [Shailendra Singh Nahar Vs. State of M.P.]** (DB)...1754

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(बी), जिला एवं सत्र न्यायाधीश (मृत्यु सह सेवानिवृत्ति लाभ) नियम, म.प्र., 1964, नियम 1–ए एवं उच्चतर न्यायिक सेवा (भर्ती और सेवा शर्तें) नियम, म.प्र., 1994, नियम 14 – अनिवार्य सेवानिवृत्ति – याची – अतिरिक्त जिला एवं सत्र न्यायाधीश – सिलेक्शन ग्रेड का प्रदान – पूर्ववर्ती प्रतिकूल प्रविष्टियां "सत्यनिष्ठा संदेहास्पद" – अभिनिर्धारित – संपूर्ण सेवा अभिलेख का विचार किये जाने के पश्चात् भी यदि न्यायिक अधिकारी को सिलेक्शन ग्रेड प्रदान किया गया, इससे पूर्ववर्ती प्रतिकूल प्रविष्टियां नहीं हटेंगी – याचिका खारिज। (शैलेन्द्र सिंह नाहर वि. म.प्र. राज्य) (DB)...1754

Companies Act (1 of 1956), Sections 433 & 434 – Winding up **– Application for winding up of the company – Respondent had apparently neglected to pay the sum and the deeming provision of Section 434 (1)(a) is attracted and it can be held that the respondent company is unable to pay its debt – Petitioner cannot be denied the order of winding up of the respondent company by directing it to avail alternate remedy – Petition admitted. [Bell Finvest (India) Ltd. (M/s.), Mumbai Vs. M/s. M.P. Proteins Pvt. Ltd., Mandsaur]** ...1854

कम्पनी अधिनियम (1956 का 1), धाराऐं 433 व 434 – परिसमापन – कंपनी के परिसमापन हेतु आवेदन – प्रत्यर्थी ने प्रकट रूप से रकम के भुगतान की उपेक्षा की और धारा 434(1)(ए) का समझा जाने वाला उपबंध आकर्षित होता है और यह अभिनिर्धारित किया जा सकता है कि प्रत्यर्थी कंपनी अपने ऋण का भुगतान करने में अक्षम है – याची को वैकल्पिक उपचार का अवलंब लेने के लिये निदेशित करते हुए प्रत्यर्थी कंपनी के परिसमापन के आदेश से इंकार नहीं किया जा सकता –

याचिका स्वीकार की गई। (बैल फिनवेस्ट (इंडिया) लि. (मे.), मुम्बई वि. मे. एम.पी. प्रोटीन्स प्रा. लि., मंदसौर) ...1854

Constitution – Article 19(1)(g) – Freedom of speech and expression – **Journalist reporting against corruption or misdeeds of public servants – Order passed against Journalist under M.P. Rajya Suraksha Adhiniyam based on petty cases – Impliedly means that attempt is made by administration to silence the voice of Journalist – Infringement of fundamental rights – Order passed by District Magistrate and of Commissioner quashed with cost of Rs. 10,000/-. [Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal]** ...1704

संविधान – अनुच्छेद 19(1)(जी) – बोलने की और अभिव्यक्ति की स्वतंत्रता – लोक सेवकों के भ्रष्टाचार एवं कुकर्मों के विरूद्ध पत्रकार की रिपोर्टिंग – पत्रकार के विरूद्ध मामूली प्रकरणों के आधार पर मध्य प्रदेश राज्य सुरक्षा अधिनियम के अंतर्गत आदेश पारित किया गया – विवक्षित रूप से अर्थ निकलता है कि प्रशासन द्वारा पत्रकार की आवाज़ शांत करने के लिये प्रयत्न किया गया है – मूलभूत अधिकारों का अतिलंघन – जिला दण्डाधिकारी एवं आयुक्त द्वारा पारित किया गया आदेश, रू. 10,000/– व्यय के साथ अभिखंडित। (अनूप सक्सेना वि. द सेक्रेटरी, मिनिस्ट्री ऑफ होम अफेयर्स, भोपाल) ...1704

Constitution – Article 21-A Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(1)(c) – **Proviso – Right of education to all children of the age of 6 to 14 years – Admission of 25% of the strength of children in pre-school classes for free & compulsory education to weaker section – Held – It is obligatory to give such admissions as the Court has duty to enforce not only fundamental rights but also to enforce legal rights. [The Daly College, Indore Vs. State of M.P.]** ...2387

संविधान – अनुच्छेद 21–ए एवं बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(1)(सी) – परंतुक – 6 से 14 वर्ष की आयु के सभी बालकों के लिए शिक्षा का अधिकार – निःशुल्क और अनिवार्य शिक्षा हेतु पूर्व–विद्यालयी कक्षाओं में बालकों की संख्या का 25% कमजोर वर्गों के लिए प्रवेश – अभिनिर्धारित – उक्त प्रवेश देना बाध्यकारी है जैसा कि न्यायालय का कर्तव्य न केवल मूलभूत अधिकारों का प्रवर्तन करना है बल्कि विधिक अधिकारों का भी प्रवर्तन करना है। (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Constitution – Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) & 200 – Maintainability of Writ – **Writ**

Petition filed for a direction to lodge FIR – In view of remedy available u/s 156(3) and 200 of Cr.P.C., power u/A 226 of Constitution of India could not be invoked – Petition dismissed with liberty to approach appropriate forum. [Shoukat Saeed Vs. State of M.P.] ...2359

संविधान – अनुच्छेद 226 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) व 200 – रिट की पोषणीयता – प्रथम सूचना रिपोर्ट दर्ज करने के निदेश हेतु रिट याचिका प्रस्तुत की गई – दं.प्र.सं. की धारा 156(3) व 200 के अंतर्गत उपलब्ध उपचार को दृष्टिगत रखते हुए, भारत के संविधान के अनुच्छेद 226 के अंतर्गत शक्ति का अवलंब नहीं लिया जा सकता – उचित फोरम के समक्ष प्रस्तुत करने की स्वतंत्रता के साथ याचिका खारिज। (शौकत सईद् वि. म.प्र. राज्य) **...2359**

***Constitution – Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 160 – Summon – Territorial jurisdiction* – Summon issued to witness at Indore by Crime Branch Mumbai under Section 160 of Criminal Procedure Code, 1973 – Held – Petitioner cannot be called as he is not residing within Mumbai jurisdiction – Respondent no. 2 is free to visit Indore & record statement – Summons quashed – Petition allowed. [Manish Vs. State of M.P.] ...2377**

संविधान – अनुच्छेद 226 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 160 – समन – क्षेत्रीय अधिकारिता – मुंबई अपराध शाखा द्वारा दंड प्रक्रिया संहिता 1973 की धारा 160 के अंतर्गत इंदौर के साक्षी को समन जारी किया गया – अभिनिर्धारित – याची को बुलाया नहीं जा सकता क्योंकि वह मुंबई क्षेत्राधिकार के भीतर निवासरत नहीं है – प्रत्यर्थी क्रमांक 2 इंदौर जाकर कथन अभिलिखित करने के लिये स्वतंत्र है – समन अभिखंडित – याचिका मंजूर। (मनीष वि. म.प्र. राज्य) **...2377**

***Constitution – Article 226 – Departmental Enquiry – Judicial Review* – Charge sheet issued against Petitioner on the allegation that while working as District and Sessions Judge he had granted anticipatory bail to several persons by falsely recording the undertaking given by the Investigating Officer – Writ Petition is not maintainable against a charge sheet as issuance of same does not give rise to a cause of action on account of fact that it does not adversely affect the rights of a party except in cases where the charge sheet has been issued by an authority not competent to do so – Correctness or veracity of charges cannot be looked into in writ proceedings – Charge sheet cannot be quashed at the initial stage on merits – There is no allegation that charge sheet has been issued by an incompetent authority – Petitioner would be at liberty**

to raise all these objections and grounds in the departmental enquiry that is pending against him – Petition dismissed. [Jagdish Baheti Vs. High Court of M.P.] (DB)...2075

संविधान – अनुच्छेद 226 – विभागीय जांच – न्यायिक पुनर्विलोकन – याची के विरूद्ध इस अभिकथन पर आरोप पत्र जारी किया गया कि जिला एवं सत्र न्यायाधीश के रूप में कार्यरत रहने के दौरान उसने अन्वेषण अधिकारी द्वारा दिये गये वचनबंध को मिथ्या रूप से अभिलिखित कर कई व्यक्तियों को अग्रिम जमानत प्रदान की थी – आरोप पत्र के विरूद्ध रिट याचिका पोषणीय नहीं क्योंकि इसका जारी किया जाना कोई वाद कारण उत्पन्न नहीं करता, इस तथ्य के कारण कि यह पक्षकार के अधिकारों को प्रतिकूल रूप से प्रभावित नहीं करता सिवाय ऐसे प्रकरणों में जहां आरोप पत्र को ऐसे प्राधिकारी द्वारा जारी किया गया हो जो ऐसा करने के लिये सक्षम नहीं है – रिट कार्यवाहियों में आरोपों की यथार्थता या सत्यता को विचार में नहीं लिया जा सकता – आरंभिक प्रक्रम पर आरोप पत्र को गुणदोषों पर अभिखंडित नहीं किया जा सकता – ऐसा कोई अभिकथन नहीं है कि आरोप पत्र को अक्षम प्राधिकारी द्वारा जारी किया गया है – याची इन सभी आक्षेपों एवं आधारों को उसके विरूद्ध लंबित विभागीय जांच में उठाने के लिये स्वतंत्र होगा – याचिका खारिज। (जगदीश बाहेती वि. हाईकोर्ट ऑफ एम.पी.) (DB)...2075

Constitution – Article 226 – Establishment of Medical College **– N.O.C. and consent of affiliation issued by University bearing same outward Number – M.C.I. sent negative recommendation on the aforesaid ground – Subsequently, as Medical Science University was established, the petitioner approached for grant of affiliation – Trust also deposited Rs. 50,30,000/- as affiliation fee – As Code of Conduct was in force in State of M.P., the University could not issue consent for affiliation – Subsequently, consent of affiliation was issued by Medical University on 25.04.2015 – However, in meeting dated 29.04.2015 Executive Committee of Medical Council gave negative recommendation as submission of document was not within time – Held – Discrepancies in two letters issued by R.D.V.V. which was competent to issue those letters ought to have been ignored – Petitioner had submitted the consent of affiliation from Medical University before the meeting of Executive Committee and Union of India had also wrote to M.C.I. to process the recommendation in the light of consent – M.C.I. directed to take final decision before commencement of admission process for academic year 2015-16 – Petition allowed. [Gyanjeet Sewa Mission Trust Vs. Union of India] (DB)...2088**

संविधान – अनुच्छेद 226 – आयुर्विज्ञान महाविद्यालय की स्थापना – विश्वविद्यालय द्वारा जारी किये गये अनापत्ति प्रमाणपत्र व संबद्ध किये जाने की सहमति पर समान जावक क्रमांक है – उपरोक्त आधार पर एम.सी.आई. ने नकारात्मक अनुशंसा प्रेषित की – तत्पश्चात्, चूंकि आयुर्विज्ञान विश्वविद्यालय स्थापित किया गया, याची ने संबद्धता प्रदान किये जाने हेतु निवेदन किया – न्यास ने संबद्ध किये जाने के शुल्क के रूप में रू. 50,30,000/– भी जमा किये – चूंकि म.प्र. राज्य में आचार संहिता लागू थी, विश्वविद्यालय संबद्ध किये जाने हेतु सहमति जारी नहीं की जा सकी – तत्पश्चात्, आयुर्विज्ञान विश्वविद्यालय द्वारा 25.04.2015 को संबद्ध किये जाने की सहमति जारी की – किंतु, आयुर्विज्ञान परिषद् की कार्यपालिक समिति ने दिनांक 29.04.2015 की बैठक में नकारात्मक अनुशंसा की क्योंकि समय के भीतर दस्तावेज प्रस्तुत नहीं किया गया था – अभिनिर्धारित – रा.दु.वि.वि. द्वारा जारी दो पत्र, जिन्हें जारी करने के लिये वह सक्षम था, के फर्क को अनदेखा किया जाना चाहिए था – याची ने कार्यपालिक समिति की बैठक के समक्ष आयुर्विज्ञान विश्वविद्यालय से संबद्ध किये जाने की सहमति प्रस्तुत की थी और भारत संघ ने भी एम.सी.आई. को सहमति के आलोक में अनुशंसा की कार्यवाही करने के लिए लिखा था – एम.सी.आई. को शैक्षणिक वर्ष 2015–16 हेतु प्रवेश प्रक्रिया आरंभ होने से पूर्व अंतिम निर्णय लेने के लिये निदेशित किया गया – याचिका मंजूर। (ज्ञानजीत सेवा मिशन ट्रस्ट वि. यूनियन ऑफ इंडिया) **(DB)...2088**

Constitution – Article 226 – Maintainability of Writ Petition against Judicial Orders **– Writ Petition filed against the order by which application under Order 21 Rule 97 of CPC has been rejected – Appeal would lie under Order 21 Rule 103 – When other statutory remedies are available to the petitioner for redressal of his grievance, judicial orders passed by Civil Court are not amenable to writ jurisdiction under Article 226 of Constitution. [Satya Pal Anand Vs. Bal Neketan Nyas, Bhopal] (DB)...1772**

संविधान – अनुच्छेद 226 – न्यायिक आदेशों के विरूद्ध रिट याचिका की पोषणीयता – आदेश जिसके द्वारा सि.प्र.सं. के आदेश 21 नियम 97 के अंतर्गत आवेदन अस्वीकार किया गया, के विरूद्ध रिट याचिका – आदेश 21 नियम 103 के अंतर्गत अपील होगी – जब याची को अपनी शिकायत के निवारण हेतु अन्य कानूनी उपचार उपलब्ध हैं, सिविल न्यायालय द्वारा पारित न्यायिक आदेश, संविधान के अनुच्छेद 226 के अंतर्गत रिट अधिकारिता के अध्यधीन नहीं। (सत्यपाल आनंद वि. बाल निकेतन न्यास, भोपाल) **(DB)...1772**

Constitution – Article 226 – Policy Matter – Judicial Review **– Where a policy is contrary to law or is in violation of the provisions of Constitution, or is arbitrary or irrational, Courts must perform their**

constitutional duties by striking it down. [State of M.P. Vs. Mala Banerjee] (SC)...1642

संविधान – अनुच्छेद 226 – नीतिगत मामला – न्यायिक पुर्नविलोकन – जहां नीति विधि के विपरीत है या संविधान के उपबंधों के उल्लंघन में है या मनमानी एवं अयुक्तियुक्त है, न्यायालयों को उसे अभिखंडित कर अपने संवैधानिक कर्त्तव्यों का पालन करना चाहिए। (म.प्र. राज्य वि. माला बनर्जी) **(SC)...1642**

***Constitution – Article 226 – Precedence – Judgment of Co-ordinate Bench* – A Bench should ordinarily follow the decision of a Co-ordinate Bench or else should forward the matter to the Chief Justice for constituting a Larger Bench in case the reasoning and conclusion of the Co-ordinate Bench is not acceptable. [State of M.P. Vs. Mala Banerjee] (SC)...1642**

संविधान – अनुच्छेद 226 – पूर्व निर्णय – समकक्ष न्यायपीठ का निर्णय – सामान्य रूप से एक न्यायपीठ को समकक्ष न्यायपीठ के निर्णय का अनुसरण करना चाहिए अन्यथा मामले को मुख्य न्यायाधिपति को वृहत् न्यायपीठ के गठन हेतु अग्रेषित करना चाहिए, यदि समकक्ष न्यायपीठ का तर्क और निष्कर्ष स्वीकार योग्य नहीं है। (म.प्र. राज्य वि. माला बनर्जी) **(SC)...1642**

***Constitution – Article 226 – Writ Petition – Whether Infructuous* – Central Government referred the negative recommendation submitted by M.C.I. back for reconsideration of Scheme of yearly renewal – M.C.I. again submitted negative recommendation – Central Govt. during the pendency of the petition issued communication mentioning "Central Government has decided to accept the same – It does not state that Central Government has accepted the said recommendations of M.C.I. – Recommendations of M.C.I. can be accepted only after giving opportunity of hearing to petitioner due to submission of fresh recommendation – Second recommendation made by M.C.I. is also under challenge – Petition cannot be said to have become infructuous. [RKDF Medical College Hospital and Research Centre Vs. Union of India] (DB)...2107**

संविधान – अनुच्छेद 226 – रिट याचिका – क्या निष्फल हो गई है – केन्द्र सरकार ने एम.सी.आई. द्वारा प्रस्तुत नकारात्मक अनुशंसा को वार्षिक नवीनीकरण की योजना का पुनर्विचार किये जाने हेतु वापस निर्देशित किया – एम.सी.आई. ने पुनः नकारात्मक अनुशंसा प्रस्तुत की – केन्द्र सरकार ने याचिका लंबित रहने के दौरान यह उल्लिखित करते हुए संसूचना जारी की कि केन्द्र सरकार ने उसे स्वीकार करने का

निर्णय लिया है" – इसमें यह नहीं कहा गया है कि केन्द्र सरकार ने एम.सी.आई. की अनुशंसाओं को स्वीकार किया है – नई अनुशंसा को प्रस्तुत किये जाने के कारण एम. सी.आई. की अनुशंसाओं को केवल याची को सुनवाई का अवसर देने के पश्चात् स्वीकार किया जा सकता है – एम.सी.आई. द्वारा की गई द्वितीय अनुशंसा को भी चुनौती दी गई है – याचिका निष्फल हो जाना नहीं कहा जा सकता। (आर.के.डी.एफ. मेडिकल कॉलेज हॉस्पिटल एण्ड रिसर्च सेन्टर वि. यूनियन ऑफ इंडिया) (DB)...2107

Constitution – Article 227 – Scope of interference – **Trial Court directed petitioner to pay ad valorem court fee on the suit – Impugned order was passed by the trial court under the vested discretionary jurisdiction and does not appear illegal, irregular or against the propriety of law, cannot be interfered at this stage – However, in the interest of justice in the available circumstances, petitioner is extended further period of 30 days to take steps to amend and modify the valuation and to pay court fee. [Harish Patel Vs. Sanjay Kumar]** ...1676

संविधान – अनुच्छेद 227 – हस्तक्षेप की सीमा – विचारण न्यायालय ने याची को वाद में मूल्यानुसार न्यायालय फीस अदा करने के लिये निदेशित किया – आक्षेपित आदेश को विचारण न्यायालय द्वारा निहित वैवेकिक अधिकारिता के अंतर्गत पारित किया गया था तथा यह अवैध, अनियमित या विधि के औचित्य के विरूद्ध प्रतीत नहीं होता, इस प्रक्रम पर हस्तक्षेप नहीं किया जा सकता – किंतु न्यायहित में, उपलब्ध परिस्थितियों में याची को मूल्यांकन संशोधित करने एवं उपांतरित करने तथा न्यायालय फीस अदा करने के लिये 30 दिनों की अतिरिक्त अवधि दी गई। (हरीश पटेल वि. संजय कुमार) ...1676

Constitution – Article 227 – Writ – Maintainability – **Alternative remedy of appeal available – Violation of principle of natural justice – Availability of alternative remedy is no bar – Writ is maintainable. [Chandrakanta Bai Vs. State of M.P.]** (DB)...1657

संविधान – अनुच्छेद 227 – रिट – पोषणीयता – अपील का वैकल्पिक उपचार उपलब्ध – नैसर्गिक न्याय के सिद्धांत का उल्लंघन – वैकल्पिक उपचार की उपलब्धता कोई वर्जन नहीं–रिट पोषणीय है। (चन्द्रकांता बाई वि. म.प्र. राज्य) (DB)...1657

Constitution – Article 265 – Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, M.P. (52 of 1976), Section 3 – Entry Tax – Rate of Tax – **By notification dated 1-5-1997 which remained in force till 30-9-1997, rate of entry tax was reduced to 1% – However, as per proviso, the dealers who had already paid the tax at the higher rate were not entitled to refund of the same – Article 265 provides that no**

tax shall be levied or collected except by authority of law – Proviso providing for non-refund of tax paid at higher rate is unconstitutional being violative of Article 14 and 265 of Constitution of India – Appeal allowed. [Vikram Cement Vs. State of M.P.] (SC)...1647

संविधान – अनुच्छेद 265 – स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, म.प्र. (1976 का 52), धारा 3 – प्रवेश कर – कर की दर – अधिसूचना दिनांक 01–05–1997 जो 30–09–1997 तक प्रभावी रही, के द्वारा प्रवेश कर की दर को 1% घटाया गया – तथापि, परंतुक के अनुसार डीलर जो पहले ही उच्चतर दर पर कर का भुगतान कर चुके हैं वे उक्त के प्रतिदाय के लिये हकदार नहीं – अनुच्छेद 265 उपबंधित करता है कि कोई कर लगाया या वसूला नहीं जा सकता सिवाय विधि के प्राधिकार द्वारा – उच्चतर दर पर अदा किये गये कर का प्रतिदाय नहीं किया जाना उपबंधित करने का परंतुक भारत के संविधान के अनुच्छेद 14 व 265 के उल्लंघन में होने के नाते असंवैधानिक है – अपील मंजूर। (विक्रम सीमेन्ट वि. म.प्र. राज्य) (SC)...1647

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 – Dispute – Business Transaction/Business Transactions **– Whether a dispute arising out of contract for sale and purchase of immovable property owned by respondents is amenable to adjudication under Section 64 – There was a single transaction whereunder the respondents had agreed to sell to society a parcel of land for use by Society – As respondents were not in the business of selling land as a commercial or business activity, it would not be a "business transaction" leave alone "business transactions" – Dispute was not maintainable. [Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal] (SC)...2293**

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – विवाद – कारोबारी संव्यवहार(एकवचन)/कारोबारी संव्यवहार(बहुवचन)– क्या प्रत्यर्थीगण के स्वामित्व की अचल संपत्ति के विक्रय एवं क्रय हेतु संविदा से उत्पन्न विवाद धारा 64 के अंतर्गत न्यायनिर्णयन के अध्यधीन है – एक एकल संव्यवहार था जिसके अंतर्गत प्रत्यर्थीगण ने सोसाइटी के उपयोग हेतु सोसाइटी को भूखंड विक्रय करने के लिए करार किया था – चूंकि प्रत्यर्थीगण वाणिज्यिक या कारोबारी क्रियाकलाप के रूप में भूमि विक्रय का कारोबार नहीं कर रहे थे, यह "कारोबारी संव्यवहार"(एकवचन) नहीं होगा, "कारोबारी संव्यवहार" (बहुवचन) तो दूर की बात है – विवाद पोषणीय नहीं था। (भानुशाली हाउसिंग कोऑपरेटिव सोसायटी लिमिटेड वि. मांगीलाल) (SC)...2293

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 – Dispute Touching Business **– Dispute arising out of the purchase of the**

land owned by respondents is a dispute touching the business of Society. [Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal] (SC)...2293

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – कारोबार से संबंधित विवाद – प्रत्यर्थीगण के स्वामित्व की भूमि के क्रय किये जाने से उत्पन्न विवाद सोसाइटी के कारोबार से संबंधित विवाद है। (भानुशाली हाउसिंग कोऑपरेटिव सोसायटी लिमिटेड वि. मांगीलाल) (SC)...2293

***Court Fees Act (7 of 1870), Section 7(iv)(c),(v) – Ad valorem Court Fee – Consequential relief* – Suit for declaration that the suit property is joint Hindu family property and further declaration that if any alienation has taken place, the same may be declared as not binding – Second part of relief is consequential relief and not in sequence as it cannot be granted unless first relief is granted – Petitioner rightly directed to pay ad valorem court fee – Petition dismissed. [Sudha Jaiswal (Smt.) Vs. Sunil Jaiswal] ...2371**

न्यायालय फीस अधिनियम (1870 का 7), धारा 7 (iv)(c),(v) – मूल्यानुसार न्यायालय फीस – परिणामिक अनुतोष – घोषणा हेतु वाद कि वाद संपत्ति संयुक्त हिंदू कुटुम्ब संपत्ति है और अतिरिक्त घोषणा कि यदि कोई अन्यसंक्रामण हुआ है, उसे बाध्यकारी नहीं होना घोषित किया जाये – अनुतोष का द्वितीय भाग परिणामिक अनुतोष है और न कि उसी क्रम में इस कारण इसे प्रथम अनुतोष प्रदान किये बिना प्रदान नहीं किया जा सकता – याची को मूल्यानुसार न्यायालय फीस अदा करने के लिए उचित रूप से निदेशित किया गया – याचिका खारिज। (सुधा जायसवाल (श्रीमती) वि. सुनील जायसवाल) ...2371

***Court Fees Act (7 of 1870), Section 7(iv)(c),(v) – Valuation and court fee payable – Consequential relief* – Consequential relief means some relief which would follow directly from declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in Act and cannot be claimed independently of a declaration as a substantive relief. [Sudha Jaiswal (Smt.) Vs. Sunil Jaiswal]. ...2371**

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(c),(v) – मूल्यांकन और देय न्यायालय फीस – परिणामिक अनुतोष – परिणामिक अनुतोष का अर्थ है कोई अनुतोष जो दी गई घोषणा से तुरंत बाद आयेगा, जिसका मूल्यांकन अंतिम रूप से सुनिश्चित किये जाने योग्य नहीं और जो अधिनियम में कहीं भी विनिर्दिष्ट रूप से उपबंधित नहीं और जिसका दावा घोषणा से स्वतंत्र रूप से मूल अनुतोष के रूप में नहीं किया जा सकता। (सुधा जायसवाल (श्रीमती) वि. सुनील जायसवाल) ...2371

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Legitimate child – Artificial insemination – **Child who is born as a result of artificial insemination is a legitimate child – Though husband is not a biological father, but he is liable for child's support because he willfully consented for artificial insemination which implied a promise to support – Child is also entitled for maintenance. [Manoj Kapadia (Dr.) Vs. Smt. Manisha Kapadia]** ...2239

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – धर्मज संतान – कृत्रिम गर्भाधान – कृत्रिम गर्भाधान के फलस्वरूप जन्मी संतान धर्मज संतान है – यद्यपि पति जैविक पिता नहीं परंतु वह संतान के लालन पालन हेतु उत्तरदायी है क्योंकि उसने कृत्रिम गर्भाधान हेतु स्वेच्छापूर्वक सहमति दी थी जिसमें लालन पालन का वचन विवक्षित है – संतान भरण पोषण के लिये भी हकदार है। (मनोज कापड़िया (डॉ.) वि. श्रीमती मनीषा कापड़िया) ...2239

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance amount – **Wife filed marks-sheet and transfer certificate of her son in which name of the present petitioner was mentioned as father of child – Her name was mentioned as wife – This document relate to the year 1997 – It is admitted that applicant has second wife – Maintenance rightly granted. [Nahar Singh Vs. Jhinki Bai]** ...1884

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण–पोषण राशि – पत्नी ने अपने पुत्र की अंकसूची और स्थानांतरण प्रमाणपत्र प्रस्तुत किया जिसमें वर्तमान याची का नाम बालक के पिता के रूप में उल्लिखित था – उसका नाम पत्नी के रूप में उल्लिखित था – यह दस्तावेज वर्ष 1997 से संबंधित है – यह स्वीकृत है कि आवेदक की द्वितीय पत्नी है – भरणपोषण उचित रूप से प्रदान किया गया। (नाहर सिंह वि. झिनकी बाई) ...1884

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – False allegation – **Husband failed to prove that wife is living an adulterous life – Sufficient ground for wife to live separately. [Manoj Kapadia (Dr.) Vs. Smt. Manisha Kapadia]** ...2239

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – पोषणीयता – मिथ्या आरोप – पति यह सिद्ध करने में असफल रहा कि पत्नी जारता का जीवन जी रही है – पत्नी के पृथक रूप से निवास करने के लिये पर्याप्त आधार। (मनोज कापड़िया (डॉ.) वि. श्रीमती मनीषा कापड़िया) ...2239

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) &

200– See – Constitution – Article 226 [Shoukat Saeed Vs. State of M.P.] ...2359

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 156(3) व 200 – देखें :– संविधान – अनुच्छेद 226 (शौकत सईद् वि. म.प्र. राज्य) ...2359

Criminal Procedure Code, 1973 (2 of 1974), Section 160 – See – Constitution – Article 226 [Manish Vs. State of M.P.] ...2377

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 160 – देखें – संविधान – अनुच्छेद 226 (मनीष वि. म.प्र. राज्य) ...2377

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2) – Period of Police Remand **– Whether period of 15 days should be reckoned from the date of surrender or from the date when accused was produced by police before Court for police remand – Held – Respondent surrendered before the High Court on 18.06.2015 and was sent to Judicial Custody – Application under Section 439 of Cr.P.C. was rejected on 29.06.2015 and police took custody of respondent on 30.06.2015 and produced him before designated Court – Designated Court limited the period of police remand till 03.07.2015 as otherwise, period of 15 days would exceed – Period of 15 days would start from the date when the respondent was taken in custody by police and produced before Designated Court and not from the date of surrender – Application allowed. [State of M.P. Vs. Vipin Goyal]** (DB)...2274

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) – पुलिस रिमांड की अवधि – क्या 15 दिनों की अवधि की गणना आत्मसमर्पण की तिथि से होनी चाहिये या उस तिथि से जब अभियुक्त को पुलिस रिमांड हेतु पुलिस द्वारा न्यायालय के समक्ष पेश किया गया – अभिनिर्धारित – प्रत्यर्थी ने 18.06.2015 को उच्च न्यायालय के समक्ष आत्मसमर्पण किया और उसे न्यायिक अभिरक्षा में भेजा गया – दं.प्र.सं. की धारा 439 के अंतर्गत आवेदन 29.06.2015 को अस्वीकार किया गया और पुलिस ने 30.06.2015 को प्रत्यर्थी को हिरासत में लिया और नामनिर्दिष्ट न्यायालय के समक्ष उसे पेश किया – नामनिर्दिष्ट न्यायालय ने पुलिस रिमांड की अवधि 03.07.2015 तक सीमित की क्योंकि अन्यथा, 15 दिनों की अवधि निकल जाती/पार हो जाती – 15 दिनों की अवधि उस तिथि से आरंभ होगी जब प्रत्यर्थी को पुलिस द्वारा अभिरक्षा में लिया गया और नामनिर्दिष्ट न्यायालय के समक्ष प्रस्तुत किया गया और न कि आत्मसमर्पण की तिथि से – आवेदन मंजूर। (म.प्र. राज्य वि. विपिन गोयल) (DB)...2274

Criminal Procedure Code, 1973 (2 of 1974), Section 221 **– See**

– *Penal Code, 1860, Section 306* [Arun Vs. State of M.P.] ...1825

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 221 – देखें – दण्ड संहिता, 1860, धारा 306 (अरूण वि. म.प्र. राज्य) ...1825

Criminal Procedure Code, 1973 (2 of 1974), Section 227/228 – See – *Penal Code, 1860, Section 307* [Umesh Singh Vs. State of M.P.] ...2490

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227/228 – देखें – दण्ड संहिता 1860, धारा 307 (उमेश सिंह वि. म.प्र. राज्य) ...2490

Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Additional Accused – No charge sheet was filed against the applicant and the I.O. kept the investigation pending against the applicant, although his name finds place in F.I.R. and statements – On the basis of defence, the evidence given by injured witness cannot be brushed aside – No right had accrued to the I.O. to reserve investigation for a particular person/accused – Charge sheet has to be filed for the entire case and not for any particular person/individuals – I.O. has given undue shelter to applicant while filing charge sheet – As the I.O. kept the investigation pending against the applicant and applicant is not ready to appear before the Trial Court, arrest warrant could be issued directly – Revision dismissed. [Rajendra Alias Raje Vs. State of M.P.] ...2232

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अतिरिक्त अभियुक्त – आवेदक के विरूद्ध कोई आरोप पत्र प्रस्तुत नहीं किया गया और अन्वेषण अधिकारी ने आवेदक के विरूद्ध अन्वेषण को लंबित रखा, यद्यपि उसका नाम प्रथम सूचना रिपोर्ट तथा कथनों में जगह पाता है – बचाव के आधार पर, आहत साक्षी द्वारा दिया गया साक्ष्य अस्वीकार नहीं किया जा सकता – अन्वेषण अधिकारी को किसी विशिष्ट व्यक्ति/अभियुक्त के लिये अन्वेषण आरक्षित करने का कोई अधिकार प्रोद्मूत नहीं हुआ था – संपूर्ण प्रकरण के लिये आरोप पत्र प्रस्तुत किया जाना चाहिए और न कि विशिष्ट व्यक्ति/व्यक्तियों के लिये – अन्वेषण अधिकारी ने आरोप पत्र प्रस्तुत करते समय आवेदक को असम्यक् आश्रय दिया है – चूंकि अन्वेषण अधिकारी ने आवेदक के विरूद्ध अन्वेषण लंबित रखा और आवेदक विचारण न्यायालय के समक्ष उपस्थित होने के लिये तैयार नहीं है, सीधे गिरफ्तारी वारंट जारी किया जा सकता है – पुनरीक्षण खारिज। (राजेन्द्र उर्फ राजे वि. म.प्र. राज्य) ...2232

Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Compromise – Complainant has filed compromise application during the pendency of appeal which was duly verified – Application for

compromise accepted in respect of appellants No. 2 to 4 who have been convicted under Section 325/34 – Application in respect of appellant No.1 rejected – However, the sentence is reduced to the period already undergone and fine amount is enhanced to a sum of Rs. 10000 from Rs. 1000/-. [Ashok Vs. State of M.P.] ...2475

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौता – शिकायतकर्ता ने अपील के लंबित रहने के दौरान समझौते का आवेदन प्रस्तुत किया जो सम्यक् रूप से सत्यापित था – अपीलार्थी क्र. 2 से 4 जिन्हें धारा 325/34 के अंतर्गत दोषसिद्ध किया गया है, से संबंधित समझौते हेतु आवेदन स्वीकार किया गया – अपीलार्थी क्र. 1 से संबंधित आवेदन अस्वीकार किया गया – किंतु दण्डादेश को भुगताई जा चुकी अवधि तक घटाया गया और अर्थदंड की राशि को रू. 1,000/– से बढ़ाकर 10,000/– किया गया। (अशोक वि. म.प्र. राज्य) ...2475

***Criminal Procedure Code, 1973 (2 of 1974), Section 321 – Locus Standi* – Complainant or any other person has locus standi to oppose withdrawal of a case. [Pushpa Dharwal (Ku.) Vs. State of M.P.] ...2260**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321 – सुने जाने का अधिकार – शिकायतकर्ता या किसी अन्य व्यक्ति को प्रकरण वापस लिये जाने का विरोध करने के लिये सुने जाने का अधिकार है। (पुष्पा धारवाल (कुमारी) वि. म.प्र. राज्य) ...2260

***Criminal Procedure Code, 1973 (2 of 1974), Section 321 – Withdrawal from Prosecution – Cross case pending* – Case was not listed – Application u/s 34 was entertained without hearing complainant – Compelling one of parties to face trial and giving benefit to other by withdrawing the case ought not to be allowed – Order granting permission to withdraw from prosecution set aside – P.P. may file fresh application u/s 321 and court is free to decide the same after giving opportunity to complainant – Application allowed. [Pushpa Dharwal (Ku.) Vs. State of M.P.] ...2260**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321 – अभियोजन वापस लेना – प्रति प्रकरण लंबित – प्रकरण सूचीबद्ध नहीं किया गया – शिकायतकर्ता को सुने बिना धारा 34 के अंतर्गत आवेदन ग्रहण किया गया – एक पक्षकार को विचारण का सामना करने के लिये बाध्य करना और दूसरे को प्रकरण वापस लेकर लाभ देना मंजूर नहीं किया जा सकता था – अभियोजन वापस लेने की अनुमति प्रदान करने का आदेश अपास्त – लोक अभियोजक धारा 321 के अंतर्गत नया आवेदन प्रस्तुत कर सकता है और शिकायतकर्ता को अवसर प्रदान करने के पश्चात् न्यायालय उसे निर्णीत करने के लिये स्वतंत्र है – आवेदन मंजूर। (पुष्पा धारवाल (कुमारी) वि. म.प्र. राज्य) ...2260

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Criminal Procedure Code, 1973 (2 of 1974), Section 321 – Withdrawal from Prosecution – Functions of Court – **Court performs supervisory and not adjudicatory function – Consent by Court is discretionary – Court must consider that (i) Whether withdrawal of prosecution would advance the cause of justice (ii) Whether case is likely to end in an acquittal (iii) whether continuance would only cause severe harassment to accused (iv) Whether withdraw is likely to resolve dispute (v) Whether grounds are valid (vi) Whether implication is bonafide or is collusive. [Pushpa Dharwal (Ku.) Vs. State of M.P.]** ...2260

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321 – अभियोजन वापस लेना – न्यायालय के कार्य – न्यायालय पर्यवेक्षण का कार्य करता है और न कि न्यायनिर्णयन का – न्यायालय की सहमति वैवेकिक है – न्यायालय को विचार करना चाहिए कि (i) क्या अभियोजन वापस लेने से न्याय का उद्देश्य अग्रसर होगा (ii) क्या प्रकरण का अंत दोषमुक्ति में होने की संभावना है (iii) क्या जारी रखने से अभियुक्त को केवल घोर उत्पीड़न कारित होगा (iv) क्या वापस लेने से विवाद सुलझने की संभावना है (v) क्या आधार वैध है (vi) क्या आलिप्त किया जाना सद्भाविक है या दुस्संधिपूर्ण है। (पुष्पा धारवाल (कुमारी) वि. म.प्र. राज्य) ...2260

Criminal Procedure Code, 1973 (2 of 1974), Section 321 – Withdrawal from Prosecution – Functions of Public Prosecutor – **Withdrawal from prosecution is an executive function of Public Prosecutor and ultimate decision to withdraw is his power and must be exercised by Public Prosecutor and none else – Govt. may suggest to Public Prosecutor to withdraw a particular case and nobody can compel Public Prosecutor to withdraw. [Pushpa Dharwal (Ku.) Vs. State of M.P.]** ...2260

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), 321 – अभियोजन वापस लेना – लोक अभियोजक के कार्य – अभियोजन को वापस लेना लोक अभियोजक का कार्यपालिक कार्य है और वापस लेने का अंतिम निर्णय उसकी शक्ति में है और जिसका प्रयोग लोक अभियोजक द्वारा किया जाना चाहिए और न कि किसी और के द्वारा – सरकार लोक अभियोजक को कोई विशिष्ट प्रकरण वापस लेने के लिये सुझाव दे सकती है और वापस लेने के लिए कोई भी लोक अभियोजक को बाध्य नहीं कर सकता। (पुष्पा धारवाल (कुमारी) वि. म.प्र. राज्य) ...2260

Criminal Procedure Code, 1973 (2 of 1974), Section 321 – Withdrawal from Prosecution – **Law discussed. [Pushpa Dharwal (Ku.) Vs. State of M.P.]** ...2260

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321 – अभियोजन वापस

लेना – विधि विवेचित। (पुष्पा धारवाल (कुमारी) वि. म.प्र. राज्य) ...2260

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Admissions in Medical Colleges were given by corrupt means – Offence has potential of undermining the trust of people in the integrity of medical profession – If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients, patients will be faced with undeserving and corrupt persons treating them – Bail cannot be granted – However, as applicant is in jail for more than 1 year and there is no substantial progress in trial, it is directed that in case trial is not completed within one year, the applicant shall be entitled to apply for bail afresh to the High Court. [Vinod Bhandari (Dr.) Vs. State of M.P.] (SC)...1625

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – आयुर्विज्ञान महाविद्यालय में भ्रष्ट साधनों द्वारा प्रवेश दिये गये – अपराध में चिकित्सीय व्यवसाय की ईमानदारी पर से लोगों का विश्वास कमजोर करने की क्षमता है – यदि अयोग्य अभ्यर्थियों को भ्रष्ट साधनों द्वारा चिकित्सीय पाठ्यक्रमों में प्रवेश दिया जाता है, न केवल समाज उत्कृष्ट दिमाग वालों से मरीजों के उपचार से वंचित होगा, मरीज, उनका उपचार करने वाले अयोग्य और भ्रष्ट व्यक्तियों का सामना करेंगे – जमानत प्रदान नहीं की जा सकती – किन्तु जैसा कि आवेदक 1 वर्ष से अधिक समय से जेल में है और विचारण में कोई सारवान प्रगति नहीं हुई है, यह निदेशित किया गया कि यदि एक वर्ष के भीतर विचारण पूरा नहीं किया जाता, आवेदक, उच्च न्यायालय को नये सिरे से जमानत हेतु आवेदन करने का हकदार होगा। (विनोद भण्डारी (डॉ.) वि. म.प्र. राज्य) (SC)...1625

Criminal Procedure Code, 1973 (2 of 1974), Section 439, Recognised Examinations Act, M.P. (10 of 1937), Sections 3(D), 1, 2 & 5 (also referred to as 'Manyataprapt Pariksha Adhiniyam, M.P. 1937') and Penal Code (45 of 1860), Sections 409, 420 & 120-B – Bail – Applicant alleged to have acted as middleman to facilitate candidate who had appeared in examination conducted by VYAPAM for Pre P.G. Medical course – Apprehension that I.O. will be biased based on vague and unsubstantiated plea which cannot be accepted – Further the applicant has refused to accept the offer of STF of interrogation of applicant under the supervision of STF chief – While deciding anticipatory bail it has already been decided that custodial interrogation is necessary –Although applicant has rejected the offer, even then STF chief is directed to supervise the interrogation session

– Application rejected. [Vipin Goel Vs. State of M.P.] (DB)...1916

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439, मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धाराऐं 3(डी), 1, 2 व 5 एवं दण्ड संहिता (1860 का 45) धाराऐं 409, 420 व 120–बी – जमानत – आवेदक ने अभिकथित रूप से उन अभ्यर्थियों को मदद करने के लिये बिचौलिये के रूप में कार्य किया जो व्यापमं द्वारा आयोजित की गई स्नातकोत्तर चिकित्सा पाठ्यक्रम पूर्व परीक्षा में सम्मिलित हुए थे – यह आशंका कि अन्वेषण अधिकारी पक्षपाती होगा, अस्पष्ट एवं अप्रमाणित अभिवाक् पर आधारित है जिसे स्वीकार नहीं किया जा सकता – इसके अतिरिक्त आवेदक ने एस.टी.एफ. प्रमुख के पर्यवेक्षण में आवेदक की पूछताछ करने के एस.टी. एफ. के प्रस्ताव को अस्वीकार किया है – अग्रिम जमानत का विनिश्चय करते समय यह पहले ही विनिश्चित किया गया है कि अभिरक्षा में पूछताछ आवश्यक है – यद्यपि आवेदक ने प्रस्ताव अस्वीकार किया है, तब भी एस.टी.एफ. प्रमुख को पूछताछ सत्र का पर्यवेक्षण करने के लिये निदेशित किया जाता है – आवेदन अस्वीकार किया गया। (विपिन गोयल वि. म.प्र. राज्य) (DB)...1916

Criminal Procedure Code, 1973 (2 of 1974), Section 454 – Supurdaginama of vehicle **– 200 bottles of Rex Cough Syrup were being transported in an unregistered vehicle – Vehicle was purchased on 22.10.14 and was insured – Vehicle was yet to be registered in the name of the applicant but he is title holder thereof – If a vehicle is seized in connection with criminal case, it should be returned and should not be allowed to rot in unprotected condition – Court shall call a report from Police Station regarding engine and chasis numbers and if they match, the vehicle shall be released in interim custody on condition. [Harshvardhan Pandey Vs. State of M.P.] ...1902**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 454 – वाहन का सुपुर्दगीनामा – रेक्स कफ सिरप की 200 बोतलों का परिवहन अपंजीकृत वाहन में किया जा रहा था – 22.10.14 को वाहन क्रय किया गया था और बीमाकृत था – वाहन का पंजीकरण अभी आवेदक के नाम से होना था परंतु वह उसका हकधारक है – यदि आपराधिक प्रकरण के संबंध में वाहन जप्त किया जाता है तब उसे वापस किया जाना चाहिये और असुरक्षित स्थिति में खराब होने नहीं दिया जा सकता – न्यायालय इंजन और चेसीस क्रमांक के संबंध में पुलिस थाने से प्रतिवेदन बुलायेगा और यदि उसका मिलान होता है, वाहन को शर्तों के साथ अंतरिम अभिरक्षा में छोड़ा जायेगा। (हर्षवर्धन पाण्डे वि. म.प्र. राज्य) ...1902

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Sections 406, 420, 461, 471 & 120-B –

Jurisdiction of Criminal Court **– There is a dispute regarding the lease of the dairy farm to the respondent no. 2 – It is purely a dispute of civil nature and for this purpose the jurisdiction vested in a criminal Court cannot be invoked to settle a dispute which is purely of civil nature – Proceedings quashed. [Subodh Kumar Gupta Vs. Smt. Alpana Gupta]** **...2494**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धाराऐं 406, 420, 461, 471 व 120–बी – दाण्डिक न्यायालय की अधिकारिता – प्रत्यर्थी क्रमांक 2 को डेरी फार्म का पट्टा दिये जाने के संबंध में विवाद है – यह शुद्ध रूप से सिविल प्रकृति का विवाद है और इस प्रयोजन हेतु दाण्डिक न्यायालय में निहित अधिकारिता का अवलंब ऐसा विवाद निपटाने के लिये नहीं लिया जा सकता जो शुद्ध रूप से सिविल प्रकृति का है – कार्यवाहियां अभिखंडित। (सुबोध कुमार गुप्ता वि. श्रीमती अल्पना गुप्ता) **...2494**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Expunction of Adverse remarks **– Trial Court after recording the evidence of prosecution witnesses and before recording the statements of accused persons under Section 313 of Cr.P.C. directed the investigating agency to further investigate the matter and also directed the authorities to initiate departmental enquiry against the applicants – Held – Court below should not have passed the order of further investigation after taking cognizance by framing charges as the impartiality of the Court will erode and such act of Court will amount to usurping the role of prosecutor – Further the Court should have passed the Judgment pointing out lapses if any – Trial Court has passed the impugned order in gross violation of established procedure – Further no opportunity of hearing was given to the applicants before passing the order – The Court also cannot direct for holding a Departmental Enquiry – Order set aside. [Kamal David Vs. State of M.P.]** **...2523**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रतिकूल टिप्पणियों का हटाया जाना – विचारण न्यायालय द्वारा अभियोजन साक्षियों का साक्ष्य अभिलिखित करने के पश्चात् और दं.प्र.सं. की धारा 313 के अंतर्गत अभियुक्त व्यक्तियों के कथन अभिलिखित करने से पूर्व अन्वेषण एजेंसी को मामले में अतिरिक्त अन्वेषण करने के लिए निदेशित किया गया और आवेदकगण के विरूद्ध विभागीय जांच आरंभ करने के लिए प्राधिकारियों को भी निदेशित किया गया – अभिनिर्धारित – निचले न्यायालय को आरोप विरचित कर संज्ञान लेने के पश्चात् अतिरिक्त अन्वेषण का

आदेश नहीं पारित करना चाहिए क्योंकि इससे न्यायालय की निष्पक्षता क्षीण होगी और न्यायालय की उक्त कार्यवाही अभियोजक की भूमिका को हड़पने की कोटि में आयेगी – इसके अतिरिक्त न्यायालय को गलतियों की ओर ध्यान दिलाते हुए, यदि कोई हो तो, निर्णय पारित करना चाहिए था – विचारण न्यायालय ने स्थापित प्रक्रिया के घोर उल्लंघन में आक्षेपित आदेश पारित किया है – इसके अतिरिक्त आदेश पारित करने से पूर्व आवेदकगण को सुनवाई का कोई अवसर नहीं दिया गया था – विभागीय जांच कराने के लिए भी न्यायालय निदेशित नहीं कर सकता – आदेश अपास्त। (कमल डेविड वि. म.प्र. राज्य) ...2523

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Penal Code, 1860, Sections 420, 467, 406, 468 & 471/34 **[Umang Choudhary Vs. State of M.P.] ...2285**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धाराऐं 420, 467, 406, 468 व 471/34 (उमंग चौधरी वि. म.प्र. राज्य) ...2285

Dental Council Rules of MDS Course Regulation 2007, Section 1 – Selection of Post graduate students – Stipend – Private Colleges – **Benefit of stipend has been given to students who have been pursuing their studies in Govt. College, but benefit has not been extended to students who are pursuing their studies in private colleges – Criteria of admission in Private College and Govt. College is different – Students prosecuting their studies in Govt. College cannot be equated with students prosecuting their studies in private college, as students with higher percentage of marks are being allotted the Govt. College and fee structure is also different – Respondent No. 4 is running an Institute within statutory framework – Direction to respondent No. 4 to pay stipend to its students would infringe the fundamental right to establish and run the educational Institute – Petition dismissed. [Rahul Bhartia (Dr.) Vs. Dental Council of India] (DB)...*38**

एम.डी.एस. पाठ्यक्रम के लिये दंत चिकित्सा परिषद् के नियम, विनियमन 2007, धारा 1 – स्नातकोत्तर विद्यार्थियों का चयन – छात्रवृत्ति – निजी महाविद्यालय – शासकीय महाविद्यालयों में अध्ययनरत विद्यार्थियों को छात्रवृत्ति का लाभ दिया गया परंतु निजी महाविद्यालयों में अध्ययनरत विद्यार्थियों को लाभ नहीं दिया गया है – निजी महाविद्यालय और शासकीय महाविद्यालय में प्रवेश का मानदंड भिन्न है – शासकीय महाविद्यालयों में अध्ययनरत विद्यार्थियों को निजी महाविद्यालयों में अध्ययनरत विद्यार्थियों के बराबर नहीं माना जा सकता, क्योंकि उच्चतर प्रतिशत अंक पाने वाले विद्यार्थियों को

शासकीय महाविद्यालय आबंटित किये जा रहे हैं और फीस का ढांचा भी भिन्न है – प्रत्यर्थी क्रमांक 4 संस्था को कानूनी रूपरेखा के भीतर चला रहा है – प्रत्यर्थी क्रमांक 4 को अपने विद्यार्थियों को छात्रवृत्ति देने का निदेश, शैक्षणिक संस्था को स्थापित करने और चलाने के मूलभूत अधिकार का उल्लंघन होगा – याचिका खारिज। (राहुल भारतीय (डॉ.) वि. डेन्टल काउंसिल ऑफ इंडिया) **(DB)...*38**

District and Sessions Judges (Death-cum-Retirement Benefits) Rules, M.P. 1964, Rule 1-A – See – Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b) **[Shailendra Singh Nahar Vs. State of M.P.] (DB)...1754**

जिला एवं सत्र न्यायाधीश (मृत्यु सह सेवानिवृत्ति लाभ) नियम, म.प्र., 1964, नियम 1–ए – देखें – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(बी) (शैलेन्द्र सिंह नाहर वि. म.प्र. राज्य) **(DB)...1754**

Education – Common Admission Test – Entrance Examination for admission in different institutes of IIM – Raw Scores **– Common Admission Test was conducted following the Item Response Theory (IRT) – Raw Scores are used in Traditional Examination System known as Classical Test Theory (CTT) – Raw Scores were applied to a process of equality and scaling using highly sophisticated mathematical modeling known as IRT – IRT approved by CAT Committee which is a body expert – Evaluation process is a academic policy cannot be subjected to writ petition in absence of any malafide or in absence of violation of any Statutory Provision – No malafide alleged against respondent No.3 who had conducted the examination in a most transparent manner – Petition dismissed. [Rutvj Waze Vs. Union of India] (DB)...2024**

शिक्षा – सामान्य प्रवेश परीक्षा – आई.आई.एम. की विभिन्न संस्थाओं में प्रवेश हेतु प्रवेश परीक्षा – रॉ स्कोर – आइटम रिस्पांस थ्योरी (आई.आर.टी.) का पालन करते हुए सामान्य प्रवेश परीक्षा आयोजित की गई – रॉ स्कोर को पारंपरिक परीक्षा प्रणाली में उपयोग किया जाता है जो क्लॉसिकल टेस्ट थ्योरी (सी.टी.टी.) के रूप में ज्ञात है – आई.आर.टी के रूप में ज्ञात उच्च रूप से जटिल/सुविज्ञ गणितीय मॉडलिंग का उपयोग करते हुए समानता एवं अनुपातिक प्रक्रिया के लिए रॉ स्कोर को लागू किया गया – सी.ए.टी. समिति जो एक विशेषज्ञ निकाय है के द्वारा आई. आर.टी. अनुमोदित – मूल्यांकन प्रक्रिया एक शैक्षणिक नीति है जिसे किसी दुराशय की अनुपस्थिति में या किसी कानूनी उपबंध के उल्लंघन के अभाव में रिट याचिका के अध्याधीन नहीं किया जा सकता – प्रत्यर्थी क्र. 3 के विरूद्ध कोई दुराशय

अभिकथित नहीं जिसने अत्यंत पारदर्शी ढंग से परीक्षा संचालित की है – याचिका खारिज। (रूत्विज वाजे वि यूनियन ऑफ इंडिया) (DB)...2024

***Education Department (Technical Branch) Contingency Paid Employees Recruitment and Conditions of Service Rules, M.P. 1978, Rule 7 and Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 – Krammonati* – Employees on regular work charged and contingency paid establishment being governed by same set of Rules 1978 and 1979 are entitled to same benefit – Denial of benefit of krammonati scheme is bad – Respondents directed to settle the claim in the light of judgment passed in Teju Lal Yadav's case. [Man Singh Thakur Vs. State of M.P.]** ...2355

शिक्षा विभाग (तकनीकी शाखा) आकस्मिकता वेतन भोगी कर्मचारियों की भर्ती तथा सेवा शर्तें नियम, म.प्र. 1978, नियम 7 एवं कार्य भारित व आकस्मिकता वेतन भोगी कर्मचारी पेंशन नियम म.प्र. 1979 – क्रमोन्नति – नियमित कार्य भारित व आकस्मिकता वेतन भोगी स्थापना के कर्मचारीगण, नियम 1978 व 1979 के समान समूह द्वारा शासित होने के नाते समान लाभ के हकदार हैं – क्रमोन्नति योजना के लाभ से इंकार करना अनुचित है – प्रत्यर्थीगण को तेजूलाल यादव के प्रकरण में पारित निर्णय के आलोक में दावे का निपटान करने के लिये निदेशित किया गया। (मान सिंह ठाकुर वि. म.प्र. राज्य) ...2355

***Employees' Provident Funds and Miscellaneous Provisions Act, (19 of 1952), Sections 14-B & 32A and Employees Provident Funds Scheme, 1952, Para 32-A – Damages* – Petitioners are grant in-aid Private Educational Institutions – Contribution of Employees and Employer – Initially the petitioners unsuccessfully challenged the application of Act, 1952 – Contribution was deposited belatedly after the SLP was dismissed by Supreme Court – Regional Provident Fund Commissioner held petitioners liable for damages – Held – In case of APFC Vs. Ashram Madhyamik the damages were reduced to 25% – Maintaining the parity, the damages are directed to be reduced to 25% – Petition partly allowed. [Naveen Vidya Bhawan Vs. Regional Provident Fund Commissioner]** ...*37

कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम (1952 का 19), धाराऐं 14–बी व 32ए एवं कर्मचारी भविष्य–निधि योजना, 1952, पद 32–ए – क्षतिपूर्ति – याचीगण, सहायक अनुदान प्राप्त प्राइवेट शैक्षणिक संस्थाऐं हैं – कर्मचारीगण और नियोक्ता का अंशदान – आरंभ में याचीगण ने अधिनियम 1952 की प्रयोज्यता को

असफलतापूर्वक चुनौती दी – उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका खारिज किये जाने के पश्चात् विलंबित रूप से अंशदान जमा किया गया था – क्षेत्रीय भविष्य निधि आयुक्त ने याचीगण को क्षतिपूर्ति के लिए दायी ठहराया – अभिनिर्धारित – ए.पी.एफ.सी. वि. आश्रम माध्यमिक के प्रकरण में क्षतिपूर्ति को घटाकर 25% किया गया – समानता कायम रखते हुए, क्षतिपूर्ति को घटाकर 25% करने के लिए निदेशित किया गया – याचिका अंशतः मंजूर। (नवीन विद्या भवन वि. रीजनल प्राविडेन्ट फण्ड कमिश्नर) ...*37

Employees Provident Funds Scheme, 1952, Para 32-A – See – Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Sections 14-B & 32A **[Naveen Vidya Bhawan Vs. Regional Provident Fund Commissioner]** ...*37

कर्मचारी भविष्य–निधि योजना, 1952, पद 32–ए – देखें – कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम, 1952 धाराऐं 14–बी व 32ए (नवीन विद्या भवन वि. रीजनल प्राविडेन्ट फण्ड कमिश्नर) ...*37

Establishment of Medical College Regulations, 1999 – Regulations 7 & 8 – See – Medical Council Act, 1956, Section 10-A **[RKDF Medical College Hospital and Research Centre Vs. Union of India]** (DB)...2107

आयुर्विज्ञान महाविद्यालयों की स्थापना विनियमन, 1999 – विनियमन 7 व 8 – देखें – आयुर्विज्ञान परिषद् अधिनियम, 1956, धारा 10-ए (आर.के.डी.एफ. मेडिकल कॉलेज हॉस्पिटल एण्ड रिसर्च सेन्टर वि. यूनियन ऑफ इंडिया) (DB)...2107

Evidence Act (1 of 1872), Section 32 **– See –** ***Penal Code, 1860, Section 304-B*** **[State of M.P. Vs. Surendra Vishwakarma]** (DB)...2251

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 304-बी (म.प्र. राज्य वि. सुरेन्द्र विश्वकर्मा) (DB)...2251

Evidence Act (1 of 1872), Section 101 – Burden to prove **– The burden to prove that the vehicle was not involved in the accident was on driver and Tempo owner (respondent no. 1 and 2) – But they failed to discharge their burden. [Mohd. Azad @ Ajju Vs. Mahesh]** ...1810

साक्ष्य अधिनियम (1872 का 1), धारा 101 – सबूत का भार – यह साबित करने का भार कि दुर्घटना में वाहन शामिल नहीं था, चालक एवं टेम्पो स्वामी (प्रत्यर्थी क्रमांक 1 व 2) पर था – परंतु वे अपना भार उन्मोचित करने में असफल रहे। (मोहम्मद आजाद उर्फ अज्जू वि. महेश) ...1810

Evidence Act (1 of 1872), Section 138 – Re-examination **– Public prosecutor was allowed by the Court to exhibit the Test Identification Parade memo as the same could not be exhibited during examination-in-chief – New matter can be introduced u/s 138 of Act, 1872 with a rider that opposite party shall be given opportunity to cross-examine – Test Identification Parade memo was already the part of charge sheet and defence was aware of that – As defence was allowed to further cross-examine the witness, no irregularity committed in permitting the Public Prosecutor to get the Test Identification Parade memo exhibited. [Mohan Singh Vs. State of M.P.] ...2501**

साक्ष्य अधिनियम (1872 का 1), धारा 138 – पुनःपरीक्षण – न्यायालय द्वारा लोक अभियोजक को पहचान परेड ज्ञापन प्रदर्शित करने की अनुमति दी गई क्योंकि उक्त को मुख्य परीक्षण के दौरान प्रदर्शित नहीं किया जा सका था – अधिनियम, 1872 की धारा 138 के अंतर्गत नया तथ्य प्रविष्ट किया जा सकता है, इस नियम शर्त के साथ कि विरूद्ध पक्षकार को प्रतिपरीक्षण का अवसर दिया जायेगा – पहचान परेड ज्ञापन पहले से आरोप पत्र का हिस्सा था और इस तथ्य से बचाव पक्ष अवगत था – चूंकि बचाव पक्ष को साक्षी का अतिरिक्त प्रतिपरीक्षण करने की अनुमति दी गयी, लोक अभियोजक को पहचान परेड ज्ञापन प्रदर्शित कराने के लिए अनुमति देने में कोई अनियमितता कारित नहीं हुई है। (मोहन सिंह वि. म.प्र. राज्य) ...2501

Forest Act (16 of 1927), Sections 52, 52A & 52B – Confiscation of Vehicle – Knowledge and consent of owner **– Nothing on record that the driver of the jeep was transporting 25 bags of manganese ore with the knowledge and consent of owner – Owner has specifically stated that he had handed over the jeep to the driver for carrying passengers – Photographs of the jeep also shows that vehicle was registered as taxi having seats, which means it was meant for plying of passengers – In absence of any consent or knowledge on the part of the owner to commit forest offence, vehicle cannot be confiscated – Order confiscating the vehicle set aside. [Vijay Kanwde Vs. Sub Divisional Officer] ...2511**

वन अधिनियम (1927 का 16), धारा 52, 52ए व 52बी – वाहन का अधिहरण – स्वामी की जानकारी एवं सहमति – अभिलेख पर कुछ नहीं कि जीप का ड्राइवर, स्वामी की जानकारी एवं सहमति से मैंगनीज अयस्क के 25 बोरों का परिवहन कर रहा था – स्वामी ने विनिर्दिष्ट रूप से कथन किया है कि उसने यात्रियों को ले जाने के लिए ड्राइवर को जीप सौंपी थी – जीप के छायाचित्र भी दर्शाते हैं कि वाहन टैक्सी के रूप में पंजीबद्ध था जिसमें सीटें लगी थीं, जिसका अर्थ यह है कि वह

यात्रियों को लाने ले जाने के लिए थी – स्वामी की ओर से वन अपराध कारित करने की किसी सहमति या जानकारी की अनुपस्थिति में वाहन का अधिहरण नहीं किया जा सकता – वाहन के अधिहरण का आदेश अपास्त। (विजय कॉवड़े वि. सब डिविजनल ऑफिसर) ...2511

Forest (Conservation) Act (69 of 1980), Section 2 – **Approval before changing use of forest land for any non-forest purpose – Held – Prior approval of Central Government is necessary. [Olpherts Pvt. Ltd. (M/s.) Vs. Union of India]** ...*32

वन (संरक्षण) अधिनियम (1980 का 69), धारा 2 – वन भूमि का उपयोग किसी अवानिकी प्रयोजन हेतु परिवर्तित करने से पूर्व अनुमोदन – अभिनिर्धारित – केन्द्र सरकार का पूर्वानुमोदन आवश्यक है। (ओलफर्ट प्रा.लि. (मे.) वि. यूनियन ऑफ इंडिया) ...*32

General Clauses Act, M.P. 1957 (3 of 1958), Section 13 – Singular or Plural – **Principle underlying Section 13 of Act, 1957 regarding singular including the plural and vice versa does not have universal application and that principle can apply only when no contrary intention is deducible from the scheme or the language used in Statute. [Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal]** (SC)...2293

साधारण खण्ड अधिनियम, म.प्र. 1957 (1958 का 3), धारा 13 – एकवचन या बहुवचन – बहुवचन के समावेश के साथ एकवचन और विपर्यय के संबंध में अधिनियम 1957 की धारा 13 में अंतर्निहित सिद्धांत की प्रयोज्यता सर्वव्यापी नहीं है और यह सिद्धांत केवल तब लागू होगा जब योजना या कानून में प्रयुक्त भाषा से कोई प्रतिकूल आशय नहीं निकाला जा सकता। (भानुशाली हाउसिंग कोऑपरेटिव सोसायटी लिमिटेड वि. मांगीलाल) (SC)...2293

Griha Nirman Mandal Adhiniyam, M.P. 1972, (3 of 1973), Section 50 and Housing Board Accounts Rules, M.P. 1991, Rules 5.4 & 5.7 – Cost of Land – **In Advertisement it was mentioned that the price of houses are provisional – Subsequent hike in price of Land at the time of allotment – In view of clause contained in advertisement and provisions of Act, 1972 and Rules, 1991, hike in price of land is permissible – However, the same has to be done by applying the doctrine of proportionality and not on the basis of Collector's guidelines – Cost of developed plot in the year 2009 was provisionally fixed at Rs. 16,500/- per sq. meter – Enhancement of the same to Rs. 30,000 per sq. meter bad – Price of developed plot may be revised by adding 10%**

to provisional cost every year upto the date of demand made upon the said amount – Interest at the rate of 9% per annum may be added on such enhanced revised value amount – Appeal partly allowed. [Madhya Pradesh Housing and Infrastructure Development Board Vs. B.S.S. Parihar] (SC)...1959

गृह निर्माण मण्डल अधिनियम, म.प्र. 1972 (1973 का 3), धारा 50 एवं गृह निर्माण मंडल लेखा नियम, म.प्र. 1991, नियम 5.4 व 5.7 – भूमि की कीमत – विज्ञापन में यह उल्लिखित था कि मकानों की कीमतें अनंतिम हैं – तत्पश्चात्, आबंटन के समय भूमि की कीमत में बढ़ोतरी – विज्ञापन में अंतर्विष्ट खंड तथा अधिनियम 1972 एवं नियम 1991 के उपबंधों को दृष्टिगत रखते हुए, भूमि की कीमत में बढ़ोतरी अनुज्ञेय है – किंतु, इसे आनुपातिकता का सिद्धांत लागू करके किया जाना चाहिए और न कि कलेक्टर के दिशानिर्देशों के आधार पर – वर्ष 2009 में विकसित भूखंड की कीमत अनंतिम रूप से रू. 16,500/– प्रति वर्ग मीटर निश्चित की गई थी – उक्त को रू. 30,000/– प्रति वर्ग मीटर बढ़ाया जाना अनुचित – उक्त राशि पर मांग की तिथि तक विकसित भूखंड की कीमत प्रत्येक वर्ष 10% अनंतिम व्यय जोड़कर पुनरीक्षित की जा सकती है – इस प्रकार बढ़ायी गई पुनरीक्षित मूल्य की राशि पर 9% प्रतिवर्ष की दर से ब्याज जोड़ा जा सकता है – अपील अंशतः मंजूर। (मध्यप्रदेश हाउसिंग एण्ड इन्फ्रास्ट्रक्चर डव्हेलपमेन्ट बोर्ड वि. बी.एस.एस. परिहार) (SC)...1959

Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994 – Rule 5 & 7 – Cutoff marks for viva voce – **Scheme of selection as made in Rules nowhere contemplates prescription of minimum cutoff marks for viva voce, such a prescription in advertisement was not permissible. [Bharat Bhushan Vs. High Court of M.P.] (DB)...2437**

उच्चतर न्यायिक सेवा (भर्ती और सेवा शर्तें) नियम, म.प्र. 1994 – नियम 5 व 7 – मौखिक परीक्षा के अर्हक अंक – चयन प्रणाली जैसा कि नियमों में बनाई गई है, कहीं भी मौखिक परीक्षा के लिए न्यूनतम अर्हक अंक निर्धारित करना अनुध्यात नहीं करती, विज्ञापन में उक्त को निर्धारित करना अनुज्ञेय नहीं। (भारत भूषण वि. हाईकोर्ट ऑफ म.प्र.) (DB)...2437

Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 14 – **See** – ***Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b)*** **[Shailendra Singh Nahar Vs. State of M.P.] (DB)... 1754**

उच्चतर न्यायिक सेवा (भर्ती और सेवा शर्तें) नियम, म.प्र., 1994, नियम 14

– *देखें – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(बी)* (शैलेन्द्र सिंह नाहर वि. म.प्र. राज्य) (DB)...1754

Hindu Law – Undivided coparcenary property – Nature of possession of coparcener – **Every coparcener is co-owner of the entire property till the same is partitioned in accordance to the procedure prescribed under the law and if the coparcenary property is in possession of some other coparcener, then as per settled proposition of Hindu Personal Law, the possession of such coparcener is deemed to be the possession as trustee of other coparceners till the partition of the same is carried out and the separate possession is given. [Gorelal Lodhi Vs. Ratan Lal Lodhi]** ...1861

हिंदू विधि – अविभाजित सहदायिकी संपत्ति – सहदायिक के कब्जे का स्वरूप – प्रत्येक सहदायिक संपूर्ण संपत्ति का तब तक सह–स्वामी है जब तक कि विधि में विहित प्रक्रिया के अनुरूप उसका विभाजन नहीं होता और यदि सहदायिकी संपत्ति किसी अन्य सहदायिक के कब्जे में है तब हिंदू स्वीय विधि के सुस्थापित प्रतिपादन के अनुसार उक्त सहदायिक का कब्जा अन्य सहदायिकों के न्यासी के रूप में समझा जाता है जब तक कि उसका विभाजन नहीं कराया जाता और पृथक कब्जा नहीं दिया जाता। (गोरेलाल लोधी वि. रतन लाल लोधी) ...1861

Hindu Succession Act (30 of 1956), Section 6 – Opening of succession of daughters becoming co-parceners in view of 2005 amendment – **Daughters who got birth after the enforcement of amended provisions of Section 6 have co-parcenary rights in the ancestral joint Hindu family property of their parents – Such daughters shall get the rights in such property on opening the succession on account of death of the co-parcener through whom they are claiming – In the present case the petitioners got birth before 2005, their succession rights has not been opened as their father is still alive and as such not entitled to get any right, title or share in the disputed property as co-parcener. [Shanti Bai Vs. Sushila Bai]** ...1679

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6 – 2005 के संशोधन को दृष्टिगत रखते हुये पुत्रियों के सहदायिक बन जाने पर उत्तराधिकार प्रारंभ होना – पुत्रियां जिनका जन्म धारा 6 के संशोधित उपबंधों के प्रवर्तन पश्चात् हुआ है, उन्हें अपने माता पिता की पैतृक संयुक्त हिंदू परिवार संपत्ति में सहदायिक अधिकार है – ऐसी पुत्रियों को उक्त संपत्ति में अधिकार मिलेगा जब सहदायिक जिसके द्वारा वे दावा कर रहे हैं कि मृत्यु के कारण उत्तराधिकार प्रारंभ होता है –

वर्तमान प्रकरण में याचीगण 2005 के पूर्व जन्मे हैं, उत्तराधिकार के उनके अधिकार प्रारंभ नहीं हुए हैं क्योंकि उनके पिता अभी जीवित हैं और इस तरह विवादित संपत्ति में सहदायिक के रूप में कोई अधिकार, स्वत्व या हिस्सा मिलने के लिये हकदार नहीं। (शांति बाई वि. सुशीला बाई) ...1679

Housing Board Accounts Rules, M.P. 1991, Rules 5.4 & 5.7 – See – Griha Nirman Mandal Adhiniyam, M.P., 1972, Section 50 **[Madhya Pradesh Housing and Infrastructure Development Board Vs. B.S.S. Parihar] (SC)...1959**

गृह निर्माण मंडल लेखा नियम, म.प्र. 1991, नियम 5.4 व 5.7 – देखें – गृह निर्माण मण्डल अधिनियम, म.प्र., 1972, धारा 50 (मध्यप्रदेश हाउसिंग एण्ड इन्फ्रास्ट्रक्चर डव्हेलपमेन्ट बोर्ड वि. बी.एस.एस. परिहार) (SC)...1959

Income Tax Act (43 of 1961), Sections 133-A, 153-BB, 153-BC – Block Assessment **– For conducting block assessment, the Assessing Officer has to restrict himself to the evidence found or material collected during search only – He cannot rely upon any other material which did not form part of search and seizure operation – Therefore, material used and obtained from Sales Tax Department is not permissible for the purposes of making Block Assessment – Appeal dismissed. [Commissioner of Income Tax Vs. Shri Sant Ramdas Chawla] (DB)...*27**

आयकर अधिनियम (1961 का 43), धाराऐं 133-ए, 153-बीबी, 153-बीसी – ब्लॉक निर्धारण – ब्लॉक निर्धारण करने हेतु निर्धारण अधिकारी को केवल तलाशी के दौरान एकत्रित तथ्य या पाये गये साक्ष्य तक सीमित रहना चाहिए – वह किसी अन्य तथ्य पर विश्वास नहीं कर सकता जो कि तलाशी एवं जप्ती कार्यवाही का हिस्सा निर्मित नहीं करते – इसलिए, विक्रय कर विभाग द्वारा प्रयुक्त एवं अभिप्राप्त सामग्री ब्लॉक निर्धारण के प्रयोजन हेतु अनुज्ञेय नहीं – अपील खारिज। (कमिश्नर ऑफ इनकम टैक्स वि. श्री संत रामदास चावला) (DB)...*27

Interpretation of statute **– (a) Even a Single adverse entry about integrity of a judicial officer may be sufficient to compulsorily retire him from service. (b) Theory of effacement of adverse entry is not attracted in respect of consideration of proposal for compulsory retirement. [Shailendra Singh Nahar Vs. State of M.P.] (DB)...1754**

कानून का निर्वचन – (अ) किसी न्यायिक अधिकारी की सत्यनिष्ठा के बारे में एकमात्र प्रतिकूल प्रविष्टि भी उसे सेवा से अनिवार्य सेवानिवृत्त किये जाने के लिये

पर्याप्त हो सकती है। (ब) प्रतिकूल प्रविष्टि के विलोपन का सिद्धांत, अनिवार्य सेवानिवृत्ति के लिये प्रस्ताव के विचारण के संबंध में आकर्षित नहीं होता। (शैलेन्द्र सिंह नाहर वि. म.प्र. राज्य) (DB)...1754

Interpretation of statute – Precedent – Binding – **Conflicting decision of Apex Court of equal number of Judges – Earlier Bench decision is binding – Unless explained by the latter Bench of equal strength. [Parag Fans & Coolings Vs. Commissioner, Customs] (DB)...1845**

कानून का निर्वचन – पूर्व न्याय – बाध्यकारी – सर्वोच्च न्यायालय के समान संख्या के न्यायाधिपतिगणों की न्यायपीठों का परस्पर विरोधी निर्णय – पूर्ववर्ती न्यायपीठ का निर्णय बाध्यकारी – जब तक कि बाद की समान संख्याबल की न्यायपीठ द्वारा स्पष्ट नहीं किया जाता। (पराग फेन्स एण्ड कूलिंग्स वि. कमिश्नर, कस्टम्स) (DB)...1845

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 12 – Bail – **Likely to come in contact with persons of known criminal background – Report of Probation Officer shows that this is the second sexual offence by applicant – Family of applicant belongs to labour class – He is drop out from school after passing 6th standard and since is doing manual labour – There are reasonable grounds for believing that if applicant is released on bail, he is likely to come again into the contact with persons of known criminal background – Application rejected. [Aamir Salman Vs. State of M.P.] ...2236**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 12 – जमानत – ज्ञात आपराधिक पृष्ठभूमि के व्यक्तियों के संपर्क में आने की संभावना – परिवीक्षा अधिकारी का प्रतिवेदन दर्शाता है कि यह आवेदक द्वारा दूसरा लैंगिक अपराध है – आवेदक श्रमिक वर्ग के परिवार से है – उसने छठी कक्षा उत्तीर्ण करने के पश्चात् शाला छोड़ दी और तब से वह शारीरिक श्रमिक का काम कर रहा है – यह विश्वास करने के लिये युक्तियुक्त आधार है कि यदि आवेदक को जमानत पर छोड़ा गया तब उसकी पुनः ज्ञात आपराधिक पृष्ठभूमि के व्यक्तियों के संपर्क में आने की संभावना है – आवेदन अस्वीकार किया गया। (आमिर सलमान वि. म.प्र. राज्य) ...2236

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 12 – Bail – **The intention of the legislature to grant bail to the juvenile irrespective of nature or gravity of the offence alleged to have been committed by him and can be defined only in the case where there appears reasonable grounds for believing that the release**

is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release shall defeat the ends of justice – Further held, that heinousness of offence is also has no relevance while considering the bail matter of a delinquent juvenile. [Jogendra Singh Vs. State of M.P.] ...1886

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 12 – जमानत – विधायिका का आशय किशोर को जमानत प्रदान करना है, उसके द्वारा कारित अभिकथित अपराध का स्वरूप या गंभीरता को विचार में लिये बिना और केवल ऐसे प्रकरण में परिभाषित किया जा सकता है जहां यह विश्वास करने के लिये युक्तियुक्त आधार प्रकट होते हैं कि उसे छोड़े जाने पर उसके किसी नामी अपराधी के सानिध्य में आने की संभावना है या उसे किसी नैतिक, शारीरिक या मानसिक खतरे में डालेगा या उसे छोड़े जाने से न्याय का उद्देश्य विफल होगा – आगे अभिनिर्धारित, कि किसी किशोर अपराधी की जमानत के मामले में विचार किये जाते समय अपराध की जघन्यता का भी कोई औचित्य नहीं। (जोगेन्द्र सिंह वि. म.प्र. राज्य) ...1886

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 15(3) – Period of custody in Reformatory – **No juvenile in conflict with law can be committed to a Reformatory for a period exceeding three years – Delinquent in conflict with law is exempted from all forms of punishment and sending to a Reformatory is a matter entirely different from being sentenced to a punishment. [In Reference Vs. Golu @ Mota] ...1896**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 15 (3) – सुधारालय में अभिरक्षा की अवधि – विधि के विरूद्ध किसी किशोर को सुधारालय में तीन वर्षों से अधिक की अवधि के लिये नहीं रखा जा सकता है – विधि के विरूद्ध अपराधी को सभी प्रकार के दंड से छूट है और सुधारालय भेजा जाना, किसी दण्ड से दण्डित किये जाने से संपूर्णतः भिन्न मामला है। (इन रेफ्रेन्स वि. गोलू उर्फ मोटा) ...1896

Land Acquisition Act (1 of 1894), Sections 30, 53 & 54 and Civil Procedure Code (5 of 1908), Section 115 – Maintainability of Civil Revision – **Order passed u/s 30 of the Act, 1894 is a decree – Appeal lies u/s 54 of the Act, 1894 – Order dismissing application u/o 7 rule 11 CPC is appealable – Civil Revision is not maintainable – Revision dismissed. [Surendra Kaur (Smt.) Vs. Satinder Singh Chhabra] ...1867**

भूमि अर्जन अधिनियम (1894 का 1), धाराऐं 30, 53 व 54 एवं सिविल प्रक्रिया

संहिता (1908 का 5), धारा 115 – सिविल पुनरीक्षण की पोषणीयता – अधिनियम, 1894 की धारा 30 के अंतर्गत पारित किया गया आदेश डिक्री है – अधिनियम, 1894 की धारा 54 के अंतर्गत अपील होगी – सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन की खारिजी का आदेश अपीलीय है – सिविल पुनरीक्षण पोषणीय नहीं – पुनरीक्षण खारिज। (सुरेन्द्र कौर (श्रीमती) वि. सतिन्दर सिंह छाबड़ा) ...1867

Land Revenue Code, M.P. (20 of 1959), Section 59(2) – Premium and Penalty – Diversion of purpose – **Land was acquired for setting up a Thermal Power Plant by petitioner company – Compensation paid by company – Company constructed Thermal Power Plant as well as colony/township as per plan – As there was no change of use, company is not liable to pay premium and penalty in accordance with Sections 59 & 172(4) of Code, 1959. [National Thermal Power Corporation Vs. State of M.P.]** ...*31

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 59(2) – प्रीमियम और शास्ति – प्रयोजन का परिवर्तन – याची कंपनी द्वारा ताप विद्युत संयंत्र स्थापित करने हेतु भूमि का अर्जन किया गया था – कंपनी द्वारा प्रतिकर अदा किया गया – कंपनी ने ताप विद्युत संयंत्र और साथ ही योजना के अनुसार कॉलोनी/उपनगर का निर्माण किया – चूंकि उपयोग में कोई बदलाव नहीं किया गया, संहिता 1959 की धारा 59 व 172(4) के अनुसार कंपनी प्रीमियम और शास्ति का भुगतान करने के लिये दायित्वाधीन नहीं। (नेशनल थर्मल पॉवर कारपोरेशन वि. म.प्र. राज्य) ...*31

Limitation Act (36 of 1963), Section 5 – Condonation of delay – **Condonation of delay sought on the ground that due to lack of communication between appellant and lawyer, appeal could not be filed – The party is bound to contact Advocate periodically to know the progress and status of case – If a party is negligent, then the right of other party has accrued on account of such negligence – Delay of 1 year & 170 days cannot be condoned – Application dismissed. [Rajendra Kumar Adhwaryu Vs. Parmanand]** ...2155

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिये माफी – विलम्ब के लिये माफी इस आधार पर चाही गई कि अपीलार्थी एवं अधिवक्ता के बीच संसूचना के अभाव के कारण अपील प्रस्तुत नहीं की जा सकी – पक्षकार प्रकरण की प्रगति और स्थिति जानने के लिये नियमित रूप से अधिवक्ता के संपर्क में रहने के लिये बाध्य है – यदि पक्षकार उपेक्षावान है तब उक्त उपेक्षा के कारण अन्य पक्षकार को अधिकार प्रोद्भूत होता है – 1 वर्ष और 170 दिनों का विलम्ब माफ नहीं किया जा सकता – आवेदन खारिज। (राजेन्द्र कुमार अधवार्यू वि. परमानन्द) ...2155

Limitation Act (36 of 1963), Section 5 – Condonation of Delay – **Effect of not assailing impugned order within the period prescribed by law – It is settled proposition of law that after passing the order by any subordinate authority or court, if within the prescribed period the appeal or revision is not preferred against such order by the aggrieved party, a valuable right relating to limitation is accrued in favour of the other side in whose favour the order is passed – Such right could not be curtailed lightly contrary to available facts by adopting the lenient approach – If sufficient cause is not made out the delay cannot be condoned. [Ram Khelawan Gupta Vs. Board of Revenue]** ...1999

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिये माफी – आक्षेपित आदेश को विधि द्वारा विहित अवधि के भीतर चुनौती नहीं दिये जाने का प्रभाव – यह विधि की सुस्थापित प्रतिपादना है कि किसी अधीनस्थ प्राधिकारी या न्यायालय द्वारा आदेश पारित किये जाने के पश्चात् यदि विहित अवधि के भीतर असंतुष्ट पक्षकार द्वारा अपील या पुनरीक्षण प्रस्तुत नहीं किया जाता है, तब अन्य पक्षकार जिसके पक्ष में आदेश पारित किया गया है के पक्ष में परिसीमा के संबंध में मूल्यवान अधिकार प्रोद्भूत होता है – उक्त अधिकार को उदार दृष्टिकोण अपनाकर उपलब्ध तथ्यों के विपरीत हल्के रूप में संकुचित नहीं किया जा सकता – यदि पर्याप्त कारण नहीं बनता, विलंब को माफ नहीं किया जा सकता। (राम खिलावन गुप्ता वि. बोर्ड ऑफ रेवेन्यु) ...1999

Limitation Act (36 of 1963), Section 5 – Sufficient cause – Duty of Court – **It is true that 'Sufficient cause' should be considered by adopting liberal approach but the court is also bound to take care that on wrong facts no person should be benefited under the garb of lenient approach – In the present case delay of more than 6 years caused in filing Revision before Board of Revenue was declined to be condoned. [Ram Khelawan Gupta Vs. Board of Revenue]** ...1999

परिसीमा अधिनियम (1963 का 36), धारा 5 – पर्याप्त कारण – न्यायालय का कर्त्तव्य – यह सत्य है कि उदार दृष्टिकोण अपनाकर 'पर्याप्त कारण' को विचार में लिया जाना चाहिए परंतु न्यायालय यह सावधानी रखने के लिये भी बाध्य है कि गलत तथ्यों पर कोई व्यक्ति उदार दृष्टिकोण की आड़ में लाभान्वित नहीं होना चाहिए – वर्तमान प्रकरण में राजस्व मंडल के समक्ष पुनरीक्षण प्रस्तुत करने में कारित किया गया 6 वर्षों से अधिक का विलंब माफ करने से इंकार किया गया। (राम खिलावन गुप्ता वि. बोर्ड ऑफ रेवेन्यु) ...1999

Limitation Act (36 of 1963), Section 29 – See – Securitization

and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 18(2), [Baleshwar Dayal Jaiswal Vs. Bank of India] (SC)...2307

परिसीमा अधिनियम (1963 का 36), धारा 29 – देखें – वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, 2002, धारा 18(2), (बालेश्वर दयाल जायसवाल वि. बैंक ऑफ इंडिया) (SC)...2307

Marketing Discipline Guidelines, 2005, Clause 2.5 – Overriding Effect – Retesting of Sample – Sample collected from the retail outlet was found OFF SPEC- Retesting was done at the request of petitioner (respondent) and in his presence who knew that the re-testing is being done under Guidelines, 2005 which too was found OFF SPEC – No objection was raised by petitioner (respondent) at that time regarding delay – Petitioner (respondent) cannot be allowed to approbate and reprobate – Petitioner (respondent) had waived his right to raise objection with regard to delay in drawing sample and is estopped by his conduct from challenging the procedure adopted by the appellants – Appeal allowed – Order of Single Judge set aside. [Hindustan Petroleum Corporation Ltd. Vs. M/s. Royal Highway Services] (DB)...1989

मॉर्केटिंग डिसिप्लिन गाइड्लाइन्स, 2005, खंड 2.5 – अध्यारोही प्रभाव – नमूने का पुनःपरीक्षण – खुदरा बिक्री केन्द्र से एकत्रित किया गया नमूना, ऑफ स्पेक (OFF SPEC) पाया गया था – याची/(प्रत्यर्थी) के अनुरोध पर और उसकी उपस्थिति में पुनः परीक्षण किया गया, जिसे पता था कि पुनःपरीक्षण को दिशानिर्देश, 2005 के अंतर्गत किया जा रहा है, इसे भी ऑफ स्पेक (OFF SPEC) पाया गया – विलंब के संबंध में उस समय याची (प्रत्यर्थी) द्वारा कोई आक्षेप नहीं उठाया गया – याची (प्रत्यर्थी) को अनुमोदन और निरनुमोदन की अनुमति नहीं दी जा सकती – याची (प्रत्यर्थी) ने नमूना निकालने में विलंब के संबंध में आक्षेप उठाने के अपने अधिकार का त्यजन किया है और उसके आचरण द्वारा उसे अपीलार्थीगण द्वारा अपनायी गई प्रक्रिया को चुनौती देने पर रोक है – अपील मंजूर – एकल न्यायाधिपति का आदेश अपास्त। (हिन्दुस्तान पेट्रोलियम कारपोरेशन लि. वि. मे. रॉयल हाईवे सर्विसेस्) (DB)...1989

Medical Council Act, (102 of 1956), Section 10-A and Establishment of Medical College Regulations, 1999 – Regulations 7 & 8 – Renewal – Reconsideration – Power of Central Government to refer back the Scheme of yearly renewal to MCI for reconsideration – M.C.I. submitted negative recommendation for renewal of recognition to the Central Government – Petitioner submitted a new Scheme before

the Central Government in reply to the notice – Central Government remanded the matter back to M.C.I. to reconsider in the light of Scheme submitted by Petitioner – Provision of Section 10-A applies to both for proposal for opening a new medical college as also for grant of renewal permission – Scheme for yearly renewal permission is required to be processed under Section 10-A read with Regulations framed in that behalf – Central Government has power to refer back the Scheme of yearly renewal to M.C.I. for reconsideration. [RKDF Medical College Hospital and Research Centre Vs. Union of India] (DB)...2107

आयुर्विज्ञान परिषद् अधिनियम, (1956 का 102), धारा 10-ए एवं आयुर्विज्ञान महाविद्यालयों की स्थापना विनियमन, 1999 – विनियमन 7 व 8 – नवीनीकरण – पुनर्विचार – पुनर्विचार हेतु एम.सी.आई. को वार्षिक नवीनीकरण की योजना वापस निर्देशित करने की केन्द्र सरकार की शक्ति – एम.सी.आई. ने केन्द्र सरकार को मान्यता के नवीनीकरण हेतु नकारात्मक अनुशंसा की – नोटिस के उत्तर में याची ने केन्द्र सरकार के समक्ष नई योजना प्रस्तुत की – केन्द्र सरकार ने मामले को याची द्वारा प्रस्तुत योजना के आलोक में पुनर्विचार करने हेतु एम.सी.आई. को प्रतिप्रेषित किया – धारा 10–ए का उपबंध, नया आयुर्विज्ञान महाविद्यालय खोलने के प्रस्ताव हेतु और साथ ही नवीनीकरण की अनुमति प्रदान करने हेतु, दोनों के लिये लागू होता है – वार्षिक नवीनीकरण अनुमति की योजना की कार्यवाही, धारा 10–ए सहपठित, इस संबंध में विरचित विनियमन के अंतर्गत की जाना अपेक्षित – वार्षिक नवीनीकरण की योजना को पुनः विचार किये जाने हेतु एम.सी.आई. को वापस निर्देशित करने की केन्द्र सरकार को शक्ति है। (आर.के.डी.एफ. मेडिकल कॉलेज हॉस्पिटल एण्ड रिसर्च सेन्टर वि. यूनियन ऑफ इंडिया) **(DB)...2107**

Medical Council Act, (102 of 1956), Section 10-A – Negative Recommendation **– M.C.I. submitted negative recommendation – Central Government referred the matter back to M.C.I. to reconsider in the light of fresh Scheme submitted by Petitioner – M.C.I. in its 2nd negative recommendations merely adverted to its previous recommendations and observations – MCI is not only expected to ensure that existing medical college fulfills all the norms and standards to ensure imparting of quality medical education, but must also be concerned about burgeoning requirement of society and of creating opportunity to the deserving students who are keen to pursue medical course, keeping in mind the deficient number of Doctor's ratio catering to the society – 2nd recommendation qua the scheme submitted by petitioner is unsustainable and hence quashed – Authorities to process**

the scheme for yearly renewal permission further and take it to its logical end expeditiously and in any case before commencement of admission process for academic year 2015-2016 – Petition allowed. [RKDF Medical College Hospital and Research Centre Vs. Union of India] (DB)...2107

आयुर्विज्ञान परिषद् अधिनियम, (1956 का 102), धारा 10-ए – नकारात्मक अनुशंसा – एम.सी.आई. ने नकारात्मक अनुशंसा प्रस्तुत की – केन्द्र सरकार ने याची द्वारा प्रस्तुत नई योजना के आलोक में पुनर्विचार किये जाने हेतु मामला एम.सी.आई. को वापस निर्देशित किया – एम.सी.आई. ने अपनी द्वितीय नकारात्मक अनुशंसाओं में मात्र अपनी पूर्वतर अनुशंसाओं और संप्रेक्षणों का हवाला दिया – एम.सी.आई. से न केवल यह सुनिश्चित करना अपेक्षित है कि उत्तम चिकित्सीय शिक्षा प्रदान किया जाना सुनिश्चित करने के लिये, विद्यमान आयुर्विज्ञान महाविद्यालय सभी सन्नियमों एवं मानकों को पूरा करता है बल्कि समाज की बढ़ती अपेक्षाओं के बारे में भी विचार करना चाहिए और समाज को उपलब्ध चिकित्सकों के अनुपात को ध्यान में रखते हुए ऐसे सुपात्र विद्यार्थी जो चिकित्सीय पाठ्यक्रम जारी रखने में उत्सुक हैं, उनके लिये अवसर निर्माण करें – याची द्वारा प्रस्तुत योजना के संबंध में द्वितीय अनुशंसा अपोषणीय है, अतः अभिखंडित – प्राधिकारीगण, वार्षिक नवीनीकरण की अनुमति हेतु योजना में आगे कार्यवाही करें और किसी भी स्थिति में शैक्षणिक वर्ष 2015–2016 के लिए प्रवेश प्रक्रिया आरंभ होने से पूर्व उसे शीघ्र रूप से उसके तर्कसंगत परिणाम तक पहुँचाये – याचिका मंजूर। (आर.के.डी.एफ. मेडिकल कॉलेज हॉस्पिटल एण्ड रिसर्च सेन्टर वि. यूनियन ऑफ इंडिया) (DB)...2107

Mineral Concession Rules, 1960 Rule 22 **– Applications for the grant of leases and applications for renewal – Only the provisions of law, as are available on the date of consideration, are to be looked into and not the law as was existing on the date of making of application. [Olpherts Pvt. Ltd. (M/s.) Vs. Union of India] ...*32**

खनिज रियायत नियम, 1960, नियम 22 – पट्टों को प्रदान किये जाने हेतु आवेदन एवं नवीनीकरण हेतु आवेदन – केवल विधि के उपबंध जैसे कि विचारण की तिथि को उपलब्ध हैं, को विचार में लिया जाना चाहिए और न कि उस विधि को जो कि आवेदन करने की तिथि को विद्यमान थी। (ओलफर्ट प्रा.लि. (मे.) वि. यूनियन ऑफ इंडिया) ...*32

Minor Mineral Rules, M.P. 1996, Rule 7(2) – Quarry Lease of Flagstone – Renewal **– Petitioner applied for renewal of quarry lease of flagstone – Application was rejected on the ground that in view of amendment in Rule 7, the quarry lease can only be granted by way of**

auction – Held – Right of Petitioner is only one of consideration of his application, which must be done in conformity with Rules prevalent at the relevant time when the decision is taken by appropriate Authority – After the amendment of Rule 7, quarry lease of flagstone can be granted only by way of auction for a period of five years and not otherwise – Application for renewal rightly rejected. [Shyamlal Samarwar Vs. State of M.P.] (DB)...2426

गौण खनिज नियम, म.प्र. 1996, नियम 7(2) – प्रस्तर खंड का खदान पट्टा – नवीनीकरण – याची ने प्रस्तर खंड के खदान पट्टे के नवीनीकरण हेतु आवेदन किया – आवेदन को इस आधार पर अस्वीकार किया गया कि नियम 7 में संशोधन को दृष्टिगत रखते हुए खदान पट्टा केवल नीलामी द्वारा प्रदान किया जा सकता है – अभिनिर्धारित – याची का अधिकार केवल उसके आवेदन का विचार किये जाने के लिये है, जिसे समुचित प्राधिकारी द्वारा निर्णय लेने के सुसंगत समय पर प्रचलित नियमों के अनुरूप किया जाना चाहिए – नियम 7 में संशोधन के पश्चात् प्रस्तर खंड के खदान पट्टे को केवल नीलामी द्वारा पांच वर्षों की अवधि के लिए प्रदान किया जा सकता है और अन्यथा नहीं – नवीनीकरण हेतु आवेदन उचित रूप से अस्वीकृत। (श्यामलाल समरवार वि. म.प्र. राज्य) **(DB)...2426**

Minor Mineral Rules, M.P. 1996, Rule 30(6) – Power to impose penalty **– In case any person is found transporting minerals or their products without a valid pass on the strength of an incomplete, distorted or tampered transit pass, the Collector, Addl. Collector, Chief Executive Officer of Zila/Janpad Panchayat, Deputy Director, Mining Officer, Asstt. Mining Officer or Mining Inspector may seize the mineral or its products together with all tools and equipments and the vehicle used for transport – In view of amended provision of Rule 30(16), the Collector has the power or authority to impose penalty upto ten times the market value of the mineral and vehicle can be released on depositing of such penalty – Order imposing penalty to the ten times of the market value is proper – However, the petitioner may avail alternative, efficacious and statutory remedy of filing an appeal under Rule 57 along with an application for condonation of delay. [Rajkumar Patel Vs. State of M.P.] (DB)...1766**

गौण खनिज नियम, म.प्र. 1996, नियम 30(6) – शास्ति अधिरोपित करने की शक्ति – कोई व्यक्ति बिना किसी वैध पास के या अपूर्ण, विरूपित या छेड़छाड़ किये गये पारगमन पास के बल पर खनिजों का या उनके उत्पादों का परिवहन करते पाये जाने की स्थिति में, कलेक्टर, अतिरिक्त कलेक्टर, जिला/जनपद पंचायत का मुख्य

कार्यपालिक अधिकारी, उपनिदेशक खनन अधिकारी, सहायक खनन अधिकारी या खनन निरीक्षक, खनिज या उसके उत्पादों को, सभी औजार एवं उपकरणों के साथ तथा परिवहन के लिये उपयोग किये गये वाहन को जप्त कर सकता है – नियम 30(16) के संशोधित उपबंध को दृष्टिगत रखते हुए कलेक्टर को खनिज के बाज़ार मूल्य के दस गुना तक की शास्ति अधिरोपित करने की शक्ति या प्राधिकार है और उक्त शास्ति जमा किये जाने पर वाहन को मुक्त किया जा सकता है – बाज़ार मूल्य के दस गुना शास्ति अधिरोपित करने का आदेश उचित है – किंतु याची नियम 57 के अंतर्गत, विलम्ब के लिये माफी के आवेदन के साथ अपील प्रस्तुत करने का वैकल्पिक, प्रभावकारी एवं कानूनी उपचार का अवलंब ले सकता है। (राजकुमार पटेल वि. म.प्र. राज्य) (DB)...1766

Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, Clause 8(6),10 & Marketing Discipline Guidelines, 2005, Clause 2.5 – Overriding Effect – Retesting of Sample **– There is no provision in Order 2005 for retesting – Guidelines 2005 contains provision for re-testing – Marketing Discipline Guidelines have not been framed by State Government but by Public Sector Oil Companies and therefore, the provisions of Order do not have any overriding effect in respect of Marketing Discipline Guidelines, 2005. [Hindustan Petroleum Corporation Ltd. Vs. M/s. Royal Highway Services] (DB)...1989**

मोटर स्पिरिट और हाई स्पीड डीजल (आपूर्ति, वितरण का विनियमन एवं अनाचार निवारण) आदेश, 2005, खण्ड 8(6),10 एवं मॉर्केटिंग डिसिप्लिन गाइड्लाइन्स, 2005, खंड 2.5 – अध्यारोही प्रभाव – नमूने का पुनःपरीक्षण – आदेश 2005 में पुनःपरीक्षण का कोई उपबंध नहीं – 2005 के दिशानिर्देशों में पुनःपरीक्षण अंतर्विष्ट है – मॉर्केटिंग डिसिप्लिन गाइड्लाइन्स को राज्य सरकार द्वारा विरचित नहीं किया गया है बल्कि सार्वजनिक क्षेत्र की तेल कंपनियों द्वारा और इसलिये, आदेश के उपबंधों का मॉर्कटिंग डिसिप्लिन गाइड्लाइन्स, 2005 के संबंध में कोई अध्यारोही प्रभाव नहीं है। (हिन्दुस्तान पेट्रोलियम कारपोरेशन लि. वि. मे. रॉयल हाईवे सर्विसेस्) (DB)...1989

Motor Vehicles Act (59 of 1988), Section 147 – Liability of Insurance Company **– Driver of the jeep was having L.M.V. license whereas he was driving Transport Vehicle – Insurance company is not liable – Insurance Company shall pay and recover from the owner. [Shameena Bano (Smt.) Vs. Ram Naresh Patel] ...2469**

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व

– जीप के ड्राइवर के पास एल.एम.वी. लाइसेंस था जबकि वह परिवहन वाहन चला रहा था – बीमा कंपनी दायी नहीं – बीमा कंपनी स्वामी से भुगतान और वसूली करेगी। (शमीना बानो (श्रीमती) वि. राम नरेश पटेल) ...2469

Motor Vehicles Act (59 of 1988), Section 163 – Computation of notional income – **Deceased not skilled labour – Notional income assessed Rs. 100/- per day – Not faulted. [Kishanlal Vs. Hemraj Jaiswal]** ...2467

मोटर यान अधिनियम (1988 का 59), धारा 163 – काल्पनिक आय की संगणना – मृतक कुशल श्रमिक नहीं – काल्पनिक आय रू. 100/– प्रतिदिन निर्धारित की गई – गलत नहीं। (किशनलाल वि. हेमराज जायसवाल) ...2467

Motor Vehicles Act (59 of 1988), Section 163-A – Motor accident – No fault liability – **Proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof – All other claims are required to be determined in terms of Chapter XII of the Act – Tribunal has rightly rejected the claim of the appellants – Appeal dismissed. [Ramkali Bai Vs. Sudhir Yadav]** ...1808

मोटर यान अधिनियम (1988 का 59), धारा 163–ए – मोटर दुर्घटना – बिना दोष दायित्व – धारा 163–ए के अंतर्गत कार्यवाही, सामाजिक सुरक्षा का उपबंध होने के नाते विशिष्ट योजना उपलब्ध कराती है, जिसका लाभ केवल वे ही ले सकते हैं जिनकी वार्षिक आय रू. 40,000/– तक है – अन्य सभी दावों का निर्धारण अधिनियम के अध्याय XII की शर्तोनुसार किया जाना अपेक्षित है – अधिकरण ने उचित रूप से अपीलार्थीगण का दावा अस्वीकार किया – अपील खारिज। (रामकली बाई वि. सुधीर यादव) ...1808

Motor Vehicles Act (59 of 1988), Section 166 – Delay in lodging FIR – **That delay in filing of FIR is not fatal either in criminal cases or in claim cases provided sufficient and cogent reason for delay in filing the FIR are given – According to present appellant, the delay in filing of FIR was due to the fact that he remained admitted in the hospital after the incident – On the next date of discharge, he lodged the FIR. [Mohd. Azad @ Ajju Vs. Mahesh]** ...1810

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रथम सूचना रिपोर्ट दर्ज कराने में विलंब – प्रथम सूचना रिपोर्ट प्रस्तुत करने में विलंब न तो आपराधिक प्रकरणों में और न ही दावा प्रकरणों में घातक है परंतु यह तब जबकि प्रथम सूचना

रिपोर्ट प्रस्तुत करने में विलम्ब के लिये पर्याप्त और प्रबल कारण दिये जायें – वर्तमान अपीलार्थी के अनुसार प्रथम सूचना रिपोर्ट प्रस्तुत करने में विलंब का कारण यह तथ्य था कि दुर्घटना के पश्चात् वह चिकित्सालय में भर्ती रहा – छुट्टी मिलने की अगली तिथि को उसने प्रथम सूचना रिपोर्ट दर्ज कराई। (मोहम्मद आजाद उर्फ अज्जू वि. महेश) ...1810

Motor Vehicles Act (59 of 1988), Section 173 – Compensation – Dependency – Deceased had six dependents at the time of his death – Personal expenses should have been 1/4th of his income and not 1/3rd – Award modified. [Shameena Bano (Smt.) Vs. Ram Naresh Patel] ...2469

मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – आश्रितता – मृतक की मृत्यु के समय उस पर छः आश्रित थे – व्यक्तिगत खर्चे उसकी आय के 1/4 होने चाहिए न कि 1/3 – अवार्ड संशोधित। (शमीना बानो (श्रीमती) वि. राम नरेश पटेल) ...2469

Motor Vehicles Act (59 of 1988), Section 173 – Insurance Company assailed the award of pay and recover on the ground that it is illegal as the Tribunal has recorded a finding regarding breach of policy – Held – Tribunal has passed the impugned award relying on the order passed by the Supreme Court – It does not suffer from any patent illegality or perversity – Appeal dismissed. [New India Assurance Co. Ltd. Vs. Shailesh Kurmi] ...1807

मोटर यान अधिनियम (1988 का 59), धारा 173 – बीमा कंपनी ने भुगतान और वसूली के अवार्ड को इस आधार पर चुनौती दी कि वह अवैध है क्योंकि अधिकरण ने पॉलिसी भंग होने के संबंध में निष्कर्ष अभिलिखित किया – अभिनिर्धारित – अधिकरण ने आक्षेपित अवार्ड को उच्चतम न्यायालय द्वारा पारित आदेश पर विश्वास करते हुये पारित किया है – वह किसी प्रकट अवैधता या विपर्यस्तता से ग्रसित नहीं – अपील खारिज। (न्यू इंडिया एश्योरेन्स कं.लि. वि. शैलेष कुर्मी) ...1807

Municipalities Act, M.P. (37 of 1961), Section 19 & 47(1) – Recalling of President – Three fourth of elected Councillors – The definition of Councillor has to be read in the context of Section 19 of the Act – Section 19(1)(b) explicitly refers to the Councillors elected by direct election from the wards – Whereas President is elected by direct election from the Municipal area – Process of recall of President can be initiated only the Councillors elected by direct election – Merely because President is part of the Municipal Council, would not make him an elected Councillor within the meaning of Section 19(1)(b) and

47 – For initiating the process of recall of President, only specified number of elected Councillors of the Council need to be reckoned – For reckoning the number of three fourth of elected Councillors, the person holding the post of President cannot be taken into consideration. [Sangeeta Bansal (Smt.) Vs. State of M.P.] (DB)...1662

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 19 व 47(1) – अध्यक्ष को वापस बुलाया जाना – निर्वाचित पार्षदों का तीन चौथाई – पार्षद की परिभाषा को अधिनियम की धारा 19 के संदर्भ में पढ़ा जाना चाहिए – धारा 19(1)(बी), वार्डों से प्रत्यक्ष निर्वाचन द्वारा निर्वाचित पार्षदों को स्पष्ट रूप से संदर्भित करती है – जब कि अध्यक्ष को नगरपालिका क्षेत्र से प्रत्यक्ष निर्वाचन द्वारा निर्वाचित किया जाता है – अध्यक्ष को वापस बुलाने की प्रक्रिया केवल प्रत्यक्ष निर्वाचन द्वारा निर्वाचित पार्षदों द्वारा आरंभ की जा सकती है – मात्र इसलिये कि अध्यक्ष, नगरपालिका परिषद् का अंग है इससे वह धारा 19(1)(बी) व 47 के अर्थान्तर्गत निर्वाचित पार्षद नहीं होगा – अध्यक्ष को वापस बुलाने की प्रक्रिया आरंभ करने के लिये परिषद् के निर्वाचित पार्षदों की केवल विनिर्दिष्ट संख्या की गणना आवश्यक है – तीन चौथाई निर्वाचित पार्षदों की संख्या की गणना हेतु अध्यक्ष का पद धारण करने वाले व्यक्ति को विचार में नहीं लिया जा सकता। (संगीता बंसल (श्रीमती) वि. म.प्र. राज्य) **(DB)...1662**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/18(b) **– Independent witnesses did not support the proceedings taken up by I.O. – Seized contraband not produced before the Court – Guilt of accused not proved – Appeal allowed. [Kanhaiyalal Vs. State of M.P.] ...2184**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/18(बी) – स्वतंत्र साक्षियों ने अन्वेषण अधिकारी द्वारा की गई कार्यवाहियों का समर्थन नहीं किया – जप्तशुदा विनिषिद्ध को न्यायालय के समक्ष प्रस्तुत नहीं किया गया – अभियुक्त की दोषिता सिद्ध नहीं – अपील मंजूर। (कन्हैयालाल वि. म.प्र. राज्य) **...2184**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985) – Sections 20(k)(i) & 42 – Power of entry, search, seizure and arrest without warrant **– Cannabis plants were seized from the field of appellant – Independent witnesses turned hostile – I.O. did not say in his evidence that after taking down the information in writing in regard to cannabis plants, he had sent a copy of the same to his immediate superior official within seventy two hours – Provisions of Section 42 are mandatory – Conviction of appellant is unsustainable – Appeal**

allowed. [Bittu Vs. State of M.P.] ...1815

स्वापक औषधि और मन:प्रभावी पदार्थ अधिनियम (1985 का 61), धाराऐं 20(के)(i) एवं 42 – बिना वारंट प्रवेश, तलाशी, जप्ती एवं गिरफ्तारी की शक्ति – अपीलार्थी के खेत से भांग के पौधे जप्त किये गये – स्वतंत्र साक्षीगण पक्ष विरोधी हो गए – अन्वेषण अधिकारी ने अपने साक्ष्य में नहीं कहा है कि भांग के पौधों के संबंध में जानकारी लेखबद्ध किये जाने के पश्चात् उसने 72 घंटों के भीतर उसकी एक प्रति अपने निकटतम उच्च अधिकारी को प्रेषित की – धारा 42 के उपबंध आज्ञापक हैं – अपीलार्थी की दोषसिद्धी कायम रखने योग्य नहीं – अपील मंजूर। (बिट्टू वि. म.प्र. राज्य) ...1815

***National Security Act (65 of 1980), Section 3(2) & 3(3) – Period of detention order – Order by State Government – Held* – State Government cannot pass an order of detention for a period of more than 3 months – Since the impugned order of detention is for 12 months at first instance, same is quashed. [Mohaseen Kureshi Vs. State of M.P.] (DB)...*36**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – निरोध आदेश की अवधि – राज्य सरकार का आदेश – अभिनिर्धारित – राज्य सरकार तीन माह से अधिक की अवधि के लिए निरोध का आदेश नहीं पारित कर सकती – चूंकि आक्षेपित निरोध आदेश पहली बार 12 माह के लिए है, उसे अभिखंडित किया गया। (मोहसिन कुरैशी वि. म.प्र. राज्य) (DB)...*36

***National Security Act (65 of 1980), Sections 3 & 9 – Approval by Advisory Board* – State Govt. directed for detention for a period of three months – Order of detention was approved by Advisory Board – State Govt. subsequently extended the period of three months twice without seeking approval of Advisory Board – Held – For every extension approval by Advisory Board is essential – Detention beyond first period of three months is illegal accordingly quashed. [Manoj Singh Jadhone Vs. State of M.P.] (DB)...*30**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराऐं 3 व 9 – सलाहकार बोर्ड द्वारा अनुमोदन – राज्य सरकार ने तीन माह की अवधि के लिये निरोध में रखने हेतु निदेशित किया – निरोध आदेश को सलाहकार बोर्ड द्वारा अनुमोदित किया गया – राज्य सरकार ने तत्पश्चात् तीन माह की अवधि को सलाहकार बोर्ड का अनुमोदन चाहे बिना दो बार बढ़ाया – अभिनिर्धारित – प्रत्येक वृद्धि के लिये सलाहकार बोर्ड का अनुमोदन आवश्यक है – प्रथम तीन माह की अवधि से परे निरोध अवैध है अतः अभिखंडित। (मनोज सिंह जाधोन वि. म.प्र. राज्य) (DB)...*30

Negotiable Instruments Act (26 of 1881), Section 138 – Complaint in the name of proprietor – **Cheque issued in the name of Firm – Not maintainable. [Harbanslal Vs. Shyamsundar]** ...*22

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – स्वत्वधारी के नाम शिकायत – चैक, फर्म के नाम पर जारी किया गया – पोषणीय नहीं। (हरबंसलाल वि. श्यामसुंदर) ...*22

Negotiable Instruments Act (26 of 1881), Section 138 – Debt or other liability – **Cheques given by the applicant were dishonored in view of the instructions given by applicant – Cheques in question were given for security against the mobilisation advance and those cheques could not be encashed unless the total account between the parties would have settled – The amount of such cheques cannot be considered as debt or other liability – As the cheques were presented in a premature stage, then, the entire pleadings of the complaint made by respondent does not disclose the commission of any offence – Complaint quashed. [Mahinder Singh Bhasin Vs. M/s. Ssangyong Engineering & Construction Co. Ltd.]** ...2505

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – ऋण या अन्य दायित्व – आवेदक द्वारा दिये गये अनुदेशों को दृष्टिगत रखते हुए आवेदक द्वारा दिये गये चैक अनादृत किये गये – प्रश्नगत चैक मोबिलाइज़ेशन एडवांस की प्रतिभूति के रूप में दिये गये थे और वे चैक भुनाये नहीं जा सकते जब तक कि पक्षकारों के बीच संपूर्ण लेखे का निपटान नहीं हो जाता – ऐसे चैक की रकम को ऋण या अन्य दायित्व के रूप में नहीं माना जा सकता – चूंकि चैकों को समय पूर्व प्रक्रम पर प्रस्तुत किया गया, तब प्रत्यर्थी द्वारा की गई शिकायत के संपूर्ण अभिवचन किसी अपराध का कारित किया जाना प्रकट नहीं करते – शिकायत अभिखंडित। (महिन्दर सिंह भसीन वि. मे. सेंगयंग इंजीनियरिंग एण्ड कंस्ट्रक्शन कं. लि.) ...2505

Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque – **Overwriting on cheque not acknowledged by drawer – No evidence regarding transaction – Cheque was issued to discharge liability is suspicious. [Harbanslal Vs. Shyamsundar]**...*22

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – चैक का अनादरण – चैक पर लिप्तलेखन/अधिलेखन को लेखीवाल द्वारा अभिस्वीकृत नहीं किया गया – संव्यवहार के संबंध में कोई साक्ष्य नहीं – दायित्व से मुक्त होने के लिये चैक जारी किया गया था; संदेहास्पद। (हरबंसलाल वि. श्यामसुंदर) ...*22

Negotiable Instruments Act (26 of 1881), Section 138 – Service of demand notice – **Different address in envelop and acknowledgment – Not established that the demand notice sent to the address as shown in complaint and notice – Not valid service. [Harbanslal Vs. Shyamsundar]** ...*22

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – मांग नोटिस की तामीली – लिफाफे पर और अभिस्वीकृति पर भिन्न पता – स्थापित नहीं किया गया कि मांग नोटिस को शिकायत एवं नोटिस में दर्शाये गये पते पर भेजा गया – वध तामीली नहीं। (हरबंसलाल वि. श्यामसुंदर) ...*22

Notional income – **Uneducated and unskilled person – Rs. 100/- per day in the year 2008 – The same is applicable and binding on the Tribunal on the date of award i.e. 2011. [Kishanlal Vs. Hemraj Jaiswal]** ...2467

काल्पनिक आय – अशिक्षित और अकुशल व्यक्ति – वर्ष 2008 में रू. 100/– प्रतिदिन – यह अधिकरण को अवार्ड की तिथि अर्थात् 2011 पर प्रयोज्य और बाध्यकारी है। (किशनलाल वि. हेमराज जायसवाल) ...2467

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 40 – Removal of Sarpanch – **Proceeding before SDO – Not empty formality – Principle of natural justice has to be followed – Opportunity to lead evidence and cross-examination be afforded. [Chandrakanta Bai Vs. State of M.P.]** (DB)...1657

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 40 – सरपंच को हटाया जाना – एस.डी.ओ. के समक्ष कार्यवाही – खाली औपचारिकता नहीं – नैसर्गिक न्याय के सिद्धांत का पालन होना चाहिए – साक्ष्य पेश करने एवं प्रतिपरीक्षण का अवसर प्रदान किया जाना चाहिए। (चन्द्रकांता बाई वि. म.प्र. राज्य) (DB)...1657

Penal Code (45 of 1860), Section 197 – Sanction for Prosecution – Official Duties – **Petitioner alleged that respondents have misappropriated the public money while implementing the schemes in the course of their official duties – Hence, acts of misappropriation as alleged against respondents cannot be separated from their official duties – Sanction under Section 197 necessary. [Tridev Jan Kalyan Samiti Vs. U.K. Subuddhi]** (DB)...2516

दण्ड संहिता (1860 का 45), धारा 197 – अभियोजन के लिये मंजूरी – पदीय कर्तव्य – याची ने अभिकथन किया कि प्रत्यर्थीगण ने अपने पदीय कर्तव्यों के

दौरान में योजनाओं को लागू करते समय लोक धन का दुर्विनियोजन किया – अतः, दुर्विनियोजन के कृत्य, जैसा कि प्रत्यर्थीगण के विरूद्ध अभिकथित किये गये हैं, को उनके पदीय कर्तव्यों से अलग नहीं किया जा सकता – धारा 197 के अंतर्गत मंजूरी आवश्यक। (त्रिदेव जन कल्याण समिति वि. यू. के. सुबुद्धि) (DB)...2516

Penal Code (45 of 1860), Sections 302/149, 148 – Murder – Unlawful Assembly **– Deceased was set on fire by two convicted accused persons – The respondents surrounded the deceased and were shouting that he be beaten and should not be left – Throwing burning tyre and sword also indicate the active role played by them – It is impossible to accept that the respondents arrived at the scene of occurrence after the crime was completed – Their role is that of participants in crime who did not allow deceased to escape by encircling him – Judgment of High Court acquitting the respondents set aside – Appeal allowed. [State of M.P. Vs. Ashok] (SC)...1943**

दण्ड संहिता (1860 का 45), धाराऐं 302/149, 148 – हत्या – विधिविरुद्ध जमाव – दो दोषसिद्ध अभियुक्तों द्वारा मृतक को जलाया गया था – प्रत्यर्थीगण ने मृतक को घेरा और चिल्ला रहे थे कि उसे पीटना है और छोड़ना नहीं है – जलता हुआ टायर और तलवार फेंकना भी उनके द्वारा निभायी गयी सक्रिय भूमिका दर्शाता है – यह स्वीकार करना असंभव है कि प्रत्यर्थीगण घटनास्थल पर अपराध पूर्ण होने के पश्चात् पहुँचे – उनकी भूमिका, अपराध में सहभागियों की है जिन्होंने मृतक को घेरकर उसे बचकर निकलने नहीं दिया – प्रत्यर्थीगण को दोषमुक्त करने का उच्च न्यायालय का निर्णय अपास्त – अपील मंजूर। (म.प्र. राज्य वि. अशोक) (SC)...1943

Penal Code (45 of 1860), Section 304-B and Evidence Act (1 of 1872), Section 32 – Dying Declaration **– Deceased in her dying declaration stated that accidentally she got burnt and her husband and sister-in-law rescued her – In inquest, father of deceased too stated that his daughter got burnt accidentally – Although, in his subsequent statement, he changed his entire version – No evidence that soon before death, she was subjected to cruelty – Respondent has been rightly acquitted by trial court – Leave refused. [State of M.P. Vs. Surendra Vishwakarma] (DB)...2251**

दण्ड संहिता (1860 का 45), धारा 304-बी एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – मृतिका ने अपने मृत्युकालिक कथन में कहा है कि वह दुर्घटनावश जली और उसके पति तथा ननद ने उसे बचाया – मृत्यु समीक्षा में मृतिका के पिता ने भी कहा कि उसकी पुत्री दुर्घटनावश जली थी – यद्यपि

अपने पश्चात्वर्ती कथन में उसने अपना संपूर्ण कथन बदल दिया – कोई साक्ष्य नहीं कि मृत्यु से तुरंत पहले उसके साथ क्रूरता का व्यवहार किया गया था – विचारण न्यायालय द्वारा उचित रूप से प्रत्यर्थी को दोषमुक्त किया गया – अनुमति अस्वीकार की गई। (म.प्र. राज्य वि. सुरेन्द्र विश्वकर्मा) (DB)...2251

***Penal Code (45 of 1860), Section 304-B – Dowry Death* – Deceased committed suicide by setting herself on fire – Omnibus allegation that the appellant was demanding dowry – No specification of demand given by witnesses - No allegation that deceased was subjected to cruelty in consequence of demand – Matter was never referred to Panchayat and no F.I.R. was lodged in her life time – Witnesses could not specify time and date or particular period in which such dowry demands were made – Nothing on record that deceased was subjected to cruelty soon before her death - Parents of deceased were not examined – Appellant could not be convicted of offence under Section 304-B of I.P.C. [Arun Vs. State of M.P.]** ...1825

दण्ड संहिता (1860 का 45), धारा 304–बी – दहेज मृत्यु – मृतिका ने स्वयं को आग लगाकर आत्महत्या की – सर्वग्राही आक्षेप कि अपीलार्थी दहेज की मांग कर रहा था – साक्षियों द्वारा मांग का कोई विवरण नहीं दिया गया – कोई आक्षेप नहीं कि मृतिका के साथ मांग के फलस्वरूप क्रूरता का व्यवहार किया गया – मामला उसके जीवनकाल में कभी न पंचायत को संदर्भित किया गया न प्रथम सूचना रिपोर्ट दायर की गई – साक्षियों द्वारा समय और दिनांक या विशेष कालखण्ड जिसमें ऐसी दहेज मांगें की गई, उल्लिखित नहीं किये जा सके हैं – ऐसा कुछ भी अभिलेख पर नहीं है कि मृतिका के साथ उसकी मृत्यु के तुरंत पूर्व क्रूरता की गई – मृतिका के माता–पिता का परीक्षण नहीं किया गया – अपीलार्थी को भा.द.सं. की धारा 304–बी के अंतर्गत दंडित नहीं किया जा सकता। (अरूण वि. म.प्र. राज्य) ...1825

***Penal Code (45 of 1860), Section 304-B – Seven Years* – In FIR date of marriage is mentioned as 22.05.1987 and incident took place on 28.03.1994 i.e. within 7 years of marriage – FIR is not a substantive piece of evidence – No other evidence to prove the date of marriage – Witnesses have accepted that marriage took place about 8-9 years back – As prosecution failed to prove that incident took place within 7 years of marriage, no offence u/s 304-B could be made out. [Rajeev Ranjan Vs. State of M.P.]** ...2223

दण्ड संहिता (1860 का 45), धारा 304–बी – सात वर्ष – प्रथम सूचना रिपोर्ट में विवाह की तिथि 22.05.1987 उल्लिखित है और घटना 28.03.1994 को

घटित हुई अर्थात् विवाह के 7 वर्षों के भीतर – प्रथम सूचना रिपोर्ट साक्ष्य का सारभूत अंग नहीं – विवाह की तिथि को साबित करने का कोई अन्य साक्ष्य नहीं – साक्षियों ने स्वीकार किया है कि विवाह लगभग 8–9 वर्ष पहले हुआ था – चूंकि अभियोजन यह सिद्ध करने में असफल रहा कि विवाह के 7 वर्षों के भीतर घटना घटित हुई थी, धारा 304–बी के अंतर्गत कोई अपराध नहीं बनता। (राजीव रंजन वि. म.प्र. राज्य) ...2223

Penal Code (45 of 1860), Section 304- (Part-2) – Culpable Homicide not amounting to murder – **Deceased sustained injuries while he was working in a rubber factory – F.I.R. was lodged after 9 hours mentioning the names of eye witnesses – One witness turned hostile and all other eye witnesses mentioned in the F.I.R. were given up – P.W. 4 deposed as an eye witness but his name was not mentioned in F.I.R. – P.W. 4 admitted that he is still working in the same factory and officers of the factory are standing outside the Court – Injuries could not have been caused by Rubber cutter which was seized from the possession of appellant – Rubber cutter also not sent to the autopsy Doctor – Appellant was all the time present in the factory at the time of incident and had no opportunity to take the blood stained rubber cutter to his house from where it was seized – No motive behind the commission of offence – Prosecution failed to prove the guilt of the appellant – Appeal allowed. [Sikandar Singh Vs. State of M.P.]** ...2214

दण्ड संहिता (1860 का 45), धारा 304 (भाग–2) – हत्या की कोटि में न आने वाला आपराधिक मानव वध – मृतक को जब वह रबर फैक्ट्री में काम कर रहा था चोटें आई – चक्षुदर्शी साक्षियों के नाम उल्लिखित करते हुए प्रथम सूचना रिपोर्ट 9 घंटे बाद दर्ज कराई गई – एक साक्षी पक्ष विरोधी हो गया और प्रथम सूचना रिपोर्ट में उल्लिखित सभी अन्य चक्षुदर्शी साक्षियों का परीक्षण नहीं किया गया – अ.सा. 4 ने चक्षुदर्शी साक्षी के रूप में कथन किया है परंतु प्रथम सूचना रिपोर्ट में उसका नाम उल्लिखित नहीं था – अ.सा.4 ने स्वीकार किया है कि वह अभी भी उसी फैक्ट्री में काम कर रहा है और फैक्ट्री के अधिकारीगण न्यायालय के बाहर खड़े हैं – चोटें उस रबर कटर से कारित नहीं की जा सकती जिसे अपीलार्थी के कब्जे से जप्त किया गया था – रबर कटर को शव परीक्षण करने वाले चिकित्सक को भी नहीं भेजा गया था – घटना के समय अपीलार्थी पूरे समय फैक्ट्री में उपस्थित था और रक्त रंजित रबर कटर को अपने घर ले जाने का उसके पास कोई अवसर नहीं था, जहां से उसे जब्त किया गया था – अपराध कारित करने के पीछे कोई हेतु नहीं – अभियोजन अपीलार्थी का दोष साबित करने में असफल रहा – अपील मंजूर। (सिकन्दर सिंह वि. म.प्र. राज्य) ...2214

Penal Code (45 of 1860), Section 306 – Abetment of suicide – Accused persons alleged to have assaulted and threatened deceased with life as they were annoyed at defamation of their cousin – Deceased committed suicide due to aforesaid beating and humiliation – However, applicants had no intention of instigating or goading the deceased to commit suicide – In all probability they not even dreamt that their conduct would lead to such disastrous consequence – By no stretch of imagination can it be said that the accused persons had created such a situation by their persistent conduct, where the deceased was left with no other option but to commit suicide – Deceased appears to be ultra sensitive to the beating and public humiliation – No charge under Section 306 of I.P.C. could be made out – Revision allowed – Applicants discharged. [Neelesh Jat Vs. State of M.P.] ...1891

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – अभियुक्तगण ने अभिकथित रूप से मृतक पर हमला किया और उसे जान से मारने की धमकी दी क्योंकि वे अपनी बहन की बदनामी से क्षुब्ध थे – मृतक ने उपरोक्त मारपीट एवं अपमान के कारण आत्महत्या कर ली – यद्यपि, आवेदकगण का आशय मृतक को आत्महत्या करने के लिये उकसाने का या प्रेरित करने का नहीं था – संभवतः उन्होंने सपने में भी नहीं सोचा था कि उनके आचरण का इतना दुर्भाग्यपूर्ण परिणाम होगा – काल्पनिक रूप से यह नहीं कहा जा सकता कि अभियुक्तगण ने अपने सतत आचरण द्वारा ऐसी स्थिति निर्मित की थी जिससे मृतक के पास आत्महत्या करने के सिवाय कोई अन्य विकल्प नहीं बचा था – ऐसा प्रतीत होता है कि मृतक मारपीट और सार्वजनिक अपमान के प्रति अति संवेदनशील था – भा.दं. सं. की धारा 306 के अंतर्गत कोई आरोप नहीं बन सकता – पुनरीक्षण मंजूर – आवेदकगण को आरोपमुक्त किया गया। (नीलेश जाट वि. म.प्र. राज्य) ...1891

Penal Code (45 of 1860), Section 306 – Abetment of suicide – Appellant/Husband was living as Ghar Jamai and was looking after the property of his in-laws alongwith his brother-in-law – P.W. 7 with whom it was alleged that appellant was having illicit relations has not stated about relation – Husband of P.W. 7 not examined – Deceased/wife never informed her maternal uncle about illicit relations, who had fixed the marriage after the death of father of deceased – No evidence that appellant had ever beaten the deceased in intoxicated condition – Nothing on record that who called the Panchayat – Neither deceased nor P.W. 7 or her husband called the Panchayat – Deceased was not having issue even after expiry of more than 7 years of marriage – Prosecution failed to prove that

appellant abeted his wife to commit suicide – Appeal allowed. [Ramprasad Lodhi Vs. State of M.P.] ...2203

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – अपीलार्थी/पति घर जमाई के रूप में रह रहा था और अपने साले के साथ ससुराल की संपत्ति की देखभाल कर रहा था – अ.सा.7 जिसके साथ अपीलार्थी के अवैध संबंध होने का अभिकथन किया गया था, उसने संबंधों के बारे में कोई कथन नहीं किया है – अ.सा.7 के पति का परीक्षण नहीं किया गया – मृतिका/पत्नी ने अवध संबंधों के बारे में कभी अपने मामा को नहीं बताया था, जिन्होंने मृतिका के पिता की मृत्यु के पश्चात् उसका विवाह तय किया था – कोई साक्ष्य नहीं कि अपीलार्थी ने कभी मृतिका के साथ नशे की हालत में मारपीट की थी – अभिलेख पर कुछ नहीं कि पंचायत किसने बुलाई थी – न तो मृतिका न ही अ.सा.7 या उसके पति ने पंचायत बुलाई – विवाह के 7 वर्ष से अधिक समय बीत जाने के पश्चात् भी मृतिका की कोई संतान नहीं थी – अभियोजन यह सिद्ध करने में असफल रहा कि अपीलार्थी ने अपनी पत्नी को आत्महत्या कारित करने के लिये दुष्प्रेरित किया – अपील मंजूर। (रामप्रसाद लोधी वि. म.प्र. राज्य) **...2203**

***Penal Code (45 of 1860), Section 306 – Abetment of suicide – Husband committed suicide* – Wife had admitted that she is having sexual relations with another person – Husband informed his mother-in-law and brother-in-law – They also started taking side of girl and threatened to implicate in false case – Held – Threat to implicate in false case, does not amount to abetment – Charges quashed. [Shyambai Vs. State of M.P.] ...2244**

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – पति ने आत्महत्या की – पत्नी ने यह स्वीकार किया कि उसके अन्य व्यक्ति के साथ शारीरिक संबंध हैं – पति ने अपनी सास एवं साले को सूचित किया – वे भी लड़की का पक्ष लेने लगे एवं झूठे प्रकरण में फंसाने की धमकी दी – अभिनिर्धारित – झूठे प्रकरण में फंसाने की धमकी, आत्महत्या का दुष्प्रेरण नहीं – आरोप अभिखंडित। (श्यामबाई वि. म.प्र. राज्य) **...2244**

***Penal Code (45 of 1860), Section 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 221 – Lesser Offence – Abetment of suicide* - Allegation of un-touchability appears to be hypothetical allegation which appears to be not true – Allegation of not providing proper treatment to deceased when she fell ill also appears to be hypothetical as doctor (D.W. 4) had stated that the deceased was treated by him for her illness relating to sterility and profuse bleeding**

during menses – Prosecution could not prove that deceased was ever illtreated and there is no allegation which falls within the purview of Sections 107 or 109 of I.P.C. No case under Section 306 of I.P.C. is made out – Appeal allowed. [Arun Vs. State of M.P.] ...1825

दण्ड संहिता (1860 का 45), धारा 306 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 221 – लघुतर अपराध – आत्महत्या का दुष्प्रेरण – अस्पृश्यता का अभिकथन काल्पनिक अभिकथन दिखाई देता है जो कि सच प्रतीत नहीं होता – मृतिका को जब वह बीमार पड़ी, उचित उपचार न कराये जाने का अभिकथन भी काल्पनिक प्रतीत होता है क्योंकि चिकित्सक (ब.सा. 4) ने कहा है कि मृतिका को उसके द्वारा उसके बांझपन और माहवारी के दौरान अत्याधिक रक्तस्त्राव होने की बीमारी के लिये उपचारित किया गया था – अभियोजन साबित नहीं कर सका कि मृतिका के साथ कमी दुर्व्यवहार किया गया और ऐसा कोई अभिकथन नहीं है जो भा.दं.सं. की धारा 107 और 109 की परिधि में आता हो – धारा 306 भा.दं.सं. के अंतर्गत कोई प्रकरण नहीं बनता है – अपील मंजूर। (अरूण वि. म.प्र. राज्य) ...1825

Penal Code (45 of 1860), Section 306 & 498-A – Abetment of suicide – No evidence of cruelty or mal-treatment against appellant – He cannot be convicted merely because of some incidents of disagreement and petty quarrels in domesticity – Appeal allowed. [Ramesh Vs. State of M.P.] ...*25

दण्ड संहिता (1860 का 45), धारा 306 व 498–ए – आत्महत्या का दुष्प्रेरण – अपीलार्थी के विरूद्ध क्रूरता या दुर्व्यवहार का कोई साक्ष्य नहीं – मात्र कुछ मतभेदों और छुटपुट घरेलू विवादों के कारण से उसे दोषसिद्ध नहीं किया जा सकता – अपील मंजूर। (रमेश वि. म.प्र. राज्य) ...*25

Penal Code (45 of 1860), Section 307 and Criminal Procedure Code, 1973 (2 of 1974), Section 227/228 – Framing of Charge – Scuffle took place between complainant party and police personnel – No bony injury was found on the body of victim – Police personnel were having service revolver which was not used – Considering the nature of injuries, it is clear that the force with which the injuries were caused, was not intended to cause grievous injury – Charge u/s 307 not made out – Trial Court directed to reconsider the framing of charge considering the bar created by Section 197 of Cr.P.C. to whether police personnel were on duty. [Umesh Singh Vs. State of M.P.] ...2490

दण्ड संहिता (1860 का 45), धारा 307 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227/228 – आरोप विरचित किया जाना – शिकायतकर्ता

पक्षकार और पुलिसकर्मियों के बीच हाथापाई हुई – पीड़ित के शरीर पर कोई अस्थि चोट नहीं पाई गई – पुलिसकर्मियों के पास सर्विस रिवाल्वर थी जिसका उपयोग नहीं किया गया – चोटों का स्वरूप विचार में लेने से यह स्पष्ट है कि जिस बल के साथ चोटें कारित की गई थीं उसका आशय गंभीर चोट कारित करना नहीं था – धारा 307 के अंतर्गत आरोप नहीं बनता – विचारण न्यायालय को दं.प्र.सं. की धारा 197 द्वारा सृजित वर्जन को विचार में लेकर आरोप विरचित करने पर पुर्नविचार करने हेतु निदेशित किया गया कि क्या पुलिसकर्मी कर्तव्यस्थ थे। (उमेश सिंह वि. म.प्र. राज्य) ...2490

Penal Code (45 of 1860), Section 307 – Attempt to Murder – Ingredients **– There should be an intention or knowledge of the offence and secondly the act done for the purpose of carrying out the intention. [Sushila Bai Vs. State of M.P.]** ...2196

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयत्न – घटक – अपराध का आशय या ज्ञान होना चाहिए और दूसरा आशय को पूरा करने के प्रयोजन हेतु कृत्य किया गया। (सुशीला बाई वि. म.प्र. राज्य) ...2196

Penal Code (45 of 1860), Section 307 – Attempt to Murder – Sentence **– Appellant shot an arrow which hit on the left side of chest of complainant – FIR lodged within 4 hours as Police Station is 19 KM away – Villagers are adjusted to dark and they recognize the known person in dark – Medical evidence also corroborates ocular evidence – Appellant rightly convicted u/s 307 – However, sentence of 7 years is reduced to 6 years – Appeal partly allowed. [Madhu @ Madaliya Vs. State of M.P.]** ...2173

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयत्न – दंडादेश – अपीलार्थी ने तीर चलाया जो शिकायतकर्ता के सीने के बायीं तरफ लगा – प्रथम सूचना रिपोर्ट 4 घंटों के भीतर दर्ज की गई क्योंकि पुलिस थाना 19 कि.मी. की दूरी पर है – ग्रामीण अंधेरे से अभ्यस्त हैं और वे अंधेरे में भी ज्ञात व्यक्ति को पहचानते हैं – चिकित्सीय साक्ष्य भी चक्षुदर्शी साक्ष्य की पुष्टि करता है – अपीलार्थी को उचित रूप से धारा 307 के अंतर्गत दोषसिद्ध किया गया – किंतु 7 वर्ष के दंडादेश को घटाकर 6 वर्ष किया गया – अपील अंशतः मंजूर। (मधू उर्फ मादलिया वि. म.प्र. राज्य) ...2173

Penal Code (45 of 1860), Section 307 **– When appellant reached the place of incident she was unarmed – She snatched the sickle from her mother-in-law and inflicted injuries to her – Appellant also received injuries including fracture of fibula bone – Injury caused to injured was**

not sufficient to cause death – Appellant not guilty of offence under Section 307 of I.P.C – Appellant held guilty for offence under Section 324 of I.P.C. – Appellant has already suffered jail sentence of 6 months – Appellant sentenced to period already undergone. [Sushila Bai Vs. State of M.P.] ...2196

दण्ड संहिता (1860 का 45), धारा 307 – जब अपीलार्थी घटनास्थल पर पहुंची वह निःशस्त्र थी – उसने अपनी सास के हाथ से हंसिया छीना और उसे चोटें पहुंचाई – अपीलार्थी को भी चोटें आई जिसमें बहिर्जंघिका अस्थि (फ़िब्यूलॉ बोन) का अस्थिभंग समाविष्ट है – आहत को कारित की गई चोट मृत्यु कारित करने के लिये पर्याप्त नहीं थी – अपीलार्थी भा.दं.सं. की धारा 307 के अंतर्गत अपराध की दोषी नहीं – अपीलार्थी को भा.दं.सं. की धारा 324 के अंतर्गत दोषी माना गया – अपीलार्थी पहले ही 6 माह के कारावास का दंड भुगत चुकी है – अपीलार्थी को पहले ही भुगताई जा चुकी अवधि के लिये दंडादिष्ट किया गया। (सुशीला बाई वि. म.प्र. राज्य) ...2196

Penal Code (45 of 1860), Section 325 – Grievous Injuries – **Accused four in number reached on the spot after the assault was concluded by appellant No.1 – Remaining accused started assaulting injured by means of lathi – All the four were sharing common intention – They are held guilty for offence punishable under Section 325/149 of I.P.C. [Ashok Vs. State of M.P.]** ...2475

दण्ड संहिता (1860 का 45), धारा 325 – गंभीर चोटें – अभियुक्तगण चार की संख्या में मौके पर अपीलार्थी क्र. 1 द्वारा हमला समाप्त करने के पश्चात् पहुंचे – शेष अभियुक्तों ने लाठी के जरिये आहत पर हमला शुरू किया – सभी चारों का समान आशय था – उन्हें भा.दं.सं. की धारा 325/149 के अंतर्गत दंडनीय अपराध के लिये दोषी ठहराया गया। (अशोक वि. म.प्र. राज्य) ...2475

Penal Code (45 of 1860), Section 326/149 – Grievous Injury – Unlawful Assembly – **Appellant No.1 caused injuries by means of Katarna – The remaining appellants came on the spot after the assault was concluded by the appellant No.1 and when the remaining appellants assaulted the injured by means of lathi, there is no overt act on the part of the appellant No.1 – It cannot be held that the appellants No. 2 to 4 had common object with appellant No.1 to cause grievous injury – All accused persons are responsible for their own act – Only appellant No.1 is guilty of causing grievous injuries by means of Katarna and remaining accused persons cannot be held guilty under Section 326/**

149 I.P.C. [Ashok Vs. State of M.P.] ...2475

दण्ड संहिता (1860 का 45), धारा 326/149 – गंभीर चोट – विधिविरूद्ध जमाव – अपीलार्थी क्रमांक 1 ने कतरना के जरिये चोटें कारित की – शेष अपीलार्थीगण अपीलार्थी क्र.1 द्वारा हमला समाप्त करने के पश्चात् मौके पर आये और जब शेष अपीलार्थियों ने आहत पर लाठी के जरिये हमला किया, अपीलार्थी क्र. 1 की ओर से कोई प्रत्यक्ष कृत्य नहीं है – यह धारणा नहीं की जा सकती कि अपीलार्थी क्र. 2 से 4 का अपीलार्थी क्र. 1 के साथ गंभीर चोट कारित करने का समान उद्देश्य था – सभी अभियुक्त व्यक्ति अपने स्वयं के कृत्य के लिये उत्तरदायी हैं – केवल अपीलार्थी क्र. 1 कतरना के जरिये गंभीर चोटें कारित करने का दोषी है और शेष अभियुक्त व्यक्तियों को भा.दं.सं. की धारा 326/149 के अंतर्गत दोषी नहीं ठहराया जा सकता। (अशोक वि. म.प्र. राज्य) ...2475

***Penal Code (45 of 1860), Sections 333 & 353* – Obstruction while performing official duty – Bike of the son of complainant collided with that of a police official – Other police personnel reached on spot to support police personnel – Trial court should consider framing of charge u/s 333, 353, as they were obstructed while performing official duties. [Umesh Singh Vs. State of M.P.]** ...2490

दण्ड संहिता (1860 का 45), धाराएँ 333 व 353 – शासकीय कर्तव्य का निर्वहन करते समय अवरोध – शिकायतकर्ता के पुत्र की मोटर साइकिल पुलिसकर्मी की मोटर साइकिल से टकराई – पुलिसकर्मी का समर्थन करने के लिए अन्य पुलिसकर्मी मौके पर पहुंचे – विचारण न्यायालय को धाराऐं 333, 353 के अंतर्गत आरोप विरचित करने पर विचार करना चाहिए क्योंकि पदीय कर्तव्यों का निर्वहन करते समय उन्हें अवरूद्ध किया गया था। (उमेश सिंह वि. म.प्र. राज्य) ...2490

***Penal Code (45 of 1860), Section 376 – Prosecutrix* – Conviction can be based for commission of offence on the sole evidence of prosecutrix – However, evidence of prosecutrix has to be scrutinized carefully. [Dittu Singh @ Dilip Bhilala Vs. State of M.P.]** ...2188

दण्ड संहिता (1860 का 45), धारा 376 – अभियोक्त्री – अपराध कारित करने के लिये मात्र अभियोक्त्री के साक्ष्य पर दोषसिद्धि आधारित की जा सकती है – किंतु अभियोक्त्री के साक्ष्य का परीक्षण सावधानीपूर्वक किया जाना चाहिए। (दित्तू सिंह उर्फ दिलीप भिलाला वि. म.प्र. राज्य) ...2188

***Penal Code (45 of 1860), Section 376 – Rape – Medical Evidence* – Doctor did not find any external injury – No injuries on private parts were found – Hymen was found intact – According to prosecutrix she**

had prepared meals when she was with the appellant and all other persons had also taken the meal – There were other persons also – When the statement of prosecutrix does not inspire confidence and it is contrary to the medical evidence, it would be unsafe to convict the appellant for offence under Section 376 of I.P.C. – However, the appellant had caught hold the hand of the prosecutrix and tried to outrage her modesty, appellant is convicted under Section 354 of I.P.C. [Dittu Singh @ Dilip Bhilala Vs. State of M.P.] ...2188

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार –चिकित्सीय साक्ष्य – चिकित्सक ने कोई बाह्य चोट नहीं पाई – गुप्तांगों पर कोई चोटें नहीं पाई गई – योनिच्छद अक्षत पाया गया – अभियोक्त्री के अनुसार जब वह अपीलार्थी के साथ थी उसने भोजन तैयार किया था और सभी अंन्य व्यक्तियों ने भी भोजन कर लिया था – वहां अन्य व्यक्ति भी थे – जब अभियोक्त्री का कथन विश्वास उत्पन्न नहीं करता और वह चिकित्सीय साक्ष्य के विपरीत है, तब भा.दं.सं. की धारा 376 के अंतर्गत अपराध के लिये अपीलार्थी को दोषसिद्ध किया जाना सुरक्षित नहीं होगा – किंतु अपीलार्थी ने अभियोक्त्री का हाथ पकड़ा था और उसकी लज्जा भंग करने का प्रयत्न किया, अपीलार्थी को भा.दं.सं. की धारा 354 के अंतर्गत दोषसिद्ध किया गया। (दित्तू सिंह उर्फ दिलीप भिलाला वि. म.प्र. राज्य) ...2188

Penal Code (45 of 1860), Section 376 – Rape – Prosecutrix is aged about 14 years on the date of incident – Injury marks were found on the body and private parts of prosecutrix – Statement of prosecutrix is reliable – Absence of sperm immaterial – Delay in lodging FIR properly explained – Appeal dismissed. [Rahul Alias Umesh Hada Vs. State of M.P.] ...2176

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – घटना की तिथि को अभियोक्त्री की आयु करीब 14 वर्ष – अभियोक्त्री के शरीर एवं गुप्तांगों पर चोट के निशान पाये गये – अभियोक्त्री का कथन विश्वसनीय है – शुक्राणु की अनुपस्थिति तत्वहीन –प्रथम सूचना रिपोर्ट दर्ज करने में विलम्ब समुचित रूप से स्पष्ट किया गया – अपील खारिज। (राहुल उर्फ उमेश हाडा वि. म.प्र. राज्य) ...2176

Penal Code (45 of 1860), Section 379 – Theft – Animus Furandi – In absence of animus furandi and circumstances indicating that taking of movable property is in assertion of bonafide claim of right, though it may amount to civil injury, but does not fall within mischief of the offence of theft. [Gurudayal Vs. Indal] ...2254

दण्ड संहिता (1860 का 45), धारा 379 – चोरी – चोरी का आशय – चोरी

के आशय के अभाव में और परिस्थितियां यह दर्शाती हैं कि चल संपत्ति का लिया जाना अधिकार के सद्भाविक दावे के प्राख्यान में है, यद्यपि यह सिविल क्षति की कोटि में आ सकता है परंतु चोरी के अपराध की रिष्टि में नहीं आता है। (गुरूदयाल वि. इंदल) ...2254

Penal Code (45 of 1860), Section 379 – Theft of Crop – **Complainant must satisfactorily prove that he has sown and raised crop on the land recorded in his name and accused fails to show that he has any genuine counter claim or possession of land or that he grew the crop, and if cutting and removal of crop is proved then he can be convicted. [Gurudayal Vs. Indal] ...2254**

दण्ड संहिता (1860 का 45), धारा 379 – फसल की चोरी – शिकायतकर्ता को संतोषजनक रूप से साबित करना चाहिए कि उसने अपने नाम से अभिलिखित भूमि में फसल बोई और खड़ी की तथा अभियुक्त यह दर्शाने में असफल रहा कि उसके पास भूमि का कोई वास्तविक प्रतिदावा अथवा कब्जा है या उसने फसल उगाई है, और यदि फसल की कटाई एवं उसे हटाया जाना सिद्ध होता है तब उसे दोषसिद्ध किया जा सकता है। (गुरूदयाल वि. इंदल) ...2254

Penal Code (45 of 1860), Section 379 – Theft of Crop – **Demarcation report shows that complainant party had encroached upon the land of respondents – There is dispute between the parties with regard to demarcation and physical possession – Since dispute is a civil dispute, no case of theft made out. [Gurudayal Vs. Indal]...2254**

दण्ड संहिता (1860 का 45), धारा 379 – फसल की चोरी – सीमांकन प्रतिवेदन दर्शाता है कि शिकायतकर्ता पक्षकार ने प्रत्यर्थीगण की भूमि पर अतिक्रमण किया था – सीमांकन एवं वास्तविक कब्जे के संबंध में पक्षकारों के बीच विवाद है – चूंकि विवाद सिविल विवाद है, चोरी का प्रकरण नहीं बनता। (गुरूदयाल वि. इंदल) ...2254

Penal Code (45 of 1860), Sections 392, 394, 397 & 323 – **Complainant alongwith two more persons was coming on a motor cycle and due to lathi blow given by miscreants they lost balance and fell down and suffered injuries – Mobile phone, wrist watch and cash was taken away – Accused persons were not identified in dock, no TIP was held during investigation – Seizure witnesses turned hostile – I.O. could not state that on what basis he arrested the accused persons as they were unknown to complainant – No offence made out – Appeal allowed. [Jairam Vs. State of M.P.] ...2179**

दण्ड संहिता (1860 का 45), धाराऐं 392, 394, 397 व 323 – शिकायतकर्ता दो और व्यक्तियों के साथ मोटर साईकिल पर आ रहा था और शरारती तत्वों द्वारा किए गए लाठी के प्रहार से वे संतुलन खो बैठे और नीचे गिरे और उन्हें चोटें आई – मोबाइल फोन, कलाई घड़ी और नकदी ले गए – कटघरे में अभियुक्त व्यक्तियों को नहीं पहचाना गया, अन्वेषण के दौरान कोई पहचान परेड नहीं कराई गई – जप्ती के साक्षी पक्ष विरोधी हो गए – अन्वेषण अधिकारी नहीं बता सका कि किस आधार पर उसने अभियुक्त व्यक्तियों को गिरफ्तार किया क्योंकि वे शिकायतकर्ता के लिए अनजान थे – कोई अपराध नहीं बनता – अपील मंजूर। (जयराम वि. म.प्र. राज्य) ...2179

***Penal Code (45 of 1860), Section 406 – Criminal breach of trust* – Machines which were supplied by respondent no. 2 were of lesser capacity – One machine was retained to compel respondent no. 2 to return the advance payment made by Company – Nature of the dispute was purely civil – There was no dishonest intension on the part of the present petitioner to misappropriate the property belonging to respondent no. 2 – No case u/s 406 of IPC is made out from the averment in the FIR – Petitioner is discharged. [Rohit Singhal Vs. State of M.P.]** ...1905

दण्ड संहिता (1860 का 45), धारा 406 – न्यास का आपराधिक भंग – प्रत्यर्थी क्रमांक 2 द्वारा जो मशीनें प्रदाय की गई वे न्यूनतर क्षमता की थी – कंपनी द्वारा किया गया अग्रिम भुगतान वापस पाने के लिये प्रत्यर्थी क्रमांक 2 को बाध्य करने हेतु एक मशीन को रोक रखा गया – विवाद का स्वरूप शुद्ध रूप से सिविल था – वर्तमान याची की ओर से प्रत्यर्थी क्रमांक 2 की संपत्ति का दुर्विनियोजन करने का बेईमान आशय नहीं था – प्रथम सूचना रिपोर्ट के प्रकथन से भा.दं.सं. की धारा 406 के अंतर्गत प्रकरण नहीं बनता – याची को आरोप मुक्त किया गया। (रोहित सिंघल वि. म.प्र. राज्य) ...1905

***Penal Code (45 of 1860), Section 406 – Vicarious liability* – Petitioner is CEO/Director of the Company – No vicarious liability can be cast on the petitioner for alleged offence committed by Company – All correspondence were handled by another employee on behalf of company – The contract was also entered into by the Company and not by the petitioner in individual capacity – Therefore listing only the present petitioner as accused and without arraying the Company and other officers as accused, the vicarious liability cannot be fastened on the present petitioner – Present FIR is an abuse of judicial process – Petitioner is discharged. [Rohit Singhal Vs. State of M.P.]** ...1905

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दण्ड संहिता (1860 का 45), धारा 406 – प्रतिनिधिक दायित्व – याची कंपनी का मुख्य कार्यपालक अधिकारी/निदेशक है – कंपनी द्वारा कारित अभिकथित अपराध के लिये याची पर प्रतिनिधिक दायित्व नहीं डाला जा सकता – कंपनी की ओर से एक अन्य कर्मचारी द्वारा संपूर्ण पत्राचार संभाला जा रहा था – संविदा भी कंपनी द्वारा की गई थी और न कि याची द्वारा व्यक्तिगत क्षमता में – इसलिये कंपनी और अन्य अधिकारियों को अभियुक्त के रूप में आरोपित किये बिना केवल वर्तमान याची को अभियुक्त के रूप में आरोपित किये जाने से वर्तमान याची पर प्रतिनिधिक दायित्व नहीं डाला जा सकता – वर्तमान प्रथम सूचना रिपोर्ट न्यायिक प्रक्रिया का दुरूपयोग है – याची को आरोप मुक्त किया गया। (रोहित सिंघल वि. म.प्र. राज्य) ...1905

Penal Code (45 of 1860), Sections 406, 420, 461, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 482 **[Subodh Kumar Gupta Vs. Smt. Alpana Gupta]** ...2494

दण्ड संहिता (1860 का 45), धाराऐं 406, 420, 461, 471 व 120–बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (सुबोध कुमार गुप्ता वि. श्रीमती अल्पना गुप्ता) ...2494

Penal Code (45 of 1860), Sections 409, 420 & 120-B – See – Criminal Procedure Code, 1973, Section 439 **[Vipin Goel Vs. State of M.P.]** (DB)...1916

दण्ड संहिता (1860 का 45) धाराऐं 409, 420 व 120–बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 439 (विपिन गोयल वि. म.प्र. राज्य) (DB)...1916

Penal Code (45 of 1860), Section 420 – Cheating **– Petitioner is a Managing Director of a Company which is engaged in sale of automobiles – Complainant purchased a vehicle and subsequently came to know that the engine number mentioned in the invoice and engine fitted in the vehicle are different – During transit vehicle had met with accident and therefore, engine was changed – Held – Allegations against applicant in the capacity of Managing Director are vague – It is essential to make requisite allegation to constitute the vicarious liability – Allegations have been made against Company, but Company has not been arrayed as accused – No proceeding can be initiated against Company as it has not been arrayed as party – Appeal allowed. [Sharad Kumar Sanghi Vs. Sangita Rane]** (SC)...1637

दण्ड संहिता (1860 का 45), धारा 420 – छल – याची एक कंपनी का प्रबंध निदेशक है जो ऑटोमोबाइल के विक्रय में संलग्न है – शिकायतकर्ता ने एक वाहन

क्रय किया और पश्चात्वर्ती रूप से उसे ज्ञात हुआ कि बीजक में उल्लिखित इंजन क्रमांक और वाहन में लगे हुए इंजन का क्रमांक भिन्न है – पारगमन के दौरान वाहन दुर्घटनाग्रस्त हुआ था और इसलिये इंजन बदला गया था – अभिनिर्धारित – प्रबंध निदेशक की क्षमता में आवेदक के विरूद्ध लगाये गये आरोप अस्पष्ट हैं– प्रतिनिधिक दायित्व गठित होने के लिये अपेक्षित अभिकथन किया जाना आवश्यक है – कंपनी के विरूद्ध अभिकथन किये गये परंतु कंपनी को अभियुक्त के रूप में दोषारोपित नहीं किया गया है – कंपनी के विरूद्ध कोई कार्यवाही आरंभ नहीं की जा सकती क्योंकि पक्षकार के रूप में उसे दोषारोपित नहीं किया गया – अपील मंजूर। (शरद कुमार संघी वि. संगीता राणे) (SC)...1637

Penal Code (45 of 1860), Sections 420, 467, 406, 468 & 471/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of charge-sheet and proceedings – Compromise – **Commercial transaction between complainant and Company – Complainant has filed an application that outstanding issues between her and Company have been resolved and does not want any further action – No useful purpose would be served in pursuing such prosecution – Proceedings quashed. [Umang Choudhary Vs. State of M.P.] ...2285**

दण्ड संहिता (1860 का 45), धाराऐं 420, 467, 406, 468 व 471/34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – आरोप–पत्र एवं कार्यवाहियां अभिखंडित की जाना – समझौता – शिकायतकर्ता और कंपनी के बीच वाणिज्यिक संव्यवहार – शिकायतकर्ता ने आवेदन प्रस्तुत किया कि उसके और कंपनी के बीच के विद्यमान विवाद सुलझा लिये गये हैं और वह कोई अतिरिक्त कार्यवाही नहीं चाहता – उक्त अभियोजन को जारी रखने से कोई उपयुक्त प्रयोजन हासिल नहीं होगा – कार्यवाहियां अभिखंडित। (उमंग चौधरी वि. म.प्र. राज्य) ...2285

Penal Code (45 of 1860), Sections 420, 467, 468 & 471 – Sessions Trial – **Amendment of first schedule of Criminal Procedure Code by Criminal Procedure Code (MP Amendment) Act, 2007 – Applicant submitted forged marks-sheet regarding his date of birth to secure employment in the army – Charge-sheet filed on 12.12.07 – The amendment came into force on 22.02.2008 – Charge-sheet was filed prior to coming in operation of the Amendment Act – The procedural law is retrospective – No statement of prosecution witness could be recorded till 28.07.14 when the JMFC chooses to commit the case to the Court of Sessions – Therefore, the trial of the case is covered by amendment introduced by the new Act – JMFC has rightly committed the case to the Court of Sessions. [Ajay Vs. State of M.P.] ...1912**

दण्ड संहिता (1860 का 45), धाराऐं 420, 467, 468 व 471 – सेशन विचारण – दण्ड प्रक्रिया संहिता (म.प्र. संशोधन) अधिनियम, 2007 द्वारा दण्ड प्रक्रिया संहिता की प्रथम अनुसूची का संशोधन – आवेदक द्वारा सेना में नियोजन पाने हेतु अपनी जन्म तिथि के संबंध में कूटरचित अंकसूची प्रस्तुत की गई – आरोपपत्र दिनांक 12.12.07 को प्रस्तुत किया गया – संशोधन, 22.02.2008 को लागू हुआ – आरोपपत्र को संशोधन अधिनियम प्रवर्तनीय होने से पूर्व प्रस्तुत किया गया – प्रक्रियात्मक विधि भूतलक्षी है – 28.07.14 तक अभियोजन साक्षी का कोई कथन अभिलिखित नहीं किया जा सका, जब जे.एम.एफ.सी. ने प्रकरण सेशन न्यायालय को उपार्पित करने हेतु चुना – अतः प्रकरण का विचारण नये अधिनियम द्वारा पुरःस्थापित संशोधन द्वारा आच्छादित होता है – जे.एम.एफ.सी. ने उचित रूप से सेशन न्यायालय को प्रकरण उपार्पित किया है। (अजय वि. म.प्र. राज्य) ...1912

Penal Code (45 of 1860), Sections 498-A & 306 **– Although no charge u/s 498-A is framed but while acquitting u/s 304-B, a person can be convicted u/s 498-A, 306 – Material contradictions with regard to articles allegedly demanded by appellant – No specific article mentioned in FIR – Even according to prosecution witnesses there was no demand of dowry in the last two years of life time of deceased – No offence u/s 498-A or 306 made out – Appeal allowed. [Rajeev Ranjan Vs. State of M.P.] ...2223**

दण्ड संहिता (1860 का 45), धाराऐं 498-ए व 306 – यद्यपि धारा 498–ए के अंतर्गत कोई आरोप विरचित नहीं किया गया है, किंतु धारा 304–बी के अंतर्गत दोषमुक्त किये जाते समय, किसी व्यक्ति को धारा 498–ए, 306 के अंतर्गत दोषसिद्ध किया जा सकता है – अपीलार्थी द्वारा अभिकथित रूप से मांगी गई वस्तुओं के संबंध में तात्विक विरोधाभास है – प्रथम सूचना रिपोर्ट में कोई विनिर्दिष्ट वस्तु उल्लिखित नहीं – अभियोजन साक्षीगण के अनुसार भी मृतिका के जीवनकाल के अंतिम दो वर्षों में दहेज की कोई मांग नहीं की गई थी – धारा 498–ए या 306 के अंतर्गत कोई अपराध नहीं बनता – अपील मंजूर। (राजीव रंजन वि. म.प्र. राज्य) ...2223

Practice and Procedure **– Order for holding summary enquiry within fixed time limit by High Court – Effect – Does not mean to hold enquiry violating the principle of natural justice – If time lapses, extension may be sought. [Chandrakanta Bai Vs. State of M.P.] (DB)...1657**

कार्यपद्धति एवं प्रक्रिया – उच्च न्यायालय द्वारा नियत समयावधि के भीतर संक्षिप्त जांच किये जाने हेतु आदेश – प्रभाव – इसका अर्थ यह नहीं कि नैसर्गिक न्याय के सिद्धांत के उल्लंघन में जांच की जाये – यदि समय व्यपगत होता है, समयवृद्धि चाही जा सकती है। (चन्द्रकांता बाई वि. म.प्र. राज्य) (DB)...1657

Prevention of Corruption Act (49 of 1988), Sections 2(c)(i), 13(1)(d), 13(2) – Public Servant – Petitioner had retired from service and is practicing as Advocate – He was appointed as Enquiry Officer to conduct departmental enquiry against complainant – Co-accused demanded Rs. 1 lac on behalf of applicant to exonerate him in the enquiry – Co-accused was caught red handed – Petitioner after being appointed as Enquiry Officer is to be remunerated by honorarium/fees for his services – Hence, petitioner is a public servant – F.I.R. has been rightly registered. [T.R. Taunk Vs. State of M.P.] (DB)...2290

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 2(सी)(i), 13(1)(डी), 13(2) – लोक सेवक – याची सेवा से निवृत्त हुआ था और अधिवक्ता के रूप में व्यवसाय कर रहा है – उसे शिकायतकर्ता के विरूद्ध विभागीय जांच संचालित करने के लिये जांच अधिकारी के रूप में नियुक्त किया गया – सह–अभियुक्त ने उसे जांच से विमुक्त करने के लिये आवेदक की ओर से रू. 1 लाख की मांग की – सह–अभियुक्त को रंगे हाथों पकड़ा गया – याची को जांच अधिकारी के रूप में नियुक्त किये जाने के पश्चात् उसकी सेवाओं के लिये मानदेय/फीस द्वारा पारिश्रमिक दिया जाना होगा – अतः, याची लोक सेवक है – प्रथम सूचना रिपोर्ट को उचित रूप से पंजीबद्ध किया गया। (टी.आर. टांक वि. म.प्र. राज्य) (DB)...2290

Prevention of Corruption Act (49 of 1988), Section 19 – Sanction for Prosecution – Competent Authority – Vide order dated 08.02.1988, the Chief Minister delegated the power to grant sanction for prosecution of Public Servants to the Law Secretary of M.P. Law Department – Economic Offences Wing sought sanction for prosecution from Department of Housing and Environment which refused to grant sanction – Trial Court directed the prosecution to obtain sanction for prosecution from Secretary Law Department – Sanction granted by Secretary Department of Law and Justice was quashed by High Court – Held – By circular dated 28.02.1998, the Secretary, Department of Law and Justice was conferred power to grant sanction in respect of cases registered by EOW – After the power to grant sanction was delegated to Department of Law and Justice, it cannot be said that the Administrative Department had power to decline sanction – Order of High Court quashing the sanction granted by Secretary, Department of Law and Legislative Affairs set aside – No infirmity as to the competence of Secretary, Department of Law and Legislative Affairs – Appeal allowed. [State of M.P. Vs. Anand Mohan] (SC)...1949

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भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – अभियोजन हेतु मंजूरी – सक्षम प्राधिकारी – आदेश दिनांक 08.02.1988 द्वारा मुख्यमंत्री ने लोक सेवकों के अभियोजन हेतु मंजूरी प्रदान करने की शक्ति को म.प्र. विधि विभाग के विधि सचिव को प्रत्यायोजित की – आर्थिक अपराध विंग ने गृहनिर्माण एवं पर्यावरण विभाग से अभियोजन हेतु मंजूरी चाही, जिसने मंजूरी प्रदान करने से इंकार किया – विचारण न्यायालय ने अभियोजन को विधि विभाग, सचिव से अभियोजन हेतु मंजूरी अभिप्राप्त करने के लिए निदेशित किया – विधि एवं न्याय विभाग के सचिव द्वारा प्रदान की गयी मंजूरी उच्च न्यायालय द्वारा अभिखंडित – अभिनिर्धारित – परिपत्र दिनांक 28.02.1998 द्वारा ई.ओ.डब्ल्यू. द्वारा पंजीबद्ध प्रकरणों के संबंध में मंजूरी प्रदान करने की शक्ति सचिव, विधि एवं न्याय विभाग को प्रदान की गई थी – मंजूरी प्रदान करने की शक्ति, विधि एवं न्याय विभाग को प्रत्यायोजित किये जाने के पश्चात् यह नहीं कहा जा सकता कि प्रशासनिक विभाग को मंजूरी नकारने की शक्ति थी – सचिव, विधि एवं विधायी कार्य विभाग द्वारा प्रदान की गई मंजूरी को अभिखंडित करने का उच्च न्यायालय का आदेश अपास्त – सचिव, विधि एवं विधायी कार्य विभाग की सक्षमता के संबंध में कोई निर्बलता नहीं – अपील मंजूर। (म.प्र. राज्य वि. आनंद मोहन) (SC)...1949

Public Services (Promotion) Rules, M.P. 2002, Rule 7(9) – Promotion **– Denial of promotion to the petitioner on the post of Professor assailed on the ground that since the vacancy was of the year 2004, ACR from the year 1999 to 2004 were to be taken into consideration instead of ACR for the year 2005 onwards, therefore, entire consideration was improper – Held – Rule 7(9) prescribes grading of ACR's and assigning marks by considering preceding 5 years ACR's from the year of vacancy – Since vacancy occurred in the year 2004, consideration of ACR's for the year 2005 onwards vitiates procedure followed by the DPC – DPC proceedings are not sustainable, same are quashed – Matter is remitted back to respondents to hold review DPC in terms of provisions of Rules 2002. [Pratibha Rajgopal (Dr.) Vs. State of M.P.] ...*33**

लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, नियम 7(9) – पदोन्नति – याची को प्राध्यापक के पद पर पदोन्नति से इंकार किये जाने को इस आधार पर चुनौती दी गई कि चूंकि रिक्ति वर्ष 2004 की थी, वर्ष 2005 के वार्षिक गोपनीय प्रतिवेदन की बजाय वर्ष 1999 से 2004 तक के वार्षिक गोपनीय प्रतिवेदन विचार में लिये जाने थे, इसलिए संपूर्ण विचारण अनुचित था – अभिनिर्धारित – नियम 7(9) वार्षिक गोपनीय प्रतिवेदनों का श्रेणीकरण और रिक्ति के वर्ष से 5 वर्ष पूर्व के वार्षिक गोपनीय प्रतिवेदन विचार में लेकर अंक प्रदान करना विहित करता है – चूंकि रिक्ति

वर्ष 2004 में अस्तित्व में आई, वर्ष 2005 से आगे के वार्षिक गोपनीय प्रतिवेदनों का विचारण विभागीय पदोन्नति समिति द्वारा अपनाई गई प्रक्रिया को दूषित करता है – विभागीय पदोन्नति समिति की कार्यवाहियां कायम रखने योग्य नहीं, उन्हें अभिखंडित किया गया – मामला प्रत्यर्थीगण को नियम 2002 के उपबंधों की शर्तों नुसार पुर्नविलोकन विभागीय पदोन्नति समिति आयोजित करने के लिये प्रतिप्रेषित किया गया। (प्रतिभा राजगोपाल (डॉ.) वि. म.प्र. राज्य) ...*33

Railways Act (24 of 1989), Section 123(b) & 124(A) – See – Railway Claims Tribunal Act, 1987, Section 23 **[Bharat Kumar Vs. Union of India] ...*21**

रेल अधिनियम (1989 का 24), धारा 123(बी) व 124(ए) – देखें – रेल दावा अधिकरण अधिनियम, 1987, धारा 23 (भारत कुमार वि. यूनियन ऑफ इंडिया)...*21

Railways Act (24 of 1989), Sections 123(c) & 124(a) – See – Railway Claims Tribunal Act, 1987, Section 16 **[Lalji Bind Vs. Union of India] ...2158**

रेल अधिनियम (1989 का 24), धाराऐं 123(सी) व 124(ए) – देखें – रेल दावा अधिकरण अधिनियम, 1987, धारा 16 (लालजी बिंद वि. यूनियन ऑफ इंडिया) ...2158

Railway Claims Tribunal Act, (54 of 1987), Section 16 and Railways Act (24 of 1989), Sections 123(c) & 124(a) **– Applicant's claim was denied on the ground that the death was not due to untoward incident – Held – In the absence of specific evidence that the train was stationary at the place where accident had occurred, it has to be presumed that the victim had fell down from the moving train – Finding arrived at by Claims Tribunal cannot be given the stamp of approval – Same are set-aside – Claimant would be entitled for compensation of Rs. 4 lakhs with 6% interest p.a. from the date of claim application – Appeal is allowed. [Lalji Bind Vs. Union of India] ...2158**

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 16 एवं रेल अधिनियम (1989 का 24), धाराऐं 123(सी) व 124(ए) – आवेदक का दावा इस आधार पर अस्वीकार किया गया कि मृत्यु दुर्भाग्यपूर्ण घटना के कारण नहीं हुई थी – अभिनिर्धारित – जहां दुर्घटना घटी उस स्थान पर रेलगाड़ी खड़ी थी के संबंध में किसी विनिर्दिष्ट साक्ष्य के अभाव में यह उपधारणा करनी होगी कि पीड़ित चलती रेलगाड़ी से नीचे गिरा था – दावा अधिकरण के निष्कर्ष को अनुमोदित नहीं किया जा सकता – उक्त को अपास्त किया गया – दावाकर्ता दावा आवेदन करने की तिथि

से रू.4 लाख, 6% ब्याज प्रतिवर्ष के साथ प्रतिकर का हकदार होगा – अपील मंजूर। (लालजी बिंद वि. यूनियन ऑफ इंडिया) ...2158

Railway Claims Tribunal Act, (54 of 1987), Section 16 – Date from which interest to be granted – Misjoinder of party **– Substitution on 17.06.2013 – Interest granted from 17.06.2013 and not from date of institution of claim petition – Held – As the liability rests on Union of India and a common man is not aware of territorial boundaries of Zonal Railways, so interest to be granted from date of institution of claim petition – Appeal allowed. [Kari Bai @ Kali Bai (Smt.) Vs. Union of India]** ...*29

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 16 – जिस तिथि से ब्याज प्रदान किया जाना है – पक्षकार का कुसंयोजन – 17.06.2013 को प्रतिस्थापित किया जाना – 17.06.2013 से ब्याज प्रदान किया गया और न कि दावा याचिका संस्थित किये जाने की तिथि से – अभिनिर्धारित – चूंकि भारत के संघ पर दायित्व आता है और सामान्य व्यक्ति ज़ोनल रेलवे की क्षेत्रीय सीमाओं से अवगत नहीं, इसलिये दावा याचिका संस्थित किये जाने की तिथि से ब्याज प्रदान करना होगा – अपील मंजूर। (करी बाई उर्फ कली बाई (श्रीमती) वि. यूनियन ऑफ इंडिया) ...*29

Railway Claims Tribunal Act, (54 of 1987), Section 23 and Railways Act (24 of 1989), Section 123(b) & 124(A) – Claim by parents **– Appellant's claim was denied on the ground that the claimants have failed to establish that the deceased was unmarried and they are dependants – Held – Since the claimants have stated on affidavit that the deceased was unmarried which was not rebutted hence burden to prove that the deceased was married lay on Railways which was not discharged – Undisputedly appellants are parents of the deceased and dependants u/s 123(b) of Railways Act, 1989 – Finding arrived at by Claims Tribunal being perverse and not based on sound reason is set aside – Appellants would be entitled for compensation of Rs. 4 lakhs with 6% interest p.a. from the date of claim application – Appeal allowed. [Bharat Kumar Vs. Union of India]** ...*21

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 23 एवं रेल अधिनियम (1989 का 24), धारा 123(बी) व 124(ए) – माता–पिता द्वारा दावा – अपीलार्थी के दावे को इस आधार पर अस्वीकार किया गया कि दावाकर्ता यह स्थापित करने में असफल रहे कि मृतक अविवाहित था और वे आश्रित हैं – अभिनिर्धारित – चूंकि दावाकर्ताओं ने शपथपत्र पर कहा है कि मृतक अविवाहित था जिसका खंडन नहीं

किया गया, अतः यह साबित करने का भार कि मृतक विवाहित था, रेलवे पर आता है जिसका निर्वहन नहीं किया गया – अविवादित रूप से अपीलार्थीगण मृतक के माता–पिता हैं और रेलवे अधिनियम 1989 की धारा 123(बी) के अंतर्गत आश्रित हैं – दावा अधिकरण का निष्कर्ष विपर्यस्त होने और ठीक कारण पर आधारित नहीं होने के कारण अपास्त – अपीलार्थीगण दावा आवेदन की तिथि से 4 लाख रूपये 6% प्रतिवर्ष ब्याज के साथ प्रतिकर के हकदार होंगे – अपील मंजूर। (भारत कुमार वि. यूनियन ऑफ इंडिया) ...*21

***Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5 – Externment* – No documents were supplied with show cause notice – Statement of witnesses were not given – Old and stale cases considered – Held – Order passed in vindictive manner to suppress the voice of independent journalist. [Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal]** ...1704

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5 – निष्कासन – कारण बताओ नोटिस के साथ कोई दस्तावेज प्रदान नहीं किये गये – साक्षियों के कथन नहीं दिये गये – पुराने और घिसे पिटे प्रकरणों को विचार में लिया गया – अभिनिर्धारित – प्रतिशोधात्मक ढंग से स्वतंत्र पत्रकार की आवाज़ का दमन करने के लिये आदेश पारित किया गया। (अनूप सक्सेना वि. द सेक्रेटरी, मिनिस्ट्री ऑफ होम अफेयर्स, भोपाल) ...1704

***Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5 – Writ jurisdiction* – District Magistrate issued an order of externment based on previous five offences – Held – In the absence of any material to establish that witnesses are not coming due to apprehension of danger to property and person, order under Section 5 (b) of the Act cannot be passed. [Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal]** ...1704

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5 – रिट अधिकारिता – जिला दण्डाधिकारी ने पिछले पांच अपराधों के आधार पर निष्कासन का आदेश जारी किया – अभिनिर्धारित – किसी तथ्य की अनुपस्थिति में जो यह स्थापित कर सके कि साक्षीगण संपत्ति एवं व्यक्ति को खतरे की आशंका के कारण नहीं आ रहे हैं, अधिनियम की धारा 5(बी) के अंतर्गत आदेश पारित नहीं किया जा सकता। (अनूप सक्सेना वि. द सेक्रेटरी, मिनिस्ट्री ऑफ होम अफेयर्स, भोपाल) ...1704

***Recognised Examinations Act, M.P. (10 of 1937), Sections 3(D), 1, 2 & 5* – See – *Criminal Procedure Code, 1973, Section 439* [Vipin Goel Vs. State of M.P.]** (DB)...1916

मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धाराऐं 3(डी), 1, 2 व 5 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 439 (विपिन गोयल वि. म.प्र. राज्य) (DB)...1916

Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Sections* 20(3) & 24 – See – *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 18(2), **[Baleshwar Dayal Jaiswal Vs. Bank of India] (SC)...2307**

बैंकों और वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम (1993 का 51), धाराऐं 20(3) व 24 – देखें – वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, 2002, धारा 18(2), (बालेश्वर दयाल जायसवाल वि. बैंक ऑफ इंडिया) (SC)...2307

***Rehabilitation and Resettlement Policy* – Whether the oustees who have accepted 100% compensation can avail the option of acceptance of 50% compensation and opt for alternative commensurate land – Supreme Court had extended the benefit of allotment of land to those who have not withdrawn the SRG benefits/compensation voluntarily or who have received the 100% compensation amount involuntarily – Policy and Order of Supreme Court does not absolve the oustees from refunding 50% of Compensation amount for becoming entitled to avail of the scheme envisaged under R & R Policy – However, on assurance given by Authority through Counsel to give one more opportunity to the oustees to avail the benefit under Para 5.1 of R&R policy on refunding 50% compensation amount received by them within three months from today, as condition precedent for allotment of alternative land, is accepted. [Narmada Hydroelectric Development Corporation Vs. Shankar] (DB)...2317**

पुनर्वास और पुनर्व्यवस्थापन नीति – क्या वे विस्थापित जिन्होंने 100% प्रतिकर स्वीकार किया है, 50% प्रतिकर को स्वीकार करने के विकल्प का उपभोग कर सकते हैं और वैकल्पिक अनुरूप भूमि का चुनाव कर सकते हैं – उच्चतम न्यायालय ने भूमि के आबंटन का लाभ उन्हें दिया है जिन्होंने स्वैच्छिक रूप से एस. आर.जी. लाभ/प्रतिकर वापस नहीं लिया है या जिन्होंने अनैच्छिक रूप से प्रतिकर की 100% रकम प्राप्त की है – नीति एवं उच्चतम न्यायालय का आदेश, पुनर्वास और पुनर्व्यवस्थापन नीति के अंतर्गत परिकल्पित योजना का उपभोग करने के लिये हकदार बनने हेतु विस्थापितों को प्रतिकर राशि का 50% लौटाने के दायित्व से

मुक्त नहीं करते – किंतु प्राधिकारी द्वारा अधिवक्ता के जरिये विस्थापितों को, वैकल्पिक भूमि के आवंटन के लिये पूरोभावी शर्त के रूप में आज से तीन माह के भीतर, उनके द्वारा प्राप्त 50% प्रतिकर की रकम लौटाने पर, उन्हें पुनर्वास और पुनर्व्यवस्थापन नीति की कंडिका 5.1 के अंतर्गत लाभ के उपभोग हेतु एक और अवसर देने का आश्वासन स्वीकार किया गया। (नर्मदा हाईड्रोइलेक्ट्रिक डव्हेलपमेन्ट कार्पोरेशन वि. शंकर) (DB)... 2317

***Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 2(n)(iv) – Unaided school – Proviso to Section 12(1)(c)* – Allocation of 25% of the strength of children to weaker section of the society in pre-school classes (Nursery to class 1) – Held – Provisions of Section 12(1)(c) has been made applicable to admission to pre-school education by private unaided schools as specified in Section 2(n)(iv) of the Act. [The Daly College, Indore Vs. State of M.P.]** ...2387

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 2(एन)(iv) – गैर अनुदान प्राप्त विद्यालय – धारा 12(1)(सी) का परंतुक – पूर्व–विद्यालयी कक्षाओं में (नर्सरी से कक्षा 1 तक) समाज के कमजोर वर्गों के बालकों की संख्या 25% नियत करना – अभिनिर्धारित – गैर अनुदान प्राप्त निजी विद्यालयों द्वारा पूर्व–विद्यालयी कक्षाओं में प्रवेश हेतु धारा 12(1)(सी) के उपबंध लागू किये गये हैं जैसा कि अधिनियम की धारा 2(एन)(iv) में विनिर्दिष्टित है। (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

***Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 6 & 12(1)(c)* – Establishment of schools by the State within a period of three years from commencement of the Act – Provisions of Section 12 ceased to have effect after 3 years – Held – Section 12(1)(c) of the Act is not dependent on establishment of schools by the State under Section 6 of the Act within three years. [The Daly College, Indore Vs. State of M.P.]** ...2387

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 6 व 12(1)(सी) – अधिनियम आरंभ होने से तीन वर्षों की अवधि के भीतर शासन द्वारा विद्यालयों को स्थापित किया जाना – तीन वर्षों के पश्चात् धारा 12 के उपबंधों का प्रभाव समाप्त हो गया – अभिनिर्धारित – अधिनियम की धारा 12(1)(सी) शासन द्वारा अधिनियम की धारा 6 के अंतर्गत तीन वर्षों के भीतर विद्यालय स्थापित करने पर निर्भर नहीं। (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Right of Children to Free and Compulsory Education Act, (35

of 2009), Section 12(1)(c) **and** *Right of Children to Free and Compulsory Education Rules, M.P. 2011, Rule 2(1)(k) – Limits of neighbourhood* **– Rule 2(1)(h) – Extended limit of neighbourhood – Held – Rule 2(1)(k) and Rule 2(1)(h) are applicable in pre-school admission. [The Daly College, Indore Vs. State of M.P.] ...2387**

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(1)(सी) एवं बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार नियम, म.प्र. 2011, नियम 2(1)(के) – पड़ोस की सीमाऐं – नियम 2(1)(एच) – पड़ोस की विस्तारित सीमा – अभिनिर्धारित – नियम 2(1)(के) और नियम 2(1)(एच) पूर्व–विद्यालयी में प्रवेश पर लागू होते हैं। (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(1)(c) – See – Constitution – Article 21-A **[The Daly College, Indore Vs. State of M.P.] ...2387**

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(1)(सी) – देखें – संविधान. – अनुच्छेद 21–ए (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(2) **– Whether Private unaided schools are entitled for reimbursement of the expenses incurred by the school on 25% children given admission in pre-school classes from weaker section – Held – Yes, it has to be reimbursed by the State. [The Daly College, Indore Vs. State of M.P.] ...2387**

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(2) – क्या गैर अनुदान प्राप्त निजी विद्यालय, पूर्व–विद्यालयी कक्षाओं में कमजोर वर्ग से प्रवेश दिये गये 25% बालकों पर वहन किये गये खर्चों की प्रतिपूर्ति के हकदार है – अभिनिर्धारित – हां, इसकी प्रतिपूर्ति शासन द्वारा की जायेगी। (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Right of Children to Free and Compulsory Education Rules, M.P. 2011, Rule 2(1)(k) – See – Right of Children to Free and Compulsory Education Act, 2009, Section 12(1)(c) **[The Daly College, Indore Vs. State of M.P.] ...2387**

बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार नियम, म.प्र. 2011, नियम 2(1)(के) – देखें – बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार

अधिनियम, 2009, धारा 12(1)(सी) (द डेली कॉलेज, इंदौर वि. म.प्र. राज्य) ...2387

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) & 3(2)(v) **– No material to show that the injured was beaten because he belonged to S.C./S.T. – In fact the injured had encroached upon a Govt. land and the appellant wanted to grab that land – Mere utterance of Caste by itself would not be sufficient to make out a case under the Act, 1989 – Appellants acquitted. [Ashok Vs. State of M.P.]** ...2475

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) व 3(2)(v) – यह दर्शाने के लिये कोई सामग्री नहीं कि आहत को इसलिए पीटा गया क्योंकि वह अनुसूचित जाति/अनुसूचित जनजाति का था – वास्तव में आहत ने सरकारी भूमि पर अतिक्रमण किया था और अपीलार्थी उस भूमि को हथियाना चाहता था – मात्र जाति का उच्चारण किया जाना अपने आप मे अधिनियम 1989 के अंतर्गत प्रकरण बनने के लिए पर्याप्त नहीं होगा – अपीलार्थीगण दोषमुक्त। (अशोक वि. म.प्र. राज्य) ...2475

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), **Section 18(2),** ***Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Sections*** **20(3) &** **24** ***and Limitation Act (36 of 1963), Section 29 – Power to condone the delay*** **– Delay in filing an appeal under Section 18(1) of SARFAESI Act can be condoned by Appellate Tribunal under Proviso to Section 20(3) of Act, 1993 read with Section 18(2) of SARFAESI Act – Appeal allowed. [Baleshwar Dayal Jaiswal Vs. Bank of India]** (SC)...2307

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 18(2), बैंकों और वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम (1993 का 51), धाराऐं 20(3) व 24 एवं परिसीमा अधिनियम (1963 का 36), धारा 29 – विलम्ब माफ करने की शक्ति – SARFAESI अधिनियम की धारा 18(1) के अंतर्गत अपील प्रस्तुत करने में विलम्ब को अपीली अधिकरण द्वारा अधिनियम 1993 की धारा 20(3) के परंतुक, सहपठित SARFAESI अधिनियम की धारा 18(2) के अंतर्गत माफ किया जा सकता है – अपील मंजूर। (बालेश्वर दयाल जायसवाल वि. बैंक ऑफ इंडिया) (SC)...2307

Service Law – Advertisement – Locus Standi **– Petitioners participated in the selection process without any demur – They cannot challenge the condition incorporated in advertisement after having**

taken part in selection process. [Bharat Bhushan Vs. High Court of M.P.] (DB)...2437

सेवा विधि – विज्ञापन – सुने जाने का अधिकार – याचीगण ने चयन प्रक्रिया में बिना किसी आपत्ति के भाग लिया – वे चयन प्रक्रिया में भाग लेने के पश्चात् विज्ञापन में सम्मिलित शर्त को चुनौती नहीं दे सकते। (भारत भूषण वि. हाईकोर्ट ऑफ म.प्र.) (DB)...2437

Service Law – Appointment – Medical fitness – Appointment for the post of Executive Trainee (Finance) **– Appointment has been cancelled on the ground that the petitioner was found medically unfit as he does not have vision in one eye – Even if the petitioner is having normal vision in one eye he is certainly entitled to be appointed as an Executive Trainee (Finance) – Further petitioner had also passed Chartered Accountant Examination and is working on same job in Small Industries Development Bank of India – Further advertisement shows that seats have been reserved for persons with 40% disability – One eye is treated as 30% disability – Respondents directed to appoint the petitioner with all consequential benefits – Petition allowed. [Anshul Jain Vs. National Thermal Power Corporation Ltd.] ...1690**

सेवा विधि – नियुक्ति – चिकित्सकीय योग्यता – कार्यपालिक प्रशिक्षणार्थी (वित्त) के पद पर नियुक्ति – नियुक्ति इस आधार पर निरस्त की गई कि याची को चिकित्सीय दृष्ट्या अयोग्य पाया गया क्योंकि उसकी एक आंख में दृष्टि नहीं थी – यदि याची की एक आंख में सामान्य दृष्टि है तब भी वह निश्चित रूप से कार्यपालिक प्रशिक्षणार्थी (वित्त) के रूप में नियुक्ति का हकदार है – इसके अतिरिक्त याची ने चार्टर्ड एकाउंटेंट परीक्षा भी उत्तीर्ण की है और भारतीय लघु औद्योगिक विकास बैंक में समान कार्य पर कार्यरत है – इसके अतिरिक्त विज्ञापन दर्शाता है कि 40% रूप से निःशक्त व्यक्तियों के लिये पद आरक्षित हैं – एक आंख की निःशक्तता 30% मानी जाती है – याची को सभी परिणामिक लाभों के साथ नियुक्त करने के लिये प्रत्यर्थीगण को निदेशित किया गया – याचिका मंजूर। (अंशुल जैन वि. नेशनल थर्मल पॉवर कारपोरेशन लि.) ...1690

Service Law – Appointment of Anganwadi Karyakarta at Anganwadi centre **– On the date of selection the petitioner was not having any valid certificate establishing that she belongs to Scheduled Tribe (Kol) – Petitioner was not eligible for 10 marks towards Scheduled Tribe cannot be faulted with – Petition dismissed. [Rannu Bai (Smt.) Vs. State of M.P.] ...*26**

सेवा विधि – आंगनवाड़ी केन्द्र में आंगनवाड़ी कार्यकर्ता की नियुक्ति – चयन की तिथि पर याची के पास यह स्थापित करने के लिये कोई वैध प्रमाणपत्र नहीं था कि वह अनुसूचित जनजाति (कोल) की है – इसमें कोई त्रुटि नहीं निकाली जा सकती कि अनुसूचित जनजाति के लिये 10 अंको हेतु याची पात्र नहीं थी – याचिका खारिज। (रन्नू बाई (श्रीमती) वि. म.प्र. राज्य) ...*26

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 **– Punishment of stoppage of one increment with cumulative effect and recovery against petitioner in joint enquiry – Held – No violation of law – Scope of interference is limited – No reason to interfere – Petition dismissed. [Toofan Singh Vs. M.P. State Civil Supplies]** ...1729

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 – संयुक्त जांच में याची के विरूद्ध संचयी प्रभाव से एक वेतन वृद्धि रोके जाने और वसूली की शास्ति – अभिनिर्धारित – विधि का कोई उल्लंघन नहीं – हस्तक्षेप की परिधि सीमित है – हस्तक्षेप का कोई कारण नहीं – याचिका खारिज। (तूफान सिंह वि. एम.पी. स्टेट सिविल सप्लाईस्) ...1729

Service Law – Contingency/Daily Wages Employees – Regularization **– State has issued a circular dated 29.09.2014 for regularizing the services of daily rated employees – University has also adopted the said circular – Employees working against vacant posts for more than 10 years – Respondent directed to constitute Committee for scrutinizing the cases of employees for regularization – Exercise be done within 6 months – Petition allowed. [Rajiv Gandhi Prodyogikiya Shramik Vishwavidyalaya Karmchari Sangh Vs. State of M.P.]** ...*34

सेवा विधि – आकस्मिकता/दैनिक वेतनभोगी कर्मचारी – नियमितीकरण – राज्य ने दैनिक वेतन कर्मचारियों की सेवाओं का नियमितीकरण करने हेतु परिपत्र दिनांक 29.09.2014 जारी किया है – विश्वविद्यालय ने भी उक्त परिपत्र को अंगीकृत किया है – कर्मचारीगण 10 वर्षों से अधिक समय से रिक्त पदों के विरूद्ध कार्यरत – कर्मचारियों के नियमितीकरण के प्रकरणों की संवीक्षा हेतु समिति गठित करने के लिये प्रत्यर्थी को निदेशित किया गया – 6 माह के भीतर कार्यवाही पूरी की जाए – याचिका मंजूर। (राजीव गॉधी प्रौद्योगिकी श्रमिक विश्वविद्यालय कर्मचारी संघ वि. म.प्र. राज्य) ...*34

Service Law – Contract Appointment **– Non-extension of a contract appointment – Petitioner was initially appointed by the**

Collector-cum-District Programme Coordinator and the extension from time to time has also been granted by the Collector – Collector is well within his power to decline extension of contract period – Petition dismissed. [Hind Kishore Vs. State of M.P.] ...*28

सेवा विधि – संविदा नियुक्ति – संविदा नियुक्ति का न बढ़ाया जाना – याची को आरंभिक रूप से कलेक्टर–सह–जिला प्रोग्राम समन्वयक द्वारा नियुक्त किया गया था और समय समय पर कलेक्टर द्वारा वृद्धि भी प्रदान की गई है – संविदा अवधि की वृद्धि अस्वीकार करना भली भांति कलेक्टर की शक्ति में है – याचिका खारिज। (हिन्द किशोर वि. म.प्र. राज्य) ...*28

***Service Law – Date of birth* – Age Determination Committee rejected the contention of the petitioner that his date of birth is 01.07.1957 and not 13.12.1953 – As highly disputed question of facts are involved, the petitioner can raise a dispute before the Labour Court – Petition dismissed. [Rameshwar Prasad Pathak Vs. South Eastern Coalfields Ltd.] ...2084**

सेवा विधि – जन्म तिथि – आयु निर्धारण समिति ने याची के इस तर्क को अस्वीकार किया कि उसकी जन्म तिथि 01.07.1957 है और न कि 13.12.1953 – चूंकि तथ्य का अति विवादित प्रश्न अंर्तग्रस्त है, याची विवाद को श्रम न्यायालय के समक्ष उठा सकता है – याचिका खारिज। (रामेश्वर प्रसाद पाठक वि. साउथ ईस्टर्न कोलफील्डस् लि.) ...2084

***Service Law – Deputation* – Deputation can only be on temporary basis and in public interest to meet the exigency of public service – Provisions of Article 166 of the Constitution are only directory in character. [Anil Shrivastava (Dr.) Vs. State of M.P.] ...1749**

सेवा विधि – प्रतिनियुक्ति – प्रतिनियुक्ति केवल अस्थाई आधार पर एवं लोक सेवा की आवश्यकता को पूरा करने के लिये लोक हित में की जा सकती है – संविधान के अनुच्छेद 166 के उपबंध केवल निदेशात्मक स्वरूप के है। (अनिल श्रीवास्तव (डॉ.) वि. म.प्र. राज्य) ...1749

***Service Law – Kramonnati* – Lecturers/Teachers in the employment of Education and Tribal Welfare Department are entitled for the benefit of Kramonnati Scheme with effect from 19-4-1999. [State of M.P. Vs. Mala Banerjee] (SC)...1642**

सेवा विधि – क्रमोन्नति – शिक्षा एवं आदिम जाति कल्याण विभाग में नियोजित व्याख्याता/शिक्षक 19–04–1999 से प्रभावी रूप से क्रमोन्नति योजना के

लाभ हेतु हकदार हैं। (म.प्र. राज्य वि. माला बनर्जी) (SC)...1642

Service Law–Pension – **Pension is a proprietary right of the retired Government servant and grant of pension is not dependent on the sweet will of State – There must be strong justified reasons for the withdrawal of pension. [Shyam Sharma (Dr.) Vs. State of M.P.] ...2014**

सेवा विधि – पेंशन – पेंशन सेवानिवृत्त सरकारी कर्मचारी का सांपत्तिक अधिकार है और पेंशन का प्रदान, राज्य की स्वेच्छा पर निर्भर नहीं – पेंशन वापस लिये जाने के लिये प्रबल न्यायोचित कारण होने चाहिए। (श्याम शर्मा (डॉ.) वि. म. प्र. राज्य) ...2014

Service Law – Promotion – No Work No pay – **Promotion was given to the petitioner after his exoneration in the departmental enquiry from the date, his juniors were promoted but was denied monetary benefit on the principle of no work no pay – Held – Principle of No Work No pay would apply only when an employee is found guilty of any misconduct and his promotion is delayed – If the promotion is granted with retrospective effect and if monetary benefit is denied, it would amount to a penalty of withholding of monetary benefit under Rule 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – Denial of such a benefit is illegal – Petitioner is entitled to the salary of promotional post from the date the said benefit was extended to his immediate junior – Petition allowed. [C.B. Tiwari Vs. State of M.P.] ...2402**

सेवा विधि – पदोन्नति – कार्य नहीं तो वेतन नहीं – याची को विभागीय जांच में विमुक्त किये जाने के पश्चात् उसे उससे कनिष्ठों को पदोन्नत किये जाने की तिथि से पदोन्नति दी गई, परंतु कार्य नहीं तो वेतन नहीं के सिद्धांत पर उसे आर्थिक लाभ देने से इंकार किया गया – अभिनिर्धारित – कार्य नहीं तो वेतन नहीं का सिद्धांत केवल तब लागू होगा जब किसी कर्मचारी को अवचार का दोषी पाया जाता है और उसकी पदोन्नति विलंबित हो जाती है – यदि भूतलक्षी प्रभाव से पदोन्नति प्रदान की गई है और यदि आर्थिक लाभ अस्वीकार किया गया है, यह म.प्र. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम 1966 के नियम 10 के अंतर्गत आर्थिक लाभ रोके जाने की शास्ति की कोटि में आयेगा – उक्त लाभ से इंकार करना अवैध है – याची पदोन्नति के पद के वेतन का हकदार उस तिथि से है जिस तिथि से उक्त लाभ उससे ठीक कनिष्ठ को दिया गया था – याचिका मंजूर। (सी. बी. तिवारी वि. म.प्र. राज्य) ...2402

Service Law – Recovery of Excess Payment – **Even if by mistake**

of employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers the excess payment has been made by mistake or negligence, the excess amount so made could be recovered. [Nitya Ranjan Das (Dr.) Vs. State of M.P.] ...2408

सेवा विधि – अधिक भुगतान की वसूली – यदि नियोक्ता की गलती से, कर्मचारी को राशि का भुगतान हुआ है और यदि बाद की तिथि में उचित निर्धारण के पश्चात् नियोक्ता को पता चलता है कि गलती या लापरवाही से अधिक भुगतान हुआ है, इस तरह किये गये अधिक भुगतान को वसूला जा सकता है। (नित्य रंजन दास (डॉ.) वि. म.प्र. राज्य) ...2408

Service Law – Recovery of Excess Payment – Principles of Natural Justice – By impugned order the entitlement for grant of selection grade pay scale has been modified from 27-7-1998 to 4-3-2000 – The order was passed unilaterally without giving any opportunity of hearing to the petitioner – The modification would result in adverse consequences i.e., recovery of amount from the petitioner – Prejudice would be caused to the petitioners if the amount is recovered from them without affording an opportunity of hearing – Respondents would be at liberty to issue notice to petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons. [Nitya Ranjan Das (Dr.) Vs. State of M.P.] ...2408

सेवा विधि – अधिक भुगतान की वसूली – नैसर्गिक न्याय के सिद्धांत – आक्षेपित आदेश द्वारा प्रवरण श्रेणी वेतनमान प्रदान किये जाने हेतु पात्रता को 27–7–1998 से परिवर्तित कर 4–3–2000 किया गया है – याची को सुनवाई का अवसर दिये बिना एकपक्षीय रूप से आदेश पारित किया गया – परिवर्तन के प्रतिकूल परिणाम होंगे अर्थात् याची से रकम की वसूली – याचीगण को प्रतिकूल प्रभाव कारित होगा यदि सुनवाई का अवसर दिये बिना उनसे रकम को वसूला जाता है – प्रत्यर्थीगण, उन आधारों को दर्शाते हुए जिस पर प्रवरण श्रेणी/ग्रेड–पे प्रदान किये जाने हेतु पात्रता की तिथि में परिवर्तन चाहा गया है, याचीगण को नोटिस जारी करने के लिये और नये सिरे से कारण सहित आदेश पारित करने के लिये स्वतंत्र होंगें। (नित्य रंजन दास (डॉ.) वि. म.प्र. राज्य) ...2408

Service Law – Repatriation – Administrative instructions – Do not have any force of law – Since petitioners have continued on deputation for more than 10 years and by the impugned orders they

are being posted in rural areas with the object to provide medical facilities to the public in general – There is no infringement of the legal rights of the petitioners in withdrawing their deputation – Petition dismissed. [Anil Shrivastava (Dr.) Vs. State of M.P.] ...1749

सेवा विधि – प्रत्यावर्तन – प्रशासनिक अनुदेश – किसी विधि का बल प्राप्त नहीं – चूंकि याचीगण दस वर्षों से अधिक के लिये निरंतर प्रतिनियुक्ति पर रहे और जनसामान्य को चिकित्सीय सुविधायें उपलब्ध कराने के उद्देश्य से आक्षेपित आदेशों द्वारा उन्हें ग्रामीण क्षेत्रों में पदस्थ किया जा रहा है – याचीगण की प्रतिनियुक्ति वापस लेने से उनके विधिक अधिकारों का कोई अतिलंघन नहीं हुआ है – याचिका खारिज। (अनिल श्रीवास्तव (डॉ.) वि. म.प्र. राज्य) ...1749

Service Law – Review D.P.C. – **In Writ Petition filed by Petitioner, the Division Bench of High Court directed to conduct review D.P.C. in accordance with directions issued therein – In subsequent writ petition filed by another person, Division Bench directed to conduct review D.P.C. in accordance with Promotion Rules, 2002 and earlier directions were not brought to the notice of the D.B. – Held – Rules as were available on the date of vacancy have to be applied for making consideration – Proceedings which were done adopting the norms prescribed in Promotion Rules, 2002 are not justified proceedings – Subsequent decision will not overrule the decision already rendered by Division Bench – Review D.P.C. be held strictly in accordance with order passed earlier. [Ashok Virang (Dr.) Vs. Principal Secretary, Public Health and Family Welfare Department] ...2004**

सेवा विधि – पुनर्विलोकन डी.पी.सी. – याची द्वारा प्रस्तुत रिट याचिका में, उच्च न्यायालय की खंड न्यायपीठ ने उसमें जारी निदेशों के अनुसार पुनर्विलोकन डी.पी.सी. आयोजित कराने के निदेश दिये – अन्य व्यक्ति द्वारा प्रस्तुत की गई पश्चात्वर्ती रिट याचिका में, खंड न्यायपीठ ने पदोन्नति नियम, 2002 के अनुसार पुनर्विलोकन डी.पी.सी. आयोजित करने के निदेश दिये और पूर्ववर्ती निदेशों को खंड न्यायपीठ की जानकारी में नहीं लाया गया – अभिनिर्धारित – नियम, जैसे कि रिक्ति की तिथि को उपलब्ध थे, विचारण किये जाने हेतु लागू करने चाहिए – पदोन्नति नियम, 2002 में विहित सन्नियमों को अपनाकर जो कार्यवाहियां की गई थी, वह न्यायोचित कार्यवाहियां नहीं हैं – पश्चात्वर्ती निर्णय, खंड न्यायपीठ द्वारा पहले ही दिये गये निर्णय को नहीं उल्टायेगा – पुनर्विलोकन विभागीय पदोन्नति समिति कठोर रूप से पूर्वतर पारित आदेश के अनुसार आयोजित की जाये। (अशोक विरांग (डॉ.) वि. प्रिंसिपल सेक्रेटरी, पब्लिक हेल्थ एण्ड फेमली वेलफेयर डिपार्टमेन्ट) ...2004

Service Law – Vacant Posts – Carried forward – **Vacant posts were carried forward and were included in the vacancies of next year and exams were conducted – As the posts were not kept vacant and since unfilled vacancies were notified in subsequent advertisement for selection and selection process proceeded on that basis, the Petitioners cannot be granted any relief as the unfilled vacancies got subsumed by operation of law. [Bharat Bhushan Vs. High Court of M.P.]** **(DB)...2437**

सेवा विधि – रिक्त पद – अग्रनीत करना – रिक्त पदों को अग्रनीत किया गया और अगले वर्ष की रिक्तियों में शामिल किया गया और परीक्षाऐं आयोजित की गई – जैसा कि पदों को रिक्त नहीं रखा गया और चूंकि चयन हेतु पश्चात्वर्ती विज्ञापन में न भरी गई रिक्तियों को अधिसूचित किया गया था और उसके आधार पर चयन प्रक्रिया की आगे कार्यवाही की गई थी, याचीगण को कोई अनुतोष प्रदान नहीं किया जा सकता क्योंकि विधि के प्रवर्तन द्वारा न भरी गई रिक्तियां सम्मिलित हो गई थी। (भारत भूषण वि. हाईकोर्ट ऑफ म.प्र.) **(DB)...2437**

Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, M.P. (52 of 1976), Section 3 – See – Constitution – Article 265 **[Vikram Cement Vs. State of M.P.]** **(SC)...1647**

स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, म.प्र. (1976 का 52), धारा 3 – देखें – संविधान – अनुच्छेद 265 (विक्रम सीमेन्ट वि. म.प्र. राज्य) **(SC)...1647**

Suits Valuation Act (7 of 1887), Section 8 – Suit for partition and possession of 1/7th share of ancestral agricultural land **– Proper valuation thereof – Respondent no. 1 filed suit for partition and separate possession of his 1/7th share in the ancestral agricultural land of his Joint Hindu Family property – The applicants have assessed twenty times of the land revenue fixed for the land and suit is valued on his 1/7th share – Held – Suit is rightly valued – A coparcener is at liberty and has a right to value the suit till the extent of his share and ratio out of the total twenty times of the land revenue and bound to pay court fee accordingly. [Gorelal Lodhi Vs. Ratan Lal Lodhi]** **...1861**

वाद मूल्यांकन अधिनियम (1887 का 7), धारा 8 – पैतृक कृषि भूमि के विभाजन एवं 1/7 हिस्से के कब्जे हेतु वाद – इसका उचित मूल्यांकन – प्रत्यर्थी क्रं 1 ने अपने संयुक्त हिंदू परिवार संपत्ति की पैतृक कृषि भूमि के विभाजन एवं अपने 1/7 हिस्से के कब्जे हेतु वाद प्रस्तुत किया – आवेदकगण ने भूमि के लिये निश्चित भू–राजस्व के बीस गुना निर्धारण किया और अपने 1/7 हिस्से पर वाद मूल्यांकित किया – अभिनिर्धारित – वाद उचित रूप से मूल्यांकित – सहदायिक को

अपने हिस्से की सीमा तक एवं भू–राजस्व के कुल बीस गुना के अनुपात में वाद का मूल्यांकन करने की स्वतंत्रता और अधिकार है तथा वह तद्नुसार न्यायालय फीस अदा करने के लिये बाध्य है। (गोरेलाल लोधी वि. रतन लाल लोधी) ...1861

***Suits Valuation Act (7 of 1887), Section 8 – Suit to declare sale deed executed by power of attorney as ab-initio void – Proper valuation thereof* – Petitioner filed suit to declare the sale deed to be ab-initio void which was executed on his behalf by his power of attorney (his real sister) – Under such circumstances it can be inferred that he was party of the impugned sale deed executed by his power of attorney with his consent – The plaintiff/petitioner is bound to value the suit equal to the consideration of sale deed and accordingly bound to pay court fee accordingly. [Harish Patel Vs. Sanjay Kumar]** ...1676

वाद मूल्यांकन अधिनियम (1887 का 7), धारा 8 – मुख्तारनामा द्वारा निष्पादित विक्रय विलेख को आरंभ से शून्य घोषित करने के लिये वाद – इसका उचित मूल्यांकन – याची ने विक्रय विलेख को आरंभ से शून्य घोषित करने के लिये वाद प्रस्तुत किया जिसे उसकी ओर से उसके मुख्तारनामा (उसकी सगी बहन) द्वारा निष्पादित किया गया – इन परिस्थितियों में यह निष्कर्ष निकाला जा सकता है कि उसके मुख्तारनामा द्वारा उसकी सहमति से निष्पादित आक्षेपित विक्रय विलेख का वह पक्षकार था – वादी/याची विक्रय विलेख के प्रतिफल के बराबर वाद का मूल्यांकन करने के लिये बाध्य है और तद्नुसार न्यायालय फीस अदा करने के लिये बाध्य है। (हरीश पटेल वि. संजय कुमार) ...1676

***Transfer of Property Act (4 of 1882), Section 44 – See – Civil Procedure Code, 1908, Order 41 Rule 23A* [Tilak Education Research & Development Society Vs. Smt. Phoolwati]** ...1801

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 44 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 23ए (तिलक एजुकेशन रिसर्च एण्ड डव्हेलपमेन्ट सोसायटी वि. श्रीमती फूलवती) ...1801

***Transfer of Property Act (4 of 1882), Section 58 – See – Civil Procedure Code, 1908, Section 100* [Muhammad Ayoob Khan (Since Deceased) Through L.Rs. Samsunnisha (Smt.) Vs. Krishnapratap Singh]** ...1788

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 58 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 (मोहम्मद अयूब खान (पूर्व मृतक) द्वारा विधिक प्रतिनिधि शमसुन्निशा (श्रीमती) वि. कृष्णप्रताप सिंह) ...1788

Vidhan Sabha Sachivalaya Seva Adhiniyam, M.P. (20 of 1981), Section 5(4) – Fundamental Rules, M.P., Rule 56(2) – Compulsory retirement – **Respondent had received poor grading in last 15 years out of 20 years – There were adverse remarks with regard to her working and conduct – Physical capacity of employee was also found very poor – Her working during last few years had deteriorated and even her leave record is not good – There are enough material to hold the respondent to be dead wood and to take action as required under F.R. 56 – Order of writ Court set aside – Order of compulsory retirement upheld. [Vidhan Sabha Sachivalaya Vs. Ku. Kamla Yadav] (DB)...1666**

विधान सभा सचिवालय सेवा अधिनियम, म.प्र. (1981 का 20), धारा 5(4) – मूलभूत नियम, म.प्र., नियम 56(2) – अनिवार्य सेवानिवृत्ति – प्रत्यर्थी को पिछले 20 वर्षों में से 15 वर्षों में न्यून/खराब श्रेणी प्राप्त हुई – उसके कार्य एवं आचरण के संबंध में प्रतिकूल टिप्पणियां थी – कर्मचारी की शारीरिक क्षमता भी बहुत कमतर पाई गई – पिछले कुछ वर्षों के दौरान उसका कार्य भी बहुत खराब हुआ है और उसका अवकाश अभिलेख भी अच्छा नहीं – यह धारणा करने के लिए पर्याप्त सामग्री है कि प्रत्यर्थी अवांछित व्यक्ति है और मूलभूत नियम 56 के अंतर्गत कार्यवाही अपेक्षित है – रिट न्यायालय का आदेश अपास्त – अनिवार्य सेवानिवृत्ति के आदेश की पुष्टि की गई। (विधान सभा सचिवालय वि. कुमारी कमला यादव) **(DB)...1666**

Work Charged & Contingency Paid Employee Pension Rules, M.P. 1979, Rules 2(b), (h), (e) & 6 – Petition for declaring him as Permanent Work Charged & Contingency Paid Employee – **Petitioner initially engaged on daily wages – Continuous service of 25 years – Held – Only when a worker is appointed as per the stipulation contained in the Rules of 1979 and against a vacant post, then only he is entitled to be declared as Permanent Work Charged & Contingency Paid Employee – Petition dismissed. [Iqbal Ahmad Vs. State of M.P.] ...2367**

कार्य भारित व आकस्मिकता वेतन भोगी कर्मचारी पेंशन नियम, म.प्र. 1979, नियम 2(बी), (एच), (ई) व 6 – स्थाई कार्य भारित एवं आकस्मिकता वेतन भोगी कर्मचारी के रूप में घोषित किये जाने हेतु याचिका – याची आरंभिक रूप से दैनिक वेतन पर लगाया गया – 25 वर्ष की निरंतर सेवा – अभिनिर्धारित – कोई कर्मी केवल तभी स्थाई कार्य भारित एवं आकस्मिकता वेतन भोगी कर्मचारी के रूप में घोषित किये जाने के लिए हकदार है जब उसे 1979 के नियमों में अंतर्विष्ट शर्त के अनुसार और रिक्त पद पर नियुक्त किया जाता है – याचिका खारिज। (इकबाल अहमद वि. म.प्र. राज्य) **...2367**

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THE INDIAN LAW REPORTS M.P. SERIES, 2015
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JOURNAL SECTION

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

HIGH COURT OF MADHYA PRADESH, JABALPUR

An overview of the updated scheme for rationalization of assignment cum listing of cases before the Benches of the High Court of Madhya Pradesh

INTRODUCTION

The number of cases being filed in the High Court of Madhya Pradesh has been constantly on the rise and listing of cases is becoming acutely unwieldy. In order to meet the ever increasing demand for listing of cases for hearing, considering the available working Judges strength, streamlining the listing procedure, better court case management, ensuring timely disposal, transparency, accountability, consistency, make the process litigants and lawyers friendly and to subserve the aspirations of the stakeholders, scheme for rationalization of listing of cases before the Benches of the High Court of Madhya Pradesh was conceptualized and introduced on 6/12/2013. This scheme was modified from time to time to meet the exigencies and to remove the difficulties experienced during working of the system, keeping in mind suggestions given by the stakeholders and was updated on 18/07/2014. Now thirteen months have elapsed since introduction of the scheme.

The principal object of the scheme is to strengthen the Court functioning and make it transparent, rational, responsive and also for enhancing efficiency in docket management especially of Motion hearing matters for dispensing quality justice to the litigants.

The salient features of the updated scheme may be summed up as under :

ADMISSION (MOTION HEARING)

1. **No pre-admission matter shall remain undated.** In that, every admission matter shall bear some date, either given by the Court or auto-generated by the computer.

2. The matters notified on the daily/weekly Board/list alone would be treated as assigned to the concerned Court, not the rest of the pending matters of that category.

3. Work load shall be equally distributed amongst the available Judges on day to day basis.

4. The CMIS software has been designed to address relative urgency of different types of cases as per the Court listing policy.

5. Ordinarily, upto 100 main cases (excluding order matters) will be listed before the Benches (SB / DB) sitting for full day.

6. Cases in which computer generated dates are given are also to be listed within the specified number (100 main cases), after listing of fixed date and freshly filed cases, if the space so permits. If, because of Court given date cases/fresh cases, daily list gets oversized, the computer generated dates "after notice admission cases of the same type" will be listed chronologically in suitable lots after four weeks and such dates shall be rescheduled and notified in the daily/supplementary list.[1]

7. Court dated pre-admission cases shall be listed on fixed dates and shall not be left out. Pre-admission matter ordered to be listed by the Hon'ble Court in week commencing / next week / after week(s) shall be treated as Court given date matter.

8. Fresh Habeas Corpus Petitions shall be listed under caption "Top of the List" in the daily cause list on the next Court working day after removal of office objections, if any. In case, these matters could not be taken up on the assigned date for any reason, the same will be notified on the next Court working day under caption "Top of the List", in the supplementary list.

9. Fresh admission cases shall be listed on the third Court working day from the date of removal of office objections, if any.

10. Not reached/left over **fresh admission** matters shall be listed in the following week in suitable lots. The not reached / left over **after notice** cases will be assigned auto-generated returnable dates spread out in suitable lots after four weeks. This is to ensure that the daily list / supplementary list for the following week does not get oversized. The returnable dates of concerned cases will be notified on the High Court official website in the case status of that case as also on the list/board for the next Court working day, for the information of the litigants and lawyers. **In either case, if the Court orders to the contrary in exceptionally urgent matters, the Court given date will prevail.**

11. Fresh matters under Sections 438 & 439 of Code of Criminal Procedure, 1973 shall be listed before the Court on 5th Court working day from the date of removal of defaults, if any, under caption "Bail Matters".

12. Criminal Appeal and Criminal Revisions accompanied by application for suspension of sentence / bail filed under section 389 / 397 Cr.P.C / Section 53 Juvenile Justice Act 2000, shall be listed on 5th Court working day from the date of removal of defaults, if any, for "admission" (Fresh/After Notice/Final Disposal).

13. The left over bail / suspension of sentence matters will be listed on second following Court working day.

14. All bail applications under section 438 & 439 Cr.P.C. arising from the same crime number of the same Police Station and application for suspension of sentence under section 389 / 397 Cr.P.C / Section 53 Juvenile Justice Act, 2000, arising from the same judgment / orders filed by the different applicants separately will be listed before the same Hon'ble Judge(s). **However, if the same Hon'ble Judge(s) is/are not available due to change of Headquarter, transfer, elevation or retirement, then the subsequent bail application of co-accused persons will be listed before available senior most Hon'ble judge(s)** to whom substantial Criminal Cases are assigned.

15. Repeat Bail Applications filed under Section 389, 438 and 439 of the Cr.P.C. shall be listed before the Hon'ble Judge who decided the first bail application. However, if the Hon'ble Judge, who decided the first application, is not available due to change of Headquarter, transfer, elevation or retirement, then the subsequent bail applications shall be

listed before the senior most (D.B. / S.B.) Bench to whom substantial Criminal Cases are assigned.

16. The advance daily list for the entire next week will be published on the previous working Friday or last Court working day of the previous week, as the case may be, latest by 7:00 p.m. and displayed on the official website of the High Court.

17. Any urgent / left over matter/fresh for admission matter required to be listed on the next Court working day after preparation of final list will be included in the **supplementary list. The supplementary list shall indicate the serial number when the matters of given category included in the supplementary list will be called out for hearing.**

18. As per **Part (A) Rule 1 (1) (c) of Chapter V of the High Court of MP Rules 2008,** the Registrar **is authorised to decide all matters relating to service of notice (i.e. few served and remaining unserved) or other processes.** Accordingly, all such matters shall be listed on the returnable date before the Registrar (Judicial) and not under **"ORDER CATEGORY"** before the Court, in the first instance.

19. Pre-admission Cases, where **respondent(s) are served,** shall be, accordingly, updated and listed before the Court as per the Court given date or computer generated date under appropriate caption. **The returnable date mentioned in the notice issued by the Court must be treated as Court given date.**

20. In case of non-compliance of the orders of the Registrar the matter shall then be listed before the Court under caption **"Common Order".** All order matters which can be disposed of by common order will be notified on the Board in **"Common Order"** category separately with the proposed order to be passed therein with the returnable dates for the concerned matters.

21. If, inspite of **'Common Order'** passed by the Court, the default is not removed within specified time given by the Hon'ble Court, such matter(s) will be listed under caption **'Common Conditional Order'** in respect of such default on the returnable dates.

22. Pre-admission cases, in which reply has not been filed by the party despite direction of the Court, shall be proceeded under appropriate category (Fresh / After Notice / Final Disposal) on the returnable

date before the Court and should not be listed in **"Order Category".**

23. The motion hearing list will have separate heads of cases in the following order of precedence:-

S.No.	Particulars of Heads
A.	Common Order
B.	Common Conditional Order
C.	Settlement
D.	Personal Appearance
E.	Bail Matters :- i) Bail applications u/s 438 Cr.P.C. ii) Bail applications u/s 439 Cr.P.C. iii) Suspension of sentence u/s 389 / 397 Cr.P.C. / Section 53 Juvenile Justice Act,2000 **in admitted matters.**
F.	Direction Matters
G	Orders
H.	Top of the list (for admission)
I.	Admission matters more than five years old
J.	Fresh (for admission) i) Civil ii) Criminal
K.	After notice (for admission) i) Criminal ii) Civil
L.	Final Disposal at admission stage i) Civil ii) Criminal

24. Interlocutory application(s) **(other than for vacation of ex-parte stay** and condonation of **delay in filing main matter)** filed in pre-

admission matter (matter yet to be formally admitted by the Court) shall be listed along with the main matter on its returnable date and shall not be listed under **"ORDER CATEGORY".**

25. **Ordinarily, application for vacation of ex-parte stay or application for condonation of delay in filing main matter will be listed under caption "ORDER" on the fifth Court working day from the date of removing office objections, if any.** However, if the main (pre-admission) case is scheduled within 5 days from the date of removing office objections in the application for vacating stay, then the IA (Interlocutory Application) for vacating ex-parte stay be listed along with the main case in appropriate category (Fresh / After Notice / Final Disposal).

26. All connected matters shall be listed under one serial number (with sub numbers thereof) in the daily/weekly list and not separately.

27. **Cases of outstation Advocates will be listed on a particular day of the week as per administrative directions issued in this behalf by Hon'ble the Chief Justice.**

28. The cases to be listed before DB-I at the Principal Seat as well as the Benches, will be as per the assignment for DB-I.

MENTIONING OF MATTERS

29. Mentioning for urgent listing or change of assigned dates of all D.B./ S.B. matters not notified in the Daily / Weekly List shall be entertained only by DB-I at Principal seat and the respective Benches at Indore and Gwalior. **However, mentioning of matters already notified in the Daily / Weekly List can be made before the concerned Hon'ble Division / Single Bench, where the matter is so listed.**

30. Every fresh admission matter will be automatically listed (without need for mentioning) on the third Court working day from the date of removing the office objections.

31. Mentioning of **pre-admission matters** to which specific date has already been assigned by the Court or auto-generated through computer, must be avoided except in matters which cannot wait till the assigned date, for pre-poning the date or for change of date, if the same is not convenient to the Advocate or the parties. **This can be done without a formal application for urgent hearing, on moving**

mentioning slip / memo before DB I.

32. Mentioning of SB Arbitration/Company/Taxation/Election matters be made before the designated Judge(s).

33. To streamline the procedure for mentioning and to obviate the Court pressure for mentioning of matters, the mentioning memo should be first presented between **10:30–11:30 a.m.** before the Registrar (J-II) at Principal Seat, Jabalpur and before the Principal Registrar at Benches at Indore and Gwalior respectively, who shall make endorsement on the mentioning slip about (a) date of institution (b) date of removal of office objection (c) last date of the listing of the case (d) type of case – Fresh / After Notice / Final Hearing (e) if Final Hearing case, whether ready for hearing and the serial number in the concerned category of the quarterly list (f) the assigned returnable date given by the Court or generated by the computer, as the case may be. **However, exceptionally urgent matters can be mentioned on the same day before the Hon'ble mentioning Court (i.e. DB-I).**

34. The concerned Registrar shall send all mention memos to the Reader of the Court in the evening on the same day.

35. Advocates/Litigants must peruse the endorsement of the Registrar in the next morning before 10:30 a.m.

36. **The Computer generated date as authenticated by the Principal Registrar / Registrar (Judicial) of pre-admission matters, will be treated as Court given date and the matter will be listed on that date before the concerned Bench as per the assignment, without any exception. There is no need to mention these cases before the Court.**

FINAL HEARING

37. After taking up cases notified for motion hearing assigned to the concerned Bench, the cases for final hearing will be taken up ad seriatim by that Bench.

38. A Consolidated Quarterly List of final hearing cases is displayed on the official website of the High Court. This list consists of matters in the given category chronologically which are ready for final hearing. The relative position of matters included in the Consolidated Quarterly List of the given cases will be indicated in the case status of that case.

39. A weekly list shall be drawn from the Consolidated Quarterly List of ready matters. This list shall consist of proportionate lots of cases of categories in chronological order assigned by Hon'ble the Chief Justice to a particular Bench. The cases notified in the weekly list will be commensurate with the inter-se ratio of the pending cases of categories in the quarterly list as worked out by **CMIS software and not manually. If, however, in a given category, there are only five or less than five cases available for listing in the week, all such cases will be included in the weekly list.**

40. **If any Final Hearing case fits in two or more categories of priority category, then it will be automatically included by the CMIS software in the category where it would get priority. If the case is not properly positioned in the list notified by the Registry, it can be brought to the notice of the Principal Registrar / Registrar (Judicial-II), who will issue suitable directions.**

41. In **admitted case**, in which reply has not been filed by the party despite direction of the Court, **shall not be treated as unready matter** and shall, accordingly, be proceeded as per its turn under appropriate category on the assumption that the Respondent is not interested in filing reply/return. **Such case(s) will not be listed in 'ORDER CATEGORY'** before the Court.

42. In admitted matters all interlocutory applications shall be updated under "ORDER CATEGORY", unless ordered by the Court to be heard along with the main matter.

43. All Applications for urgent hearing of admitted cases pertaining to SB or DB shall be listed before DB I at Principal seat, Jabalpur and Benches at Gwalior and Indore respectively.

44. **If a case older than the oldest of a given category listed in the Weekly List is left out or included in wrong category resulting in loosing its seniority, litigants / advocates are requested to bring that fact to the notice of the Registrar (Judicial) so that corrective measures can be taken by the office.**

45. Part heard / specially assigned matters (except election petitions and Full Bench matters) would cease to be part heard/specially assigned with change of assignment of cases of the concerned category, unless

a request for continuation of the matter is made by the parties and the same is approved by Hon'ble the Chief Justice.

46. The Election Petitions will be heard as priority cases by the concerned Judge to whom the case has been assigned, keeping in mind the statutory requirement of disposal of such cases within six months.

SPECIAL ASSIGNMENT FOR COMPANY, ARBITRATION, TAXATION AND ELECTION MATTERS

47. Special assignment for company, arbitration, taxation and election matters shall be notified in the assignment.

E-SERVICES

48. In case of default in a freshly filed case, auto generated SMS/email will be automatically sent through CMIS software to the registered mobile number/email address of the advocate and/or litigant. Similar services are being provided regarding listing of cases, paper-book estimates and upon preparation of paper-book.

49. Online information regarding listing of cases as per the approved scheme shall be available on the official website 'www.mphc.in' of Madhya Pradesh High Court and on Kiosks installed at various locations in the High Court premises in Jabalpur Main Seat as well as at Indore and Gwalior Benches.

Note:-The above scheme is flexible and open to suitable modifications to address issues of stakeholders and administrative exigency and is operated by in house customized auto generated computer programme.

Dated:9th January, 2015

Sd/

REGISTRAR GENERAL

APPROVED

Sd/-

CHIEF JUSTICE

मध्य प्रदेश उच्च न्यायालय जबलपुर (म.प्र.)

न्यायालयीन मुकदमों की सुनवाई हेतु पारदर्शी, तर्कसंगत एवं जवाबदेहीपूर्ण नवीन लिस्टिंग प्रणाली – पक्षकारों के हितों पर केंद्रित सुदृढ़ न्यायिक व्यवस्था के लिए मील का पत्थर

नवीन लिस्टिंग प्रणाली का स्वरूप

कार्यरत न्यायाधीशों की संख्या, अन्य सहयोगी संसाधनों की उपलब्धता, युक्तियुक्तकरण, बेहतर न्यायिक समय प्रबंधन तथा सूचना प्रौद्योगिकी का न्यायपालिका की आवश्यकताओं के अनुरूप अधिकतम उपयोग करने के लिये सुनवाई हेतु प्रकरणों की लिस्टिंग प्रक्रिया की एक नयी पारदर्शी, सशक्त, तर्कसंगत एवं जवाबदेह प्रणाली को दिनांक 06/12/2013 से लागू किया गया है।

इस प्रणाली का उद्देश्य सभी संबंधित हितग्राहियों को शीघ्र न्याय प्रदान करने के साथ ही उनके प्रकरणों की सुनवाई हेतु दिनांक नियत किये जाने अथवा नियत नहीं किये जाने के कारण को भी स्पष्टतया दर्शाना है, जिससे सुनवाई हेतु नियत प्रकरणों के निराकरण में होने वाले विलंब का औचित्य प्रकट हो सके और प्रकरणों की सुनवाई में एकरूपता, सुनिश्चितता एवं न्याय प्रशासन की जबावदेही प्रकट हो सके।

पृष्ठभूमि

वर्तमान प्रणाली लागू होने के पूर्व मध्यप्रदेश उच्च न्यायालय में कुल 2,60,350 मुकदमें लंबित थे, जिसमें 87.5 प्रतिशत अर्थात् 2,28,100 प्रकरण प्रारंभिक सुनवाई के थे (जबलपुर मुख्यपीठ – 1,38,000, इंदौर खंडपीठ– 41,900, ग्वालियर खंडपीठ– 48,800 योग 2,28,100) है। अंतिम सुनवाई के प्रकरणों की संख्या कुल लंबित प्रकरणों का 12.5 प्रतिशत अर्थात् 32,250 थी। (जबलपुर मुख्य पीठ 17,300, इंदौर खंडपीठ 8,750, ग्वालियर खंडपीठ–6,200 योग –32,250)।

नवीन प्रणाली का तात्कालिक प्रभाव

नयी लिस्टिंग प्रणाली लागू होने के बाद वर्तमान में कुल लंबित मुकदमों की संख्या लगभग 2,57,300 है, जिनमें से 52.5 प्रतिशत अर्थात् कुल लगभग 1,35,000 मुकदमें (जबलपुर मुख्यपीठ 78,600, इंदौर खंड–पीठ–20,300, ग्वालियर खंड–पीठ – 36,000, योग– 1,35,000) प्रारंभिक सुनवाई में हैं। वर्तमान में अंतिम सुनवाई के प्रकरणों की संख्या लगभग 1,22,300 (जबलपुर मुख्य पीठ 71,400, इंदौर खंड–पीठ – 33,900, ग्वालियर खंडपीठ– 17,000) है।

उपरोक्त आंकड़े स्पष्ट रूप से दर्शाते हैं कि योजना–बद्ध तथा तर्क–संगत तरीके से वर्तमान लिस्टिंग प्रणाली के कारण प्रारंभिक सुनवाई के प्रकरण 2,28,100 से घटकर 1,35,000 रह गये है। परिणामस्वरूप, अंतिम सुनवाई के प्रकरण 32,250 से बढ़कर 1,22,300 हो गये है। यहां यह उल्लेखनीय है कि इस दौरान उच्च न्यायालय के समक्ष लगभग 90,000 नवीन प्रकरण भी संस्थित हुए। इसके बावजूद प्रारंभिक सुनवाई के लंबित प्रकरणों की संख्या में, जो वर्तमान में लम्बित कुल मुकदमों की संख्या का 52.5 प्रतिशत है, में लगभग 35 प्रतिशत की कमी आयी, और अंतिम सुनवाई के लंबित

प्रकरणों का प्रतिशत 12.5 प्रतिशत से बढ़कर 47.5 प्रतिशत हो गया है अर्थात् उसमें 35 प्रतिशत की वृद्धि हो गयी।

उक्त क्रम में यह बात भी उल्लेखनीय है कि वर्तमान में भी 5 वर्ष से अधिक अवधि के प्रारंभिक सुनवाई के लंबित मुकदमों की संख्या लगभग 34,150 है जिसमें से लगभग 23,500 जबलपुर मुख्यपीठ में **(सबसे पुराना – द्वितीय अपील क्रमांक 333/89)**, इंदौर खंडपीठ में 2,250 प्रकरण **(सबसे पुराना – कंपनी पिटिशन क्रमांक 7/72)** तथा ग्वालियर खंडपीठ में करीब 8,400 **(सबसे पुराना – प्रथम अपील क्रमांक 5/76)** लंबित हैं। इसी प्रकार अंतिम सुनवाई के 5 वर्ष से अधिक पुराने लगभग 68,300 प्रकरण, जिनमें से जबलपुर मुख्यपीठ में 44,600 **(सबसे पुराना – मिसलेनियस पिटिसन क्रमांक 2152/1988)**, इंदौर खण्डपीठ में 14,800 **(सबसे पुराना – प्रथमं अपील क्रमांक 80/1987)** तथा ग्वालियर खण्डपीठ में करीब 8,950 **(सबसे पुराना – प्रथम अपील क्रमांक 39/1987)** विचाराधीन हैं।

मुकदमों की सुनवाई की स्थिति के समग्र अवलोकन हेतु निम्न ऑकड़ो पर दृष्टिपात की आवश्यकता है :–

न्यायाधीशों की संख्या

अनुमोदित	–	53
कार्यरत	–	31

उपलब्ध न्यायाधीशों की कार्यस्थल अनुसार स्थिति

जबलपुर मुख्यपीठ – सामान्यतया 3 खण्डपीठ एवं 9 एकलपीठ – कुल 15 न्यायाधीश

इंदौर खण्डपीठ – सामान्यतया 1 खण्डपीठ एवं 6 एकलपीठ – कुल 8 न्यायाधीश

ग्वालियर खण्डपीठ – सामान्यतया 1 खण्डपीठ एवं 6 एकलपीठ – कुल 8 न्यायाधीश

ग्राह्यता पूर्व प्रकरणों में पिछले 5 वर्षों का 210 कार्य दिवस प्रतिवर्ष के आधार पर औसत संस्थापन (Institution)

जबलपुर मुख्यपीठ – करीब 260 प्रकरण प्रतिदिन (54,600) प्रतिवर्ष

इंदौर खण्डपीठ – करीब 140 प्रकरण प्रतिदिन (29,400) प्रतिवर्ष

ग्वालियर खण्डपीठ – करीब 100 प्रकरण प्रतिदिन (21,000) प्रतिवर्ष

यदि नवीन लिस्टिंग प्रणाली के परिप्रेक्ष्य में वर्ष 2013 एवं 2014 के प्रथम 9 माह में निराकृत प्रकरणों की तुलना करें तो प्रकट होता है कि जहाँ वर्ष 2013 के प्रथम 9 माह में कुल 83,958 प्रकरणों का निराकरण किया गया वहीं वर्ष 2014 के प्रथम 9 माह में 96,176 प्रकरणों का निराकरण हुआ है। यह उल्लेखनीय है कि वर्ष 2013 में कुल 34 न्यायाधीश उपलब्ध थे। वर्ष 2014 में मात्र 32 न्यायाधीशों के कार्यरत रहने के उपरांत भी प्रकरणों के निराकरण की संख्या में तुलनात्मक रूप से कुल 12,267 की वृद्धि हुई है, जो समान अवधि में निराकृत प्रकरणों में करीब 15% वृद्धि को दर्शाती है।

उपरोक्त परिणाम वर्तमान प्रभावशील प्रणाली के युक्ति–संगत एवं प्रभावी–स्वरूप तथा उसके क्रियान्वयन में सभी कर्तव्यधारियों (Duty Holders) यथा न्यायाधीशगण, अधिवक्तागण, रजिस्ट्री के अधिकारो तथा कर्मचारियों के सक्रिय सहयोग से ही संभव हो सका है तथा इसका सीधा लाभ उन पक्षकारों को मिला है, जिनकी न तो अपनी कोई आवाज है और न ही जो निरन्तर अपने मुकदमों की सुनवाई के लिये दौड़–भाग एवं प्रयास करने की क्षमता रखते हैं। यह दर्शाता है कि वर्तमान प्रणाली सभी हितधारियों के साथ–साथ उन पक्षकारो के हितों का ध्यान रखती है जो पूरी तरह से साधन–विहीन हैं।

लिस्टिंग प्रणाली – अधिकाधिक प्रभावशीलता की ओर

वर्तमान लिस्टिंग प्रणाली को पक्षकारो एवं अधिवक्ताओं के लिये यथासंभव सरल एवं सुविधायुक्त बनाने तथा उनकी आवश्यकताओं के अनुरूप ढालने के लिये वरिष्ठ अधिवक्ताओं तथा अभिभाषक संघो के सम्मानीय पदाधिकारियों से निरन्तर विचार–विमर्श कर उसे और अधिक क्रियाशील एवं प्रभावी बनाया गया है।

वर्तमान लिस्टिंग प्रणाली के बारे में इन्दौर के वरिष्ठ अभिभाषक श्री अशोक कुटुम्बले द्वारा प्रस्तुत रिट याचिका क्रमांक 5891/2014 में माननीय मध्य प्रदेश उच्च न्यायालय के द्वारा सभी सम्बद्ध पक्षों को विस्तारपूर्वक सुनने के पश्चात् उनकी वृहद सहमति के आधार पर उसे दिनांक 19.09.2014 को निराकृत किया गया। इस मामले में माननीय उच्च न्यायालय द्वारा लिस्टिंग प्रणाली से संबंधित विचार–विमर्श हेतु महत्वपूर्ण विषयों की पहचान और उसके सौहार्दपूर्ण समाधान में अभिभाषक–संघों व मध्य प्रदेश अधिवक्ता परिषद की सकारात्मक भूमिका की सराहना भी की गयी।

नवीन लिस्टिंग प्रणाली की मुख्य विशेषताएं

क्या आप जानते हैं कि :–

1. वर्तमान लिस्टिंग प्रणाली में प्रारंभिक सुनवाई का कोई भी मुकदमा अ–दिनांकित (undated) नहीं रहता है, अर्थात् प्रत्येक ऐसे प्रकरण की सुनवाई हेतु न्यायालय द्वारा नियत या कम्प्यूटर जनित तारीख दी जाती हैं।
2. अंतिम सुनवाई योग्य प्रकरणों की एक वर्गीकृत समेकित त्रैमासिक सूची प्राथमिकताओं के आध

ाार पर तैयार की जाती है तथा उसी में से साप्ताहिक सूची बनाई जाती है।

3. ग्राह्यता संबंधी प्रकरण, जिनमें नोटिस पश्चात् मामलें (After Notice Matters) भी शामिल है, प्राथमिकता क्रमानुसार सुनवायी हेतु उपलब्ध खण्डपीठों/एकलपीठों की संख्या के आधार पर सुनिश्चित संख्या में सूचीबद्ध किये जाते है, जिनमें न्यायालय द्वारा नियत दिनांक के सभी प्रकरण एवं स्थान उपलब्ध होने पर कम्प्यूटर जनित दिनांक के प्रकरण क्रमानुसार लिये जाते हैं।

4. प्रकरणों को नियत किये जाने में **'प्रथम आयें प्रथम पायें'** के सिद्धांत को ही सारतः अपनाया जाता है।

5. बंदी प्रत्यक्षीकरण याचिकाओं तथा जमानत याचिकाओं की शीघ्र सुनवाई की व्यवस्था की गई है।

6. अत्यावश्यक प्रकृति के प्रकरणों में, यदि वे प्रकरण दैनिक/साप्ताहिक सूची में है, सीधे संबंधित पीठ के समक्ष, और यदि सूचीबद्ध नहीं है, तो उस दशा में ज्ञापन/आवेदन संबंधित रजिस्ट्रार के माध्यम से खण्डपीठ क्रमांक-1 के समक्ष प्रस्तुत कर शीघ्र सुनवाई की व्यवस्था भी इस प्रणाली में की गई है, ताकि अत्यावश्यक प्रकरणों में शीघ्र अनुतोष हेतु सुनवायी संभव हो सके।

7. अंतिम सुनवाई योग्य प्रकरण अधिसूचित नहीं हो पा रहे थे या अधिसूचित होने पर भी सुनवाई हेतु क्रम पर पहुँच नहीं पा रहे थे, लेकिन अब ऐसे प्रकरणों की सुनवाई भी संभव हो रही है।

8. प्रत्येक सप्ताह में सुनवायी के लिए नियत होने वाले प्रकरणों की संख्या के आधार पर अग्रिम रूप से तालिका तैयार करते हुए ऐसे सप्ताह में वास्तविक रूप से उपलब्ध खंडपीठों/पीठों की संख्या और प्रणाली अनुसार प्रत्येक पीठ के लिए नियत संख्या के आधार पर सूचीबद्ध किये जाने वाले प्रकरणों की संख्या को दर्शाया जाता है। जबकि इस प्रणाली के लागू होने के पूर्व प्रकरणों की सूची (Cause List) कार्यालय सहायक (Dealing Assistant) द्वारा भेजे गये प्रस्तावों (Proposals) के आधार पर दैनिक रूप से जारी होती थी, जिसमें कोई जवाबदेही सुनिश्चित नहीं थी तथा प्राथमिकताओं व युक्तिसंगतता का अभाव था।

9. ऐसी साप्ताहिक सूची में उस सप्ताह सूचीबद्ध न होने वाले प्रकरणों की संख्या भी स्पष्ट कर उनके सूचीबद्ध न होने का कारण और ऐसे प्रकरण आगे की दिनांकों में कब लगेंगे यह भी दर्शाया जाता है, जिसका रजिस्ट्रार (न्यायिक) एवं रजिस्ट्रार (IT) द्वारा प्रमाणीकरण भी किया जाता है।

10. कम्प्यूटर जनित नवीन लिस्टिंग प्रणाली इतनी पारदर्शी है कि उसमें न्यायालय द्वारा नियत दिनांक वाले समस्त प्रकरण, नियमानुसार लगाये जाने वाले प्रकरण, अन्य आवश्यक प्रकरण तथा रजिस्ट्रार द्वारा प्राधिकृत कम्प्यूटर जनित दिनांक (Computer generated date) के प्रकरणों के अलावा स्थान उपलब्ध होने पर केवल स्वजनित (Auto generated) दिनांक वाले प्रकरण ही लगाये जाते हैं।

11. यदि प्रकरणों को अधिसूचना किये जाने की प्रक्रिया में कोई प्रकरण त्रुटिवश किसी कारण से

अधिसूचित नहीं हो पाता है तो संबंधित पक्षकारों/अधिवक्ताओं द्वारा इसकी जानकारी देने पर उसमें सुधार के लिए **शिकायत निवारण प्रणाली** की व्यवस्था भी गयी है।

प्रकरणों को सूचीबद्ध किये जाने के नवीन प्रणाली का लाभ

1. यह प्रणाली न्यायिक विवेक पर आधारित परम्परागत प्रक्रिया के स्थान पर सभी पक्षकारों/अधिवक्ताओं के प्रकरणों की सुनवाई विधि के समक्ष समानता के आधार पर सुनिश्चित करती है।

2. **प्रकरणों को युक्तियुक्त तरीके से वर्गीकृत किया गया है और ऐसे वर्गीकृत मामलों में भी उनकी आन्तरिक प्राथमिकता का क्रम सुनिश्चित किया गया है** जिससे विशिष्ट वर्ग और श्रेणी के प्रथम क्रम के प्रकरणों की शीघ्र सुनवायी हो सके। ऐसा पक्षकारों के हितों को सुनिश्चित करने के लिए किया गया है।

3. **मृत्युदण्ड से संबंधित सभी निर्देश (Reference)/अपीलों का निराकरण इस प्रक्रिया के कारण संभव हुआ है।**

4. **वर्ष 2004 से लेकर अब तक उच्चतम न्यायालय द्वारा शीघ्र निराकृत किये जाने के निर्देशों वाले लगभग सभी मामलों को इस नवीन प्रणाली के कारण निराकृत करना संभव हुआ है।**

5. **अन्य लोकहित वाले महत्वपूर्ण प्रकरणों का भी शीघ्र निराकरण इस नवीन प्रणाली के कारण संभव हो सका है।**

6. **उचित न्यायिक समय प्रबंधन (Proper Judicial Time Management)–**

   (अ) इसके अंतर्गत **सामान्य आदेश (Common Order)** और **सामान्य सशर्त आदेश (Common Conditional Order)** के प्रकरणों को एक साथ सम्मिलित कर एक ही आदेश के जरिये निराकरण की व्यवस्था की गयी है। जिससे एक ही प्रकृति के पृथक–पृथक आदेश विभिन्न मामलों में पारित करने में लगने वाले अमूल्य समय की बचत होती है, जिसका उपयोग अन्य महत्वपूर्ण प्रकरणों की सुनवाई हेतु किया जा रहा है।

   (ब) दैनिक/साप्ताहिक सूची में सम्मिलित प्रकरणों के अलावा अन्य **अत्यावश्यक प्रकरणों की शीघ्र सुनवायी के लिए ज्ञापन/आवेदन प्रस्तुति** केवल खंडपीठ क्रमांक 1 के समक्ष निर्धारित किये जाने के परिणामस्वरूप **जबलपुर, इंदौर, ग्वालियर की करीब 25 खण्डपीठों/एकलपीठों में इस हेतु औसतन प्रति पीठ लगने वाले लगभग 10 मिनट, अर्थात् कुल लगभग 250 मिनट (लगभग एक सम्पूर्ण कार्य–दिवस का समय) की बचत के**

साथ ही ऐसी कार्यवाही में एकरूपता सुनिश्चित हो सकी है।

(स) नवीन लिस्टिंग प्रणाली के कारण जबलपुर मुख्यपीठ के साथ ही इन्दौर एवं ग्वालियर पीठों के लिए नियत होने वाले प्रकरणों की **साप्ताहिक और दैनिक सूची को तैयार** किये जाने में पूर्व की अपेक्षा अब 30 मिनट से भी कम समय लगता है, जो न्यायिक प्रबंधन तथा सूचना प्रौद्योगिकी के अधिकतम उपयोग से ही संभव हो पाया है। वर्तमान प्रणाली लागू होने के पूर्व जबकि इसके पूर्व की प्रक्रिया लम्बी [Dealing Assistant द्वारा भेजे गये प्रस्तावों (Proposals) पर आधारित] तथा जटिल थी।

(द) नवीन लिस्टिंग प्रणाली के अंतर्गत अग्रिम रूप से पूरे सप्ताह की दैनिक सूचियाँ तैयार कर कार्य सप्ताह के पूर्व के सप्ताह में अंतिम कार्यदिवस (सामान्यतः शुक्रवार) को सांयकाल 7:00 बजे तक अधिसूचित कर दी जाती हैं। पूरक सूची (Supplementary List) भी नियत दिनांक के एक दिन पूर्व शाम 7:00 बजे तक अधिसूचित की जाती है, जो उच्च न्यायालय की वेबसाइट पर सर्वत्र उपलब्ध रहती है।

7. सुनवाई हेतु प्रकरणों को नियत करने की नीतिगत अभैद्य प्राथमिकता निम्नानुसार है:–

(अ) सर्वप्रथम न्यायालय द्वारा नियत दिनांक वाले प्रकरणों को सूचीबद्ध किया जाता है। यह सुविदित है कि वर्तमान प्रणाली लागू होने के पूर्व ऐसे अनेक प्रकरण कार्यालय सहायक द्वारा प्रस्ताव सम्प्रेषण में चूक होने के कारण सूचीबद्ध नहीं हो पाते थे, जो अन्यथा न्यायालय की अवमानना जैसी थी।

(ब) उसके पश्चात् मध्यप्रदेश उच्च न्यायालय नियम, 2008 के अनुसार नियत होने वाले प्रकरण, जिनमें व्यक्तिगत स्वतंत्रता से संबंधित जमानत एवं सजा के निलंबन संबंधी प्रकरण तथा एकपक्षीय अंतरिम आदेश हटाये जाने संबंधी प्रकरण शामिल हैं, निश्चित तौर पर अधिसूचित किये जाते हैं।

(स) इसके साथ ही रजिस्ट्रार (न्यायिक) द्वारा प्राधिकृत कम्प्यूटर जनित दिनांक के प्रकरणों को भी सूचीबद्ध किया जाता है।

(द) उसके पश्चात् प्रत्येक पीठ के लिए नियत की गयी संख्या के आधार पर, यदि निर्धारित सीमा के अंदर स्थान उपलब्ध हो तो, कम्प्यूटर जनित दिनांकित प्रकरणों को उक्त सीमा में रहते हुए नियत किया जाता है।

सूचना प्रसार द्वारा सशक्तिकरण

(Empowerment by dissemination of information)

कोई भी पक्षकार या अधिवक्ता या अन्य व्यक्ति **नवीन लिस्टिंग प्रणाली और उसके अन्तर्गत अधिसूचित होने या नहीं होने वाले प्रकरणों की जानकारी** म.प्र. उच्च न्यायालय की अधिकृत **वेबसाइट** www.mphc.in पर प्राप्त कर सकता है।

सुनवाई हेतु नियत अथवा निराकृत किये गये प्रत्येक प्रकरण की प्रस्तुति दिनांक से अंतिम सुनवाई दिनांक तक की **केस स्टेटस रिपोर्ट** उक्त वेबसाइट पर किसी भी स्थान से **इन्टरनेट** के द्वारा अथवा **उच्च न्यायालय परिसर में लगे कियोस्क** के जरिए देखी जा सकती है। ऐसी सुविधा से पक्षकार स्वयं ही अपने प्रकरण के बारे में समस्त अद्यतन (updated) जानकारी प्राप्त कर सकता है।

ऑनलाईन डिस्प्ले बोर्ड एंड्राईड एप्लीकेशन, जिसे म.प्र. उच्च न्यायालय की वेबसाइट www.mphc.in से डाउनलोड किया जा सकता है, के द्वारा एंड्राईड मोबाईल पर भी उच्च न्यायालय की विभिन्न पीठों में सुने जा रहे प्रकरणों की वास्तविक समय (Real time) आधारित स्थिति की जानकारी किसी भी स्थान से प्राप्त की जा सकती है।

नये प्रस्तुत प्रकरणों में प्रक्रिया संबंधित त्रुटि (Default) पाये जाने पर अधिवक्ताओं / पक्षकारों को उनके रजिस्टर्ड मोबाइल नम्बर/ई–मेल पर स्वजनित एस.एम.एस./ई–मेल भेजे जाने की सुविधा दी जा रही है जिससे सुनवाई में अनावश्यक विलम्ब न हो। इसी प्रकार की सुविधाऐं प्रकरणों की लिस्टिंग के सम्बन्ध में भी दी जा रही हैं।

मुकदमों के लिस्टिंग की नवीन प्रणाली सभी पक्षकारों एवं अधिवक्ताओं के लिए एक अत्यधिक उपयोगी एवं पारदर्शी व्यवस्था उपलब्ध कराती है।

म.प्र. उच्च न्यायालय उपलब्ध न्यायाधीशों एवं अन्य संसाधनों का अधिकतम उपयोग कर पीड़ित पक्षकारों को शीघ्र न्याय प्रदान करने के लिये कृत–संकल्पित है, जिसे सभी सम्बन्धित पक्षों के परस्पर समन्वयन, विशेषकर पक्षकारों एवं अधिवक्ताओं की सक्रिय भागीदारी एवं सहयोग से संपादित किया जाना है।

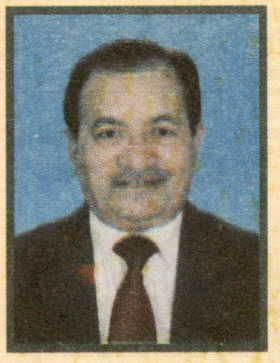
यह भी सुनिश्चित है कि भविष्य में अतिरिक्त न्यायाधीशों की उपलब्धता होने पर खण्डपीठों की संख्या में वृद्धि होगी जिससे वर्तमान प्रणाली के अंतर्गत और अधिक प्रकरण सुनवाई हेतु अधिसूचित हो सकेंगे।

रजिस्ट्रार जनरल

म.प्र. उच्च न्यायालय, जबलपुर

मुख्य न्यायाधिपति

FAREWELL



HON'BLE MR. JUSTICE G. S. SOLANKI

Born on September 06, 1953 at Anjad District Badwani. Passed Higher Secondary School Examination from Govt. Higher Secondary School, Anjad, B.Sc. degree in 1974 from Gujarati Science College, Indore, M.A. (Economics) and LL.B. degrees in 1978 from Indore Christian College.

Practiced as an Advocate for one year. Joined Judicial Service as Civil Judge class-II on September 14, 1979. Worked as Civil Judge at Harda, Sohagpur, Bhanpura, Dewas and Indore. Also worked as Chief Judicial Magistrate, Indore. Was Promoted as Additional District Judge in the year 1991. Worked as Additional Registrar, Bhopal Gas Victims, Bhopal from June 1996 to May 1999 and Special Judge (Prevention of Atrocities on SC/ST Act) at Sagar from 07.06.1999 to 07.02.2002 and also worked as officiating District Judge, Sagar. Was posted as Additional Welfare Commissioner Gas Victims Bhopal for a short term and then appointed as Additional Secretary and Secretary, Law & Legislative Affairs Department, Govt. of M.P. Bhopal and worked there from March 2002 to May 2005.

Worked as District & Sessions Judge, Raisen and also headed one Member Enquiry Commission, appointed under Commissions of Enquiry Act, 1952 for enquiring into the matter of death of R.K. Jain, Deputy Commissioner, Commercial Taxes Department for his custodial death during police custody of Special Police Establishment (Lok Ayukta Bhopal). Was District Judge (Inspection & Vigilance) Jabalpur-Zone from 15.05.2007 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh on May 03, 2010. Appointed as permanent Judge on September 24, 2011 and demitted office on September 5, 2015.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE G.S. SOLANKI, GIVEN ON 04-09-2015 IN THE CONFERENCE HALL OF THE HIGH COURT OF M.P. AT JABALPUR.

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

We have assembled here today to bid a warm farewell to Justice Gulab Singh Solanki, who will be demitting office tomorrow on attaining the age of superannuation. He has dedicated the best phase of his life by rendering invaluable services as a Judge, for almost about 36 years.

Born on 6th September, 1953 at Anjad, District Badwani, Justice Solanki completed his Higher Secondery School Examination from Anjad Government Secondary School. After graduating in Science 1974 from Gujrati Science College, Indore , Justice Solanki was conferred with Masters Degree in Economics and thereafter Degree of Law in 1978 from Indore Christian College. He then got himself enrolled as an Advocate with Madhya Pradesh State Bar Council in 1978. He could not wait longer to join the State Judicial Services of Madhya Pradesh, where his natural instincts belonged. On 14 th September, 1979, he joined as a Judge , Civil Judge, Class II.

After his promotion in the cadre of District & Sessions Judge on 14 th October, 1991, he held various important assignments till June 2010.During this period, he also rendered his services as Additional Registrar, Bhopal Gas Victim Commission, from June 1996 to May, 1999; and thereafter as additional Welfare Commissioner, Gas Victims at Bhopal.

From March 2002 to May, 2005 Justice Solanki served in the Department of Law & Legislative Affairs, Government of Madhya Pradesh as Additional Law Secretary and thereafter as Law Secretary. Prior to his elevation, Justice Solanki was working as District Judge (Inspection) Jabalpur.

Consider his experience , merit and legal acumen, Justice Solanki was elevated to the Bench on 3rd May, 2010 as Additional Judge of our High Court and thereafter confirmed as Permanent Judge on 24 th September, 2011.

Lord Denning, in his book titled " The Influence of Religion", has said and I quote:-

> **" Every Judge on his appointment discards all politics and all prejudices. You need have no fear.The Judges of England**

have always in the past- and always will- be vigilant in guarding our freedoms. Someone must be trusted. Let it be the judges".

In his another book, titled as "What Next in the Law", he says about Judges and I quote:-

" They will not be diverted from their duty by any extraneous influences; not by hope of reward nor by the fear of penalties; not by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people their confidence in the judges".

Justice Solanki epitomizes all the qualities of a good Judge; and expected of a noble human being. During his long tenure as a Judge, He observed highest standards of judicial conduct and probity in public life. He was known for his negotiating skills, innate ability to deal with complex legal issues as also to defuse the provocations in the Court hall during the arguments with firmness. He enjoys endearing respect of the Bar and the Bench alike.

Justice Solanki, besides discharging his judicial responsibility as a Judge of the High Court was also an asset on the administrative side - on account of his vast experience. On the judicial side, he has contributed to the development of law which is manifest from his several reported judgments adorning the Law Journals.

Justice Solanki was member of various Administrative Committees of the High Court. Suggestions given by him that capacity were taken earnestly, being of great help and in the larger interests of the institution. For, his suggestions were always altruistic and unassuming.

While working with Justice Solanki, I noticed in him a spark of a student of law. No wonder, he could handle any legal issue with ease - because of sheer industry and willingness to handle any type of case; and including by far untraveled jurisdictions by him. That became evident when I entrusted him the responsibility of election law Jurisdiction, which he had confided in me that he was not so familiar with that subject. But, He took that assignment as a challenge and gave his best.

Justice Solanki not only carries with him the tag of a hallowed Judge, but also a man of learning and experience in the law, of exemplary morals, immense patience and calmness.

His absence will be felt on the Bench and also in the different Administrative Committees of which he has been a member. Contribution made by Justice Solanki to the legal system as a whole will be cherished by one and all for posterity.

Indubitably, Justice Solanki is both mentally as well as physically fit to continue with the innings of a Judge for some more time. But, the framers of our Constitution have restated the philosophy of **Aristotle**, predicated for Judges and I quote;

> **"That judges of important causes should hold office for life is not a good thing, for the mind grows old as well as the body".**

Hence, we have no option but to say good bye and extend best wishes to Justice Solanki and Mrs. Rajeshwari Solanki during their late autumn walk.

I, on behalf of my brother & sister Judges and the Registry of the High Court, wish Justice Gulab Singh Solanki and Mrs. Rajeshwari Solanki a very happy, healthy, prosperous and glorious future and success in all creative endeavours.

"JAI HIND"

Shri Ravish Chandra Agarwal, Advocate General, M.P., bids farewell :-

It is always painful to say good -bye. Especially to someone who has been an integral part of our life. Someone who has touched our life in more ways than one. Someone who is a thorough gentlemen, a thorough professional in his work. A man of great ethics and unwavering temperament. Someone like Lord Justice G.S.Solanki.

It seems like yesterday when his lordship doned the chair as a judge of this great Institution. As the say goes that "time flies", it indeed has flied with supreme velocity. In Justice Solanki the bar saw a very jovial, kind hearted and magnanimous judge who was always committed to the cause of justice and equity.

We appreciate and admire the cordial court room environment he created especially for young budding lawyers. He made it a point to ease the nerves of young lawyers and soon the butterflies in the stomach of young professional use to vanish.

His Lordship has been integral part of every happening in this great institution for the past over 5 years and the void in his absence would be hard to fill. His admirable dedication towards his work and his work ethic would surely be remembered, but missed.

On behalf of the Government of M.P., Law officers of the State and on my own behalf, I wish my Lord the best of luck for his future endeavors. May the almighty shower his choicest of blessings on him and his family. We look forward to his association in varying capacities and the bar would continue to seek his guidance and support in future.

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

We have congregated here conjointly to bid Your Lordship Shri Justice Gulab Singh Solanki, a hearty farewell at the eve of your demitting the high-office of a Judge of this High Court after completing a vivid votive voyage in the ocean of Justice Delivery System immaculately with great eminence. Your Lordship have embossed the language of Justice on the pages of golden history of this High Court with colours of intellect, integrity, devotion and interminable sense of humanity. Destiny had its mission for you and you had the vision to carry them out. Your Lordship have brought the philosophy of Justice down from heaven and translated it into your Judgments. The Lord God made you for this great contribution to the Administration of Justice. Your Lordship have shown that law can be an effective instrument of Justice, to undo the plight of common men.

It is almost a definition of a gentleman to say that he is one who never inflicts pain to others. Your Lordship's life has been a glorious cycle of songs and a medley of extemporanea and in the words of Shakespeare 'a walking shadow of your persona.'

Your Lordship's name encompasses two different qualities in one in your persona. You are as soft and gentle as 'Gulab', the rose and at the same time as stiff as 'Singh', the Lion. Lord Krishna possessed both these qualities like you at a time - 'वज्रादपि कठोराणि, मृदुलानि कुसुमादपि ' [as stiff as a 'Vajra', as soft as a flower]. We at the Bar, have witnessed your these qualities as a Judge of this Court, while sitting in a Bench. In his play ' Romeo and Juliet' William Shakespeare says:-

> " what's in a name? that which we call a rose by any other name,
> would smell as sweet."

But in 'Othello', Shakespeare says :-

" The name, it is the immediate Jewel of his soul."

Your Lordship are a 'Rose' with a soul, nearer to God's heart in Eden Garden of Life. A soul opening out to great natural sensitivity and sensibility. The name signifies to point a moral, to adorn a tale. Your life has been like a poem written on the petals of a rose.

Your Lordship was born on 6th September 1953 at Anjad, District - Badwani. Your Lordship passed your Higher Secondary School Examination from Govt. Higher Secondary School, Anjad; and thereafter, obtained B.Sc. degree in year 1974 from Gujrati Science College, Indore. Your Lordship obtained your M.A. in Economics and LL.B. degrees in year 1978 from Indore Christian College. You got married with Smt. Rajeshwari Solanki. You practised as an Advocate for one year and thereafter, joined Judicial Services as Civil Judge, Class-II on 14th September 1979. So the month of September brought for you rains of fortunate events from heaven.

Your Lordship worked as Civil Judge at Harda, Sohagpur, Bhanpura, Dewas and Indore; and as C.J.M. at Indore. Thereafter, you were promoted as Additional District Judge in year 1991. You worked as Additional Registrar, Bhopal Gas Victims at Bhopal from June 1996 to May 1999. You also worked as Special Judge (Prevention of Atrocities on SC/ST Act) from 7th June 1999 to 7th February, 2002 at Sagar; and also worked as Officiating District Judge, Sagar.

Your Lordship were posted as Additional Welfare Commissioner Gas Victims, Bhopal for a short term and then were appointed as Additional Secretary Law and Legislative Affairs department and then as Secretary from March 2002 to May 2005. Your Lordship also worked as District & Sessions Judge, Raisen. You also headed one Member Enquiry Commission under Commissions of Enquiry Act, 1952 for inquiring into the custodial death of R.K. Jain, Dy. Commissioner, Commercial Tax Department during police-custody of Special Police Establishment (Lokayukta) Bhopal. Your Lordship were also posted as District Judge (Inspection and Vigilance) Jabalpur Zone from 15th May 2007 till your elevation. Thereafter, Your Lordship adorned the high pedestal of a Judge of this High Court, and during your forensic tenure in High Court disposed of about 18,927 cases consisting of Civil and Criminal matters during 5 years and 4 months; and also disposed of 15 Election Petitions, out of which 9 Election Petitions were disposed of within one year.

Your Lordship's inclination to respond to social problems entangled in litigations with equanimity and to think in advance of times, reflected in several of your Judgments. You have examined the issues in the colour of past values of the society in comparison with altra-modern trends in walk of life, with a mode of exceptional reasoning. Your Lordship have always been a Humanist in the widest possible sense of the term, delivering Judgments with imagination and purpose with a matured and scholastic mind. Your Lordship were alive to the problems confronted by the weaker sections of the society and people belonging to down-trodden class with optimistic and optimized approach. Your concept always was that Rule of Law must run closely with the Rule of Life, as stagnant water loses its purity. Law must run dynamically. While dealing with Criminal Jurisprudence Your Lordship always insisted the need for updating the Criminal law and Criminal Procedure garbled during long passage of time gate crashing the unexplored areas and to evolve golden past concepts in the course of practice of law.

The happy blending of Judge and the reformer in your personality, has made you versatile and capable of being the person in modulating the system of law to achieve the effect of renovating the criminal jurisprudence with human values based on 'Karuna'. Your Lordship's theoretical and practical thoughts with a missionary zeal have exposed the mordacious morbidity of 'BAIL' system, which results monumentally unnecessary rush of under-trial prisoners in the prisons of the State, those who ought to be out at liberty by imposing stringent conditions, as prevalent in most of civilized countries of world. There is one universal law. That law is Justice. Justice forms the corner-stone in each civilized society. Coronation of Justice on and over the deteriorated legal technalities of outdated laws is the need of present time.

I must say at this juncture that there was a long courtship of the Members of Bar with Your Lordship which has abounded both love and mutual constancy. It is the high time of farewell when words fade out and feelings come alive. Thomos Jefferson says :-

" I like the dreams of the future better than the history of the past."

We wish for good and charming dreams of future to Your Lordship with good health and prosperity. Let your life lightly dance on the edges of time like dew on the petals of a rose, on the tip of a leaf. I on behalf of all the Members of M.P. High Court Bar Association and on my own behalf wish a good, healthy and very prosperous life to Your Lordship and all Members of your family. Your Lordship may rise on stepping stones of joyful and delightful future, with wings of desire.

" जीवेद् शरदः शतम् "

आकांक्षा के पुष्प खिलें नये उपवन में।
सुरभित हो जीवन उमंग भर तन मन में ।।
सदा विराजो निज गौरव के आसन में।
खुशियां बरसें नित्य आपके आंगन में।।

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

We have assembled here to-day to bid farewell to Hon'ble Justice Shri G.S. Solanki, who will be demitting his office on 5th September, 20 15.

My Lord Justice Solanki between 14th -September, 1979 to 2nd May, 2010 occupied different high judicial offices and carried with him about 30 years of judicial experience when my Lord was elevated as Additional Judge of the High Court of Madhya Pradesh and later confirmed as permanent Judge on 24th September, 2011. The month of September occupies an unique place in the life of my Lord Justice Solanki. He was born on 6th September, 1953, joined M.P. Judicial Service as Civil Judge Class II on 14th September, 1979, became permanent Judge of this Court on 24th September, 2011 and is now demitting his office on 5th September, 2015.

My Lord served this institution for five years and four months and won the hearts of everyone who came in contact with him. My Lord is known for extremely good behavior and good temperament.

My Lord was very considerate. He rendered qualitative judgments and had acquired great expertise in election law which was a new field for him. The orders and judgment that he passed in election petitions, speak volumes about his ability and depth in election law. I had the privilege of appearing before him in quite a few election petitions. The patience which he showed in hearing and handling the election matters was exemplary. He has left an imprint on our hearts. His smiling face will always be remembered.

We have known that my Lord is settling at Indore. He will be associated with his son who is serving in a law firm. Thus his pursuit of legal knowledge will continue even after his retirement. The parting is somewhat painful but a day comes when one has to demit his office, so also my Lord Solanki. We will be

missing an illustrious Judge who commanded respect from every one.

I wish a happy retired life with his family members. I on behalf of High Court Advocates Bar Association and on my own behalf again wish my Lord a very happy retired life.

Shri Rajesh Kumar Pandey, Chairman, M.P. State Bar Council, bids farewell :-

आज हम अपने न्यायाधिपति माननीय श्री जस्टिस जी.एस.सोलंकी जी के विदाई के उपलक्ष्य में आयोजित समारोह में उपस्थित हुए हैं।

आपका जन्म 06 सितंबर 1953 को तहसील अंजड़ जिला बड़वानी म.प्र. में हुआ। आप जन्म से ही कुशाग्र बुद्धि के थे। आपने अपनी स्कूल की शिक्षा शासकीय हायर सेकेंडरी स्कूल अंजड़ से प्राप्त की। आपने अपनी स्नातक की परीक्षा वर्ष 1974 में गुजराती विज्ञान महाविद्यालय इंदौर से एवं अर्थशास्त्र से स्नातकोत्तर व विधि की उपाधि इंदौर क्रिश्चियन कालेज से वर्ष 1978 में पूर्ण की। तत्पश्चात् आपने एक वर्ष तक विधि व्यवसाय किया। आपके विधि के ज्ञान और अनुभव के आधार पर आपकी नियुक्ति न्यायिक सेवा में सिविल जज वर्ग दो के रूप में वर्ष 1979 में हुई। आपने न्यायिक सेवाओं में उच्च पदों पर हरदा, सोहागपुर, भानपुरा, देवास एवं इंदौर में कार्य किया है। आपके विधि के गहन, ज्ञान एवं अनुभव को देखते हुए उच्च न्यायालय ने आपको पदोन्नत करते हुए वर्ष 1991 में अतिरिक्त जिला एवं सत्र न्यायाधीश के पद पर नियुक्त किया। आपने वर्ष 1996 से 1999 तक अतिरिक्त रजिस्ट्रार (गैस पीड़ित) भोपाल के पद पर भी कार्य किया है। आपने विशेष न्यायाधीश (अनुसूचितजाति/जनजाति अत्याचार निवारण अधिनियम) के तहत 1999 से 2002 तक सागर में कार्य किया है। आपने कार्यकारी जिला एवं सत्र न्यायाधीश सागर के पद पर भी कार्य किया। आपके सागर में रहने के दौरान मुझे भी आपके न्यायालय में पैरवी करने का सौभाग्य प्राप्त हुआ। आप सभी को एक ही भाव से देखते थे। कभी आपके द्वारा जूनियर, सीनियर का भेद नहीं किया गया। आपने समय-समय पर विभिन्न पदों पर कार्य करते हुए अपनी कार्य कुशलता का परिचय दिया। आपने भोपाल गैस पीड़ितों हेतु अतिरिक्त वेलफेयर कमिश्नर के रूप में भी अल्प काल के लिये कार्य किया है। उसके बाद आपने अतिरिक्त सचिव एवं सचिव, विधि एवं विधायी विभाग, भोपाल में वर्ष 2002 से 2005 तक कार्य किया। आपने जिला एवं सत्र न्यायाधीश, रायसेन के पद को भी सुशोभित किया।

न्यायिक सेवाओं में आपके लंबे न्यायिक अनुभव, कार्य कुशलता एवं विधि के गहरे ज्ञान को देखते हुए आपको श्री आर.के.जैन, उप-कमिश्नर, कमर्शियल टैक्स विभाग की विशेष पुलिस स्थापना (लोकायुक्त पुलिस) की हिरासत में हुई असमय मृत्यु की जांच हेतु जांच अधिनियम 1952 के अंतर्गत गठित एक सदस्यीय जांच आयोग के रूप में अपना योगदान दिया।

आप वर्ष 2007 में म.प्र. उच्च न्यायालय में न्यायाधिपति के पद पर पद स्थापित होने तक आपने जिला न्यायाधीश (इन्सपेकशन एवं विजिलेंस) के पद पर भी कार्य किया है।

आपने म.प्र. उच्च न्यायालय में अपने न्यायाधिपति के 5 वर्ष 4 माह के कार्यकाल में 18,927

सिविल एवं क्रिमिनल प्रकरणों का निराकरण किया है। अपने कार्यकाल के दरम्यिान आपने 15 चुनाव याचिकाओं का निराकरण किया है जिसमें से 9 याचिकाओं का निराकरण मात्र एक वर्ष में पूर्ण किया है। आपके अंदर न्यायाधिपति के अलावा एक शिक्षक के भी गुण हैं। क्योंकि आपमें किसी भी व्यक्ति को समझाने की कला है। आपसे मैं इस बात का भी निवेदन करता हूँ कि आप आने वाले दिनों में अपना कुछ समय निकालकर नये अधिवक्ताओं को सिविल जज बनाने के लिये उन्हें मार्गदर्शन प्रदान करें, ताकि नये अधिवक्ताओं को आपका सानिध्य प्राप्त हो सके।

आपके विदाई के अवसर पर मैं आपके उत्तम स्वास्थ्य की कामना करते हुए मध्यप्रदेश राज्य अधिवक्ता परिषद की ओर से, प्रदेश के अधिवक्ताओं की ओर से एवं स्वयं अपनी ओर से आपके उज्ज्वल भविष्य की कामना करता हूँ।

जय हिन्द,

Shri Jinendra Kumar Jain, Asstt. Solicitor General, bids farewell :-

आज हम सभी न्यायमूर्ति श्री गुलाब सिंह सोलंकी जी को विदाई समारोह हेतु इस सभागार में उपस्थित हुए हैं। 6 सितंबर 1953 की बेला जिसमें आपका जन्म हुआ एवं 1979 में शिक्षा पूरी करने के पश्चात् विधि जगत में आपका प्रवेश हुआ। उसके पश्चात् विगत 36 वर्षो तक न्यायाधीश के पद पर आसीन होकर आपने विभिन्न दायित्वों का सफलता पूर्वक निर्वहन किया। भौतिक जगत में न्यायालय एवं न्यायाधीश को बड़े ही आशा एवं आदर की दृष्टि के साथ देखा जाता हैं। न्यायाधीश के पद पर आसीन होकर नाना प्रकार के मामलों में आपने विधान सम्मत फैसले किये हैं। आज हम जब किसी न्यायाधीश के जीवन पर विचार करते हैं तब मन में विचार आता है कि न्यायाधीश की भूमिका क्या कागज पर लिखे नियमों और उपनियमों में सिमट कर निर्णय देने की होती है या सत्य एवं न्याय की रक्षा करते हुए सभी पहलुओं पर विचार कर न्याय प्रदान करने की होती है। संविधान निर्माताओं ने संविधान निर्मित करते समय इस पर अवश्य विचार किया होगा।

आज हम उस व्यक्तित्व को सम्मानित कर रहे हैं जिनका विगत जीवन सादगीपूर्ण किंतु आत्म विश्वास से भरपूर, पद की चकाचौंध से रहित किंतु आत्मसम्मान से लवरेज, न्यायाधीश का पद परंतु कनिष्ठ एवं वरिष्ठ सभी अधिवक्ताओं से समान व्यवहार, जिसका परिणाम कि जूनियर अधिवक्ता भी साहस के साथ अपना पक्ष रखने में आपके समक्ष तत्पर रहते थे।

विगत वर्षो में आपने दीवानी, फौजदारी, इलेक्शन पिटीशन एवं अन्य मामलों में निर्णय पारित किये हैं उन निर्णयों में अधिवक्तागण संतुष्ट एवं प्रसन्न चित्त दिखाई देता था।

न्यायमूर्ति श्री सोलंकी जी से सभी के संबंध स्नेहिल आत्मीय एवं वात्सल्य पूर्ण रहे हैं, न्यायाधीश के अलावा उन्हें शिक्षक की भूमिका में भी देखा है, तर्क सुनते समय तथ्यों एवं विधान की बारीकियों को समझाते हुए पक्षकार को संतुष्ट करना यह आपकी विशेषता रही है। जबलपुर के अधिवक्तागण आपको हमेशा याद रखेंगे, भविष्य में आप न्यायाधीश की इस गरिमामयी कुर्सी पर नहीं दिखेंगे लेकिन हमें आशा है कि आप जबलपुर के इस बार को नहीं भूलेंगे।

जिस सम्मान, गरिमामय एवं स्वच्छ साफ छवि के साथ आपने इस पद एवं दायित्व को गौरवान्वित किया उसका मैं सम्मान करता हूं।

इन्हीं शब्दों के साथ मैं अपनी ओर से भारत सरकार की ओर से समस्त विधि अधिकारियों की ओर से आपकी एवं आपके सभी स्नेहिल परिवार जन की उज्जवल भविष्य की कामना करता हूँ।

जय भारत।

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

Today we all have assembled here to bid farewell to Hon'ble Shri Justice Gulab Singh Solani, who is demitting the office of the Judge of the High Court of Madhya Pradesh.

On my Lords elevation to this Hon'ble Court, we all witnessed one of the finest Judges being elevated to this Court. Your Lordship always kept in mind that the duties of a Judge are sacrosanct and always did justice with your sacred and divine duties.

To My Lord the law was no lifeless conglomeration of sections and decisions. He illumined justice and humanized the law. My Lord delivered justice with the sacred image of Roman Goddess in mind whose throne that tempest could not shake, a pulse that passion could not stir, eyes that were blind to any feeling of favour or ill will and sword that fell on offenders with equal and impartial force.

My Lord always had faith in God and been a religious man. The man as great as the Judge. Innocent smile of My Lord kept the atmosphere in the Court most congenial . Respectful to seniors and compassionate to juniors, my Lord has conquered each and every member of the Bar.

Your Lordship would be missed by the members of the Bar as Your Lordship has always been extremely courteous to everyone.

I, on behalf of the Senior Advocates Council and my own behalf extend good wishes to Your Lordship and hope that you will continue to engage yourself in other activities, which will be beneficial to the Society. We are sure that Your Lordship's legal knowledge and experience gained during the last four decades shall be utilized for the betterment of the poor and the needy. Along with My Lord I also extend my heartfelt good wishes to all family members for a healthy, peaceful

and happy long life.

Farewell speech delivered by Hon'ble Mr. Justice G.S. Solanki :-

Parting is always painful. Out of love and affection, all of you have spoken very high about me. I know that I do not possess any of these qualities, however, it would be my constant endeavour if I can adopt even few of these qualities. It appears that as usual you have judged me charitably.

I am very much grateful for kind sentiments and feelings expressed by all of you. Today is the day when memory goes into the flashback, when I recollect, I remember how I entered into the Judicial Service almost about 36 years ago, completed this journey step by step in the State Judiciary and elevated as a Judge of this prestigious Institution.

I express my gratitude to Hon'ble Shri Justice A.K. Patnaik, the then Chief Justice of this High Court and former Judge of Supreme Court of India and other members of collegium Hon'ble Shri Justice Dipak Verma (former Judge of Supreme Court of India) and Hon'ble Justice Dipak Misra, Judge of Supreme Court of India for recommending my name to be elevated as a Judge of this High Court.

I also express my gratitude to Hon'ble the Chief Justice Shri A.M.Khanwilkar, who has reposed confidence on me to work on different rosters, specially in conducting the trial of election petitions. I am satisfied that I have performed my duties with utmost sincerity and dedication. His Lordship has guided me like an elder brother every time whenever I needed his advice.

I am thankful to my senior brother judges. Whenever I had difficulties they solved my legal riddles. I got affection and good will of all my brother judges and the sister judges.

I feel it to be my great privilege that I could get an opportunity to be posted at Jabalpur. Jabalpur Bar has historic past and bright future ahead and has highest of traditions. When I came here, I was stranger to all and when I am leaving today, I visualize that everybody is mine and I belong to all of you. I am not detached but attached to everybody here due to your love and affection. I feel distinctly lucky to have worked at 'Sanskardhani' abode of purifier 'Maa Narmada'. I am thankful for the same.

I have learnt a lot from the Bar and tried to correct myself if found on wrong step. It is well said that the Bar is the Judge of Judges. In the making of a Judge Bar plays vital role which cannot be undermined. Credit or discredit goes to you whatever shape you have given to me. I have absolutely nothing in my heart except love and affection to all.

I request seniors to distribute wealth of knowledge amassed amongst juniors. I am sure, they will extend help and guide as elder man does to younger generation.

I have a word of advice for young lawyers that kindly follow path of senior lawyers, top is always vacant, it is for you to fix and measure your own goal, to which you have to reach. Work hard with honesty, integrity and utmost respect to the Court. You are going to become senior one day, keep patience in formative years, maintain dignity of highest noble profession. Do not make justice a commodity, respect it. Always remain a learner, this is ocean of law, you cannot swim it in a day, go on and on and you will find new treasure embedded in deep of ocean. You can learn from the following quotation " मिटा दे अपनी हस्ती को गर तू मर्तबा चाहे की दाना मिटटी में मिलकर गुले गुलजार होता है" Always prepare the case thoroughly and make it habit to be prepared with case law even if it need not be cited.

I am thankful to my parents, who taught me how to live life in society. Though they are not present in this world but I am sure today they must be showering their blessing upon me. I hardly gave any time to my wife Smt. Rajeshwari Solanki, my daughter Arpita, son-in-law Anurag, daughter Amrita, son-in-law Bhaskar, son Ajay (Law Associate) and daughter-in-law Shweta (Law Associate) and my grandson Shubh, but without their co-operation it would not have been possible for me to discharge the duties as required. I thank all of them. I am also thankful to my elder brother Shri Vijay Singh Solanki and younger brother Shri Karan Singh Solanki and sister-in-law Shivkanya and brother-in-law Shri Jeevan Singh Solanki and other relatives and friends right from my school time, who have come all the way to grace this occasion.

I am thankful to Shri Ved Prakash Sharma, Registrar General for being helping hand to me and other Officers of the Registry and District Judiciary who were always helpful to me including Shri V.B. Singh, Registrar cum PPS. I am also thankful to Dr. A.C.Sonkar, who was always there to take care for me and my family members whenever we required his services.

I am also thankful to my personal staff Private Secretaries Shri Ravi Shankar Shrivastava, Smt. Geetha Nair, Shri Pradyumna Barve, Shri Naveen Nagdeve, stenographer Smt. Julie Singh, Reader Shri Rajiv Bhatt, Law Assistant Shri Sunil Kumar Choure, Jamadar Shri Shrinivas Kushwaha, Shri Ramesh Shukla, Driver Shri Dilip Kumar Gautam, PSOs Shri Umesh Prasad Rajak and Shri Bhopal Singh and others, all of them worked untiringly with me in odd hours for years together.

I am also thankful to the staff posted at my Bungalow Shri Subhodh Singh Chouhan, Shri Holkar Singh Rajput, Shri Kailash Patel and Shri Dhurve, who have always helped me to make my life comfortable.

I am also thankful to Shri Ajay Pawar, Joint Registrar and his protocol team, who have always taken care to make my journeys comfortable whenever I went out of Jabalpur on LTC and specially Farid, Radheshyam and Railway Magistrate Shri Shrivastava, who have always made my journeys comfortable whevever I went out of Jabalpur.

God gives only what is the part of my destiny. I am grateful to the Almighty God (Radhasaomi Dayal) who gave me this opportunity to sit on this pious and highly dignified chair and to serve as the Judge.

Now the moment has come where my long journey as a Judge comes to an end as it has reached to its destination. At last before leaving I would like to express my feelings by quoting some word of philosophy of Saint Kabir :-

झीनी झीनी झीनी चदरिया

दास कबीर जतन से ओढी, ज्यों की त्यों धर दीनी चदरिया

Thanks to all of you.

FAREWELL

HON'BLE MR. JUSTICE T.K. KAUSHAL

Born on September 08, 1953 in Bombay. Son of Late Shri Uddhav Kumar Kaushal, Gwalior based poet and Freedom Fighter. Completed High School in the year 1968 from DAV Gwalior, B.Sc. in the year 1974 from Govt. Science College Gwalior and LLB in the year 1977 from Madhav College Gwalior. Won awards in debate and Moot Court competitions. Started practice in criminal side in High Court, in the year 1978. Joined Judicial Service on 20.08.1979. Worked as Civil Judge Class II at Bhind, Morena, Sardarpur and Sanwer and was confirmed as Civil Judge in the year 1983. Was posted as Civil Judge Class-I at Ujjain in the year 1987 and as ACJM at Indore in the year 1990. Worked as ADJ at Dhar, Mandleshwar and Khargone from the year 1992 to 1999. Confirmed as District Judge in Higher Judicial Services on 04-10-1997. Granted Selection Grade Scale on 08-05-1999. Worked as President, Distt. Consumer Forum, Guna, in the year 1999, and as Addl. Welfare Commissioner, Bhopal Gas victims, Bhopal from the year 2000 to 2005. Was posted as Distt. & Sessions Judge Khandwa in the year 2005. Was granted Super Time Scale on 26-02-2006.

Worked in the Madhya Pradesh High Court Registry at main seat Jabalpur, from the year 2007 in various capacities, as O.S.D., Principal Registrar (Inspection & Vigilance) and was working as Registrar General of the High Court of M.P. before elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh on 03.01.2011. Appointed as permanent Judge on January 2, 2013 and demitted office on September 7, 2015.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE T.K. KAUSHAL, GIVEN ON 07-09-2015, AT THE HIGH COURT OF M.P., INDORE, BENCH INDORE.

Hon'ble Mr. Justice P.K. Jaiswal, the Administrative Judge, High Court of M.P., Bench Indore, bids farewell to the demitting Judge:-

We have assembled here to bid a warm and affectionate farewell to Hon'ble Shri Justice Tarun Kumar Kaushal, who will be demitting Office today on attaining the age of superannuation, after successfully completing the tenure of more than four years' on the Bench.

Shri Justice T.K. Kaushal was born on 8th September, 1953 at Bombay. His father Late Shri Uddhav Kumar Kaushal was Poet and freedom fighter. After completing his graduation and LL.B. Degree in 1977, he started practice in the High Court, Bench Gwalior on criminal side. In 1979, he joined judicial service as Civil Judge, Class II and on account of his hard worki ng, he got promotions on the post of Civil Judge Class-I, Ad ditional District & Sessions Judge in 1992 and worked at Dhar, Mandleshwar and Khargone; and ultimately District Judge in 2005. In year 2005-06, he worked as Principal Sessions Judge, Khandwa and thereafter, worked in the High Court Registry at Jabalpur in various capacities as Registrar (Vigilance & Examination) and Registrar General.

Looking to his hard working and approach to the law in deciding the cases of different fields, he was appointed as an Additional Judge of the M.P. High Court on 3rd January, 2011 and thereafter appointed as Permanent Judge on 2nd January, 2013.

During his tenure as Judge of the Madhya Pradesh High Court, Shri Justice T.K. Kaushal has decided large number of civil and criminal cases. His number of judgments reported in law journals and recorded in judicial files demonstrate his deep knowledge of law.

Shri Justice Kaushal has respect for everyone, be it Judges or lawyers. Because of his legal acumen, Shri Justice Kaushal earned respect both from the Bench and the Bar. Shri Justice Kaushal shall always be remembered as a Judge whose actions were just rational and reasonable.

I, on my own behalf and on behalf of my esteemed brother and sister Judges and the Registry this High Court, wish Justice Kaushal and his family members a very happy, prosperous and glorious future.

"JAI HIND"

Shri Sunil Jain, Addl. Advocate General, bids farewell :-

Shri Tarun Kumar Kaushal was born on 08/09/1953 at Bombay. His father late Shri Uddhav Kumar Kaushal was a Poet and a Freedom Fighter. He completed schooling from D.A.V. Gwalior in 1968 and completed graduation in 1974 from Government Science College, Gwalior. He took LL.B Degree in 1977 from Madhav College, Gwalior and in 1978 he started practice in High Court on criminal side. In 1979 he was appointed as Civil Judge, Class II and in 1987 as Civil Judge, Class I. In 1992 he was appointed as Additional District Judge and District Judge in 2005. Prior to his appointment as Judge of the High Court, he was holding the office of Registrar General.

Parting is always painful, be it from school, college, family, friends or from the service. My Lord started his journey as a Judge from lower judiciary, then to higher judiciary, and lastly as a Judge of the Madhya Pradesh High Court, almost 36 years of illustrious career in judiciary.

My Lord has seen all shades of administration of justice in his career. His behavior towards lawyers was very cordial and he had ability to hear cases whether of civil nature or of Criminal one with utmost sincerity and patience. My Lord Justice Kaushal used to keep the atmosphere of the Court very light. No junior lawyer afraid in appearing before My Lord. While sitting in Division Bench, My Lord always marked his presence by actively participating during hearing, which always made the Division Bench meaningful.

Every inning comes to an end. It is important that how the one has played it, and here we all can say that Justice Kaushal has not only stayed firmly but played the innings as a successful batsman and gave pleasant moments to the others.

Now, Justice Kaushal would have time for his family, friends and near and dear ones and for pursuing the hobbies which he could not pursued earlier due to his dedication towards his service.

At this juncture, I on behalf of the State Government, all my colleagues and staff in the Advocate General Office, wish Justice Kaushal and Mrs. Kaushal a very happy journey after retirement with sound health, happiness and pleasant memories of time spent with us.

बात ऐसी हो कि जज्बात कम ना हो,

खयालात ऐसे हो कि कभी गम ना हो।

दिल के कोने में इतनी सी जगह रखना,

की खाली खाली सा लगे, जब हम ना हो।

Shri Pradeep Gupta, President, High Court Bar Association, Indore, bids farewell :-

मै अत्यंत खुशनसीब हूँ क्योंकि माननीय श्री तरूण कुमार कौशल जी ने जब सिविल जज क्लास–2 की परीक्षा दी थी और आज जब उनके सेवानिवृत्त होने का अवसर हैं दोनों ही अवसरों पर मैं मौजूद रहा हूँ। आपका जो मुस्कुराहट का स्वभाव था उसके सभी अधिवक्तागण कायल थे। आपके जीवन के बहुमूल्य 36 वर्ष न्यायिक सेवाओं के लिये समर्पित थे! आज आपके सेवानिवृत्त होने पर मैं ईश्वर से आपकी लंबी आयु और अच्छे स्वास्थ्य की प्रार्थना करता हूँ। मैं यही कहना चाहता हूँ– उजाले अपनी यादों के हमारे साथ रहने दो, न जाने किस गली में जिंदगी की शाम हो जाये।

Shri Sunil Gupta, Member, M.P. State Bar Council, bids farewell :-

जैसा कि श्रीमद् भागवतगीता में कहा है–

"योगः कर्मसु कौशलम्" । कर्म को योगयुक्त बुद्धि से करना ही कुशलता है, यही कुशलता से कर्म करने का मार्ग है। 'कर्मसु योगः' का अर्थ है योग युक्त कर्म 'व् कौशलम्' का तात्पर्य उस कर्म में महारत हासिल करने से हैं.

तो जिनके नाम में ही कौशल हो उनके बारे में यही कहा जा सकता है की वे अपने कर्म क्षेत्र के सर्वश्रेष्ठ सोपानों में महारत हासिल करके न्याय के उच्च आसन पर विराजित हुए हैं.

माननीय न्यायमूर्ति कौशल साहब की न्याय क्षेत्र की यात्रा कई न्याय मार्गों से होते हुए आज पूर्णता को प्राप्त हो रही है. न्यायमूर्ति ने मध्यप्रदेश के जबलपुर, इंदौर व् ग्वालियर की बेंचों में कई ऐतिहासिक निर्णय किये हैं. रजिस्ट्रार विजिलेंस व रजिस्ट्रार जनरल आफॅ हाई कोर्ट ऑफ मध्यप्रदेश के पदों को सुशोभित किया है।

माननीय न्यायमूर्ति का सरल स्वभाव व् शालीन व्यक्तित्व इंदौर बार के लोगों को सदैव याद रहेगा।

माननीय न्यायमूर्ति ने मध्यप्रदेश में अपने न्यायोचित निर्णयों से डेमोक्रेसी के एक आधार स्तंभ का निर्वहन बड़ी मजबूती से किया और जब वे अपने एक नए जीवन का आरंभ करने जा रहे हैं तो मैं इंदौर के समस्त अभिभाषकों व् स्टेट बार और बार कौंसिल ऑफ इंडिया की तरफ से उनके नवीन जीवन के लिये शुभकामनाऐं प्रेषित करता हूँ।

मैं आशा करता हूँ की सेवा निवृत्ति के उपरांत भी न्यायमूर्ति की सेवाएं हम अभिभाषकों को मार्गदर्शन के रूप में प्राप्त होती रहेंगी, और स्टेट बार की तरफ से किसी भी प्रकार की सहायता की आवश्यकता होने पर बार मदद करके कृतार्थ होगी।

माननीय न्यायमूर्ति ने अपने जीवन के बहुमूल्य 36 वर्ष न्यायिक सेवाओं के लिये समर्पित किए हैं।

पुनः प्रणाम करते हुए मैं न्यायमूर्ति की सेवाओं के प्रति अपना आभार प्रकट करते हुए उनके सेवानिवृत्त जीवन के लिये शुभकामनाये देता हूँ। और इन्हीं शब्दों के साथ अपनी वाणी को विराम देता हूँ।

Shri Deepak Rawal, Asstt. Solicitor General, bids farewell :-

महोदय,

आज हम माननीय न्यायमूर्ति श्री टी.के.कौशल सा. की 36 वर्षो की न्यायिक यात्रा, जो कि उन्होंने सतह से प्रारंभ की और शिखर तक उँचाई प्राप्त की है, के.सेवानिवृत्ति के अवसर पर एकत्रित हुए हैं। कहा जाता है कि हर व्यक्ति के जीवन में एक समय ऐसा आता है, जब उसकी एक ऑख में आंसू हों और उसकी दूसरी आंख में प्रसन्नता की चमक हो। ऐसा ही अवसर है आज जब माननीय न्यायमूर्ति श्री कौशल सा. को हम इस न्यायिक यात्रा से सेवानिवृत्त होने पर अपने से दूर होने का अनुभव कर रहे है, व उस परिवार के लिये निश्चित रूप से आज खुशी का समय होगा, जो इनकी न्यायिक सेवाओं में निरंतर समर्पित रहने से इनके अपनत्व से दूर रहे हैं, जिसे वे अब पूरा समय प्रदान करेंगे।

मैं उन सौभाग्यशाली अभिभाषकों में से जिनको श्री कौशल सा. के सामने उपस्थित होकर कार्य करने का अवसर प्राप्त हुआ है और मैंने उनसे काफी कुछ सीखा है, जो मेरे भविष्य के लिये प्रेरणादायी है।

आपके दिए संस्कारों का ही प्रतिफल है कि आपके पुत्र एवं पुत्रियां आज अच्छे मुकाम पर हैं। आपका पुत्र विदेश में इंजीनियरिंग के क्षेत्र में अपना योगदान दे रहा है और आपकी एक पुत्री भी विदेश में हैं तथा एक पुत्री नोएडा में रहकर शिक्षा के क्षेत्र में अपना अमूल्य योगदान दे रही है।

महोदय, कहा जाता है कि हर पुरूष की सफलता के पीछे एक महिला का हाथ होता है। मैं यहां आदरणीया श्रीमती कौशल मेडम का अभिनंदन करते हुए यह कहने में गर्व का अनुभव करता हूँ कि माननीय न्यायमूर्ति श्री कौशल सा. की धर्मपत्नी भी इंदौर के प्रतिष्ठित स्कूलों में अपनी सेवाएं देती रही हैं और उनके द्वारा भी न्यायमूर्ति महोदय को अपनी न्यायिक यात्रा में संपूर्ण सहयोग प्रदान किया है।

महोदय, मैं भारत शासन की ओर से एवं अपने स्वयं की ओर से निम्न पंक्तियों के साथ आपके उज्ज्वल भविष्य के लिये अपनी शुभकामनाएं प्रेषित करता हूँ–

आकाक्षां के पुष्प खिले, नए उपवन में।
सुरभित हो जीवन, उमंग भर तन मन में
सदा विराजे निज गौरव के आसन में
खुशियां बरसे नित्य आपके आंगन में।

पुनः एक बार आपकी सेवानिवृत्ति के उपरांत उज्ज्वल भविष्य की शुभकामनाएं देता हूँ। आप

स्वस्थ रहें, प्रसन्न रहें। जीवैत शरतः शतम्।

Farewell speech delivered by Hon'ble Mr. Justice Tarun Kumar Kaushal :-

After completing more than my 36 years of judicial career, I am here to say and hear good-bye. Fifty six months ago i.e. 03.01.2011, I took oath of judgeship. As a result of vision and decision of Shri A.M. Khanwilkar Saheb, our Chief Justice, I am working at Indore since last eleven months. I, from the bottom of my heart express my sincere thanks and regards to His Lordship for giving me this opportunity. My posting at Indore has proven to be a milestone and turning point of my life in many ways. Thank you very much Sir.

Presence of Hon'ble Shri Justice Sharan in audience has a great meaning for me because on 20.08.1979, I reported to him as Civil Judge, Class-II at Bhind. He always remained as a guardian to me.

Similarly, presence of Shri N.K. Garg, retired District Judge is also a matter of great value for me. In 1981 he joined as Civil Judge, Class-II in Murena and undergone his training period at my board. Thereafter he became instrumental to take me to our spiritual Guru also.

I tried my level best to help everyone in my Court in given legal frame work but not at the cost of favour and fear. I am feeling totally relieved and relaxed at last. This is something more than the job satisfaction that I had through out my life. But in Indore not only I found your liking, love, affection and protection but also found final destination of my life.

Without blessings and good wishes of my friends, relatives, family members and colleagues, this journey was not possible to this happy end. I shall remain thankful to Bar members and staff members for giving me the space to work according to my style. Now I shall always remain at your disposal for ever.

JAI HIND

FAREWELL

HON'BLE MR. JUSTICE B.D. RATHI

Born on September 16, 1953. After completing B.Sc. LL.B., was enrolled as an advocate in the year 1978 and started practice in Civil and Criminal side in High Court and lower Courts at Indore. Joined Judicial Services on 04.09.1979. Confirmed as Civil Judge in the year 1983. Appointed as C.J.M. in the year 1991. Posted as Offg. District Judge in Higher Judicial Services in the year 1993. Was deputed as Additional Director, Judicial Officers Training Institute, Jabalpur from August 1994 to April, 1996. Confirmed as District Judge in Higher Judicial Services in the year 1997. Was granted Selection Grade Scale w.e.f. 08.05.1999. Posted as special Judge for cases under SC/ST (P.A) Act and N.D.P.S. Act, in the year 2000. Was granted Super Time Scales w.e.f. 19.10.2006. Was posted as Principal Registrar, High Court of M.P. Bench Gwalior from 01.09.2009 till elevation.

Elevated as Additional Judge to the High Court of Madhya Pradesh on 01.04.2013. Appointed as permanent Judge on September 6, 2014 and demitted office on September 15, 2015.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE B.D. RATHI GIVEN ON 15-09-2015 AT THE HIGH COURT OF M.P. GWALIOR BENCH ,GWALIOR.

Hon'ble Mr. Justice U.C. Maheshwari, the Administrative, Judge, High Court of M.P., Bench-Gwalior, bids farewell to the demitting Judge:-

As you all know, we have assembled today to bid farewell to our esteemed Brother Judge Hon'ble Mr.Justice B.D.Rathi who is demitting office of the Judge of High Court upon attaining superannuation after completing about 36 years of illustrious service in District Judiciary & as Judge of High Court.

Justice Rathi was born on 16th September, 1953 as elder son of Shri S.L.Rathi at Indore (Dewas). He Completed graduation in science and obtained LL.B(Honours) degree from Indore University popularly known as Devi Ahilya Vishwavidyalaya in 1978.

He was enrolled as an Advocate in 1978 and became the member of High Court Bar Association, Indore. He joined the office of eminent lawyer of Indore late Shri K.B.Joshi and started practice in civil and criminal branches of Law in High Court and Lower Courts under the guidance of prominent lawyers Late Shri S.L.Ukas and Late Shri Pradhan.

In 1979 Justice Rathi started his judicial journey as a Civil Judge. He was posted at different places like Bhopal, Bilaspur, Bagli, Khategaon, Jabalpur, Sardarpur, Kukshi & Ganjbasoda. He was promoted as Chief Judicial Magistrate in 1991; thereafter promoted further as officiating District Judge in Higher Judicial Service in 1993 and granted Selection Grade Scale in the year 1999. He was Posted as Special Judge for cases under SC/ST (P.A) Act and N.D.P.S.Act, in the year 2000 and was awarded Super time Scale in 2006. Recognising academic bent of mind, the High court posted Justice Rathi as Additional Director of Judicial Officers Training Institute, Jabalpur and he served this Institution in its infancy with utmost dedication and commitment from August 1994 to April,1996.The First issue of JOTI Journal was published in October,1995 by Editorial Board of JOTI with Justice Rathi as one of the Members of that Board. In recognition of his administrative qualities, Justice Rathi was appointed as Principal Registrar at High Court of Madhya Pradesh, Bench Gwalior on 1.9.2009 and he continued to serve as such till his elevation. Justice Rathi was elevated as Additional Judge of Madhya Pradesh High Court on 1.4.2013 and became Permanent Judge on 6/9/2014.

His contribution was not limited to the judicial work as a Judge, as under his able guidance during his term as District Judge Shajapur, a guide in Hindi was prepared for operation of laptop based on Lynux System which was published by High Court of M.P. under the direction of the then Hon'ble Chief Justice Shri A.K. Patnaik.

He also took active part in the activities of M.P. Judicial Officers Association and was also a member of its Executive Committee and later on became its Treasurer.

From his High School days spirituality and Astrology have been his favourite subjects of his hobbies. He has been awarded "Jyotish Shri" in the year 1990. Justice Rathi is deeply spiritual and has followed strict discipline of life as a staunch follower of Brahma Kumari Religious Organization and believes in simple living & high thinking. Justice Rathi has a very high quality of legal acumen & observed high moral values in his life.

I came in contact of Justice Rathi in P.M.B.Gujrati College from where we both have prosecuted the study of LL.B as regular students and passed out. Thereafter we both had come in practice. Later, Justice Rathi became Judge but our cardiac and brotherly relations continued. I have always found him to be studious, sincere and socially conscious person who has had a spiritual bent of mind from a very early age.

Even during a short stint as Judge of High Court for a period of two and half year, Hon'ble Rathi has disposed of a large number of cases with very good quality of judgment. Not only this, he has rendered many judgments of lasting legal value and public importance. I have had the privilege to work with him in the Division Bench and always found him upto date on law and ready to dispose of cases with expedition. For him, an ordinary or mighty were both equal and he ensured that the law is above all and his duty is to uphold the dignity of law under all circumstances. He discharged his duties as a Judge without fear or favour. It has always been a great pleasure to work with him. We appreciate him for his open-hearted personality, good nature and friendliness.

I on my behalf and on behalf of all my colleagues wish him the best of luck in his future endeavors. We hope, he will find the new phase of life with new opportunities and pleasures and continue to serve the society and nation with his usual zeal.

Shri Arvind Dudawat, Addl. Advocate General, bids farewell :-

आज हम सब यहां माननीय न्यायमूर्ति श्री भगवान दास जी राठी की विदाई के उपलक्ष में आयोजित समारोह में उपस्थित हुए हैं।

माननीय श्री राठी जी का जन्म मध्यप्रदेश के ऐतिहासिक एवं औद्योगिक नगरी इन्दौर में दिनांक 16.09.1953 को हुआ। माननीय न्यायमूर्ति ने विज्ञान विषय से स्नातक तथा एलएल.बी. (ऑनर्स) की उपाधि इन्दौर विश्वविद्यालय से प्राप्त की। दिनांक 10.01.1978 को म.प्र. अधिवक्ता परिषद द्वारा अधिवक्ता के रूप में नामांकित किए जाने के पश्चात् आपने इन्दौर के प्रसिद्ध अधिवक्ता स्व. श्री के. बी.जोशी, स्व. श्री एस.एल. उकास एवं स्व. श्री प्रधान साहब के सानिध्य में सिविल एवं क्रिमिनल क्षेत्र में वकालत प्रारंभ की।

कुछ समय पश्चात् ही दिनांक 04.09.1979 को आपकी नियुक्ति न्यायिक सेवा में हुई, तत्पश्चात् आप विभिन्न स्थानों पर न्यायिक अधिकारी के रूप में पदस्थ रहे। दिनांक 29.03.1993 से आपको ऑफिसियेटिंग डिस्ट्रिक जज के रूप में पदस्थ किया गया, आप विभिन्न जिलों में जिला एवं सत्र न्यायाधीश रहे, एवं दिनांक 01.09.2009 को माननीय श्री राठी जी मध्यप्रदेश उच्च न्यायालय खण्डपीठ ग्वालियर में प्रिंसिपल रजिस्ट्रार के पद पर पदस्थ किये गये जहां उन्होंने न्यायमूर्ति के रूप में ऐलीवेट होने तक कार्य किया।

माननीय न्यायमूर्ति श्री राठी जी ने दिनांक 01.04.2013 को म.प्र. उच्च न्यायालय के एडीशनल जज के रूप में शपथ ली, तत्पश्चात् दिनांक 06.09.2014 को माननीय श्री राठी जी म.प्र. उच्च न्यायालय के परमानेंट जज के रूप में पदस्थ किए गए। इस प्रकार माननीय न्यायमूर्ति श्री राठी जी ने लगभग 36 वर्ष न्यायिक जगत में सफलता पूर्वक अपनी सेवायें अर्पित कर एक कीर्तिमान स्थापित किया है।

माननीय न्यायमूर्ति श्री राठी जी बहुत ही मृदुभाषी स्वभाव के हैं, उनका व्यवहार हमेशा गरिमामय एवं मृदुभाषी रहा है। उन्होंने कभी भी जल्दवाजी में कोई निर्णय पारित नहीं किया, आपके द्वारा समय-समय पर पारित किये गये न्यायिक निर्णय न्याय जगत के लिए हमेशा मार्गदर्शक के रूप में हम सब का मार्गदर्शन करते रहेंगे।

मैं अपनी ओर से, म.प्र. शासन की ओर से एवं अपने सभी सहयोगी शासकीय अधिवक्तागण की ओर से माननीय न्यायमूर्ति श्री भगवान दास जी राठी के स्वस्थ एवं दीर्घायु तथा उज्जवल भविष्य की कामना करता हूं।

अंत में मैं कुछ पंक्तियां माननीय न्यायमूर्ति को सादर समर्पित करता हूं:-

विस्तृत होगी और धवल छवि।
रंग भरेगा जीवन में रवि।
चले तूलिका नये फलक पर।
नव दिगन्त में नया सृजन कर, नया सृजन कर।
जय हिंद, जय भारत।

Shri Prem Singh Bhadoriya , President, High Court Bar Association, Gwalior, bids farewell :-

आज का यह विशेष क्षण हम सभी के लिए भावनात्मक होकर अत्यंत महत्वपूर्ण है। जब हम सभी म.प्र. उच्च न्यायालय के माननीय न्यायमूर्ति श्री बी.डी.राठी जी के यशस्वी और सफल कार्यकाल पूर्ण होने पर उन्हें भावभीनी बिदाई देने हेतु एकत्रित हुए हैं।

माननीय न्यायमूर्ति श्री बी.डी.राठी जी का जन्म श्री एस.एल.राठी के ज्येष्ठ पुत्र के रूप में दिनांक 15 सितम्बर 1953 को इंदौर में हुआ।

माननीय न्यायमूर्ति श्री बी.डी.राठी द्वारा स्नातक की परीक्षा विज्ञान विषय से उत्तीर्ण की तथा उसके पश्चात एलएल. बी. ऑनर्स की उपाधि दिनांक 10.01.1978 को इंदौर विश्वविद्यालय से प्राप्त की थी और विधि व्यवसाय का संकल्प लेते हुए माननीय न्यायमूर्ति द्वारा वर्ष 1978 में ही म.प्र. राज्य अधिवक्ता परिषद में अपना पंजीयन कराते हुए विधि व्यवसाय इंदौर के सुप्रसिद्ध अभिभाषक स्व. श्री के. बी. जोशी जी के सानिध्य में जिला न्यायालय इंदौर से प्रारंभ किया तदोपरांत उन्होंने स्व. श्री एस.एल. उकास एवं स्व.श्री प्रधान एडवोकेट्स के मार्गदर्शन में विधि ज्ञान प्राप्त किया व विधि व्यवसाय के साथ साथ माननीय न्यायमूर्ति अध्यात्म से भी जुड़े होकर वर्ष 1978 से प्रजापति ब्रम्हकुमारी ईश्वरी विश्वविद्यालय से जुड़े हुए हैं।

माननीय न्यायमूर्ति के अधिवक्ता के रूप में व्यवसायरत रहने के दौरान ही आपका मध्य प्रदेश न्यायिक सेवा में व्यवहार न्यायधीश वर्ग 2 के रूप में दिनांक 04.09.1979 को चयन किया गया और आपकी प्रथम पदस्थापना प्रदेश की राजधानी भोपाल में की गई, जहॉ से आपका न्यायिक सेवा में योगदान प्रारंभ हुआ।

म.प्र. न्यायिक सेवा के दौरान आपको शनैः शनैः दिये गये दायित्वों का आपके द्वारा सफलतापूर्वक निर्वाहन करते हुए दिनांक 17.01.1991 को मुख्य न्यायिक दण्डाधिकारी विदिशा एवं दिनांक 29.03.1993 को अतिरिक्त जिला न्यायाधीश के रूप में पदोन्नत किया गया तथा माननीय न्यायमूर्ति को अगस्त 1994 में अतिरिक्त संचालक न्यायिक अधिकारी ट्रेनिंग सेंटर में नियुक्त किया गया जहां उन्होने अगस्त 1994 से अप्रैल 1996 तक अपनी सेवाएं दी।

तदोपरांत माननीय न्यायमूर्ति को वर्ष 1999 में सेलेक्शन ग्रेड एवं 2000 में विशेष सत्र न्यायाधीश एससी, एसटी एक्ट एवं एन.डी.पी.एस. एक्ट तथा 2006 में सुपर टाईम स्केल प्रदान करते हुए उन्हें जिला एवं सत्र न्यायाधीश के रूप में पदोन्नत किया गया तदोपरांत माननीय न्यायमूर्ति को दिनांक 01.09.2009 को इस न्याय मंदिर के प्रिंसिपल रजिस्ट्रार के पद पर नियुक्त किया गया।

माननीय न्यायमूर्ति को दिये गये सभी दायित्वों का माननीय न्यायमूर्ति द्वारा सफलतापूर्वक निर्वाहन किया गया। माननीय न्यायमूर्ति के दीर्घ विधि अनुभव के आधार पर उन्हें दिनांक 01.04.2013 को इस महान न्याय मंदिर में अतिरिक्त न्यायमूर्ति के रूप में नियुक्त किया गया तथा माननीय न्यायमूर्ति को दिनांक 06. सितंबर 2014 को स्थाई न्यायमूर्ति के रूप में नियुक्त किया गया। आपने उच्च न्यायालय न्यायमूर्ति के पद पर रहते हुए अत्यंत शालीनता और सादगी के साथ अपने कर्त्तव्यों का निर्वाहन करते हुए सर्वाधिक प्रकरणों का निराकरण किया गया ।

आपके व्यवहार में सदैव सहजता, मधुरता और अपनत्व की जो भावना झलकती थी सदैव हमारे लिये अत्यंत प्रेरणादायी रही। न्यायदान की प्रक्रिया में आपने जिस प्रकार पक्षकारों के मन की पीड़ा को समझकर प्रकरणों का त्वरित निराकरण किया गया जिससे अभिभाषक एवं सभी पक्ष सदैव संतुष्ट नजर आये।

अंत में मैं यह कहूंगा कि इस न्याय मंदिर के न्यायमूर्ति के रूप में आपका कार्य सब के लिये एक खुशनुमा पल के रूप में विद्यमान रहेगा और आने वाले समय में आपका जीवन और अधिक गरिमापूर्ण बने ऐसी ईश्वर से कामना करता हूँ।

न्यायमूर्ति के लिये मैं बस यही कहूँगा–
'जिंदगी के कई इम्तिहान अभी बाकी है,'
जिंदगी की असली उड़ान अभी बाकी है
अभी तो नापी है थोड़ी सी जमी'
अभी तो सारा आसमान बाकी है।

आने वाले समय में आपकी अनुपस्थिति से इस न्याय मंदिर में जो शून्यता और रिक्तता उत्पन्न होगी वह हमेशा हम सभी को महसूस होती रहेगी।

न्यायदान में आपका योगदान अमूल्यनीय एवं अभिनंदनीय है। आपके सफल कार्यकाल पूर्ण करने पर आपसे यह अनुरोध करता हूँ कि इस अर्द्धविराम के बाद प्रभामान होने वाले समय की गति के साथ साथ आप उसी सहजता एवं सुलभता के साथ प्रदेश के विधि व्यवसायियों एवं समाज के अन्य वर्गो के सामाजिक विकास में एवं दीन हीन की सेवा में अपना रचनात्मक एवं अध्यात्मिक योगदान देकर समाज के विकास में नई भूमि का निर्माण करेंगे।

इन्हीं शुभकामनाओं के साथ मैं अपनी ओर से एवं म.प्र. उच्च न्यायालय अभिभाषक संघ के सभी सदस्यों की ओर से एवं विधि जगत की ओर से आपके प्रति कृतज्ञता एवं आभार व्यक्त करता हूँ एवं आपके उत्तम स्वास्थ्य एवं मंगल पारिवारिक जीवन की कामना करता हूँ।

धन्यवाद सहित।

Shri Jitendra Kumar Sharma, Member, M.P. State Bar Council, bids farewell :-

Today we have gathered here to bid farewell to MY LORD Shri Justice B.D. Rathi Judge, High Court of Madhya Pradesh who is demitting office from today after completing his successfully service tenure.

My lord was born on 16.09.1953. My lord had an excellence academic record throughout his career. After completing graduation in Science from Devi

Ahilya Vishwavidyalaya Indore, My lord did LL.B(Hons.) degree on 10.01.1978 and was enrolled as an advocate in the year of 1978 and joined the chamber of late Shri K.B. Joshi who was an eminent lawyer. My lord practiced on civil and criminal side under able guidance of late Shri S.L. Ukas and late Shri Pradhan.

My lord joined as trainee civil judge class II on 04.09.1979 at Bhopal and was nominated as member of executive body of M.P. Judicial Officers Association. My lord was appointed as Chief Judicial Magistrate at Vidisha and as Additional District Judge at Jabalpur, Kukshi and Balaghat. My lord was appointed as Treasurer of Judges Association. My lord successfully performed his duties in the capacity of District and Sessions Judge. A guide in Hindi was prepared for smooth operation of laptops based on Linux system under his able guidance which was published by High Court of M.P. from Aug. 1994 to April 1996. My lord was appointed as Additional Director, Judicial Officers Training Institute, Jabalpur. He was included in the editorial board of JOTI which publish JOTI journal. On 01.09.2009 My lord was appointed as Principal Registrar High Court of M.P. bench at Gwalior. During this tenure of My lord, I got the opportunity to serve as Secretary of the High Court Bar Association. During this period, My lord always extended co-operation towards functioning of the Bar. My lord took oath as judge of M.P. High Court on 1st April 2013. I was witness of such moment.

As a judge of this Court my lord has delivered many decisions of high precedential value including verdicts of complex issues of important civil and criminal litigations.

Besides it, My lord has been party to numerous orders and judgments that have furthered the cause of justice in justice delivery system. All through his judicial career my lord has upheld the rule of law while also being conscious of the needs of the under- privileged and vulnerable group of society It is indeed difficult to spell out the plethora of judgments which bear testimony of his judicial qualities.

I on my behalf and on behalf of the State Bar Council of Madhya Pradesh, I would like to convey our gratitude for my lord Shri Justice B.D. Rathi's services to this Court. We will always fondly remember his contribution to the rule of law and to this court. We wish the very best in his future pursuit and pray for long happy and fulfilling life ahead.

Shri Vivek Khedkar, Asstt. Solicitor General, bids farewell :-

We all have assembled here today to bid adieu to My Lord Hon'ble Shri

Justice B.D. Rathi on His demitting the office of a Judge.

Feeling can't be expressed, they can only be felt. It fills me with great pleasure and honour to have such a wonderful opportunity to express my gratitude towards My Lord.

From the day one when I had an opportunity to understand My Lord in this August Institution, I found him so calm, composed. and full of spiritual attainments. He evolved and emerged as a complete judge capable of doing social justice and of applying legal principles with pragmatic approach. Though he had a stint of only two and a half years he is leaving indelible marks of his impeccable character, crusader of justice and a hardworking judge.

My Lord Hon. Shri Justice Bhagwan Das Ji Rathi as the divinity in his name itself spreads fragrance among all, who was born on 16.09.1953. After completing his graduation in Science from Devi Ahilya Vishwavidyalaya, he took LL.B (Hons.) Degree on 10.01.1978. He was enrolled as an Advocate in 1978 and joined the Chamber of late Shri KB. Joshi who was an eminent lawyer of Indore. He practiced on Civil and Criminal sides under the able guidance of late Shri S.L. Ukas and late Shri Pradhan. He joined as a Trainee Civil Judge Class-II on 4th September, 1979 at Bhopal. He was nominated as the member of Executive Body of M.P. Judicial Officers Association. He was appointed as Chief Judicial Magistrate at Vidisha and as Additional District Judge at Jabalpur, Kukshi and Balaghat. He was also nominated as Treasurer of Judges Association. Throughout the State of M.P. he held various posts. A guide in Hindi was prepared for smooth operation of laptop based on Linux system under his able guidance which was published by the High Court of Madhya Pradesh. From August, 1994 to April, 1996 he was appointed as the Additional Director, Judicial Officers' Training Institute, Jabalpur.

He was included in the editorial Board of JOTI which publishes JOTI Journal. Thereafter, he was appointed as the Principal Registrar of this Hon'ble Court Bench Gwalior and adorned such post till his elevation as the Judge of High Court of Madhya Pradesh Bench Gwalior. His other interests include spiritualism and astrology. He believes that one of the greatest gifts of spiritual knowledge is that it realings our sense of self to something we may not have even ever imagined was within us. Spirituality says that even if we think we are limited and small, it simply isn't so. We are greater and more powerful than we have ever imagined. A great and divine light exists inside us. Undoubtedly, this analogy and thought has been perfected by My Lord in attaining such a stage i.e. a stage of a sage.

Mahatma Gandhi once quoted,

There is a higher court than court of justice and that is the court of conscience. It supersede all other court"

- true it is indeed

My Lord is full of compassion for the downtrodden. Not once or twice but number of times I have witnessed Him in His Court Room at the time of delivering judgments and orders in the interest of justice. I being an ardent fan of reading feels inspired by reading amazing works by our great leaders and on this occasion I can remember one of favourites by again The Mahatma Gandhi himself about The seven things.

There are seven things that will destroy us he said, wealthy without work. Pleasure without conscience. Knowledge without character, religion without sacrifice, politics without principle, science without humanity, business without ethics and justice without morality"

Finally,

I, on behalf of the Union of India, convey and express the gratitude for all the faith and trust you have bestowed upon us and guided us towards excellence.

Your journey of accomplishment will continue to inspire us achieving heights on the path of justice dispensation system. Thank you so much.

Shri K.B. Chaturvedi, Sr. Advocate, Representative of Senior Advocates, bids farewell :-

We are assembled here on the occassion of ovation of Hon'ble Justice B.D. Rathi Ji who is demitting the prestigious office today. Justice Rathi was born on 16-09-1953 at Indore. After completing B.Sc., LL.B., my lord has enrolled as an advocate in the year 1978 and started practice on Civil and criminal side in High Court and Lower Courts at Indore. My lord joined judicial service as civil judge on 04-09-1979 and confirmed in the year 1983. Appointed as CJM in the year 1991. In the Year 1993 posted as Officiating District Judge in Higher Judicial services. My lord remained Additional Director, Judicial Officer Training Institute Jabalpur from 1994 to April 1996. Confirmed as District Judge in the year 1997. My lord was posted as Principal Registrar, High Court of M.P, Bench at Gwalior from 01-09-2009 till elevation. Looking to his ability and efficiency elevated as

High Court Judge and took oath on 01-04-2013 and became as permanent judge on 6-9-2014.

My lord is also a great astrologer reading the destiny of others. My lord has deep roots of spirituality, great vision and enlightened virtues. Contribution by delivering land mark judgments to the bar will be remembered in the judicial field.

In a landmark judgment *Ravi Kant Dubey* my lord decided that FIR can be quashed at any stage of proceeding and only statement recorded by police under section 161 of Cr. P.C. can be considered and the statement recorded during trial can be ignored.

Lordship's two worthy sons are lawyers practicing at Delhi & Indore High Court.

I pray to God for good health & prosperous life of my lord and his family members.

Farewell speech delivered by Hon'ble Mr. Justice B.D. Rathi :-

I am an ardent believer of God, the Almighty. Without His will, nothing can happen. By His grace and grace alone, I have completed 36 years of service in the domain of Justice quite successfully and to my entire satisfaction within.

I am honoured by the presence of so many well wishers, who have spared time from their busy schedule to be here. I am extremely grateful and over - whelmed by the sentiments expressed about me. I do not know how much do I deserve and how much do I do'nt. However, it's a human weakness to feel pleasant on such words and it is also true that only good words are spoken on such occasions. But let me tell you that I do realize that I also have many shortcomings and it is only your goodness and kindness that you have overlooked them always.

I am grateful to Hon'ble Shri Justice S.A. Bobde, the then Chief Justice and presently Judge of the Supreme Court of India, who has administered the oath of this pious office to me and instilled much confidence in me during my tenure and I am thankful to God for making me able to perform my duties as per my oath and expectations.

I also convey my thanks to Hon'ble Shri Justice A.M. Khanwilkar, the Chief Justice who is a dynamic, visionary and enthusiastic. I feel pride and privilege to share the bench with His Lordship to see working closely.

I can never forget the love and guidance of my elder brother Judge Hon'ble Shri Justice Ajit Singh, the then Administrative Judge of this Court (now Officiating Chief Justice of Rajasthan High Court) during my long sitting at Jabalpur in Division Bench.

At this Juncture, I also extend my thanks to my senior colleagues, Hon'ble Shri Justice Rajendra Menon, Administrative Judge and Hon'ble Shri Justice S.S. Kemkar for their love and affection shown to me.

I have also had an opportunity to closely work with Hon'ble Shri Justice U.C. Maheshwari, the Administrative Judge of the bench, while sitting in Division Bench. His Lordship happened to be my classmate. I had also an opportunity to hear His Lordship in a huge Social gathering at Pipariya, Distt. Hoshangabad. There, I was happy to hear the expressions of the public gathered by highly appreciating His Lordship's oratory and knowledge on all the subjects apart from Law. His Lordship is an able Judge, best orator besides a good Administrator.

At this time, I also remember my elder brother Judge, Hon. Shri Justice S.K.Gangele, with whom I have got an opportunity to sit in Division Bench at Gwalior, where I also learnt a lot.

Similarly, I will be failing if I could not acknowledge affection and cooperation extended towards me by Hon. Shri Justice P.K. Jaiswal and Hon'ble (Mrs) Justice S.R Waghmare.

I also feel pride and pleasure to have sitting in Division Bench with Hon'ble Shri Justice R.S. Jha, who has left an inimitable impression on me regarding his knowledge of law and way of working even during short period of sitting.

I also cannot forget the simplicity and good behaviour of Hon'ble Shri Justice J.K. Maheshwari, Hon. Shri Justice Sanjay Yadav, Hon. Shri Justice S.C.Sharma and Hon. Shri Justice Prakash Shrivastava. Their lordships are also known for their helpful attitude. I am grateful to them also.

I have no words to express my thanks towards my senior colleagues Hon'ble Shri Justice Sheel Nagu and Hon'ble Shri Justice Sujoy Paul. I found in their lordships much patience and politeness. I had always an opportunity to learn while sitting in Division Bench with their Lordships. I always feel relaxed by enjoying the sense of humor possessed by their Lordships.

I cannot forget my brother colleagues Hon'ble Shri Justice Rohit Arya, Hon'ble Shri Justice Sushil Gupta and Hon'ble Shri Justice S.K. Palo for their cordial brotherhood-ship.

I also extend my respect and thanks to Hon'ble Shri Justice A.K. Patnaik, former Judge of Supreme Court and the then Chief Justice of Madhya Pradesh High Court who always used to appreciate my work and kept me motivated and guided.

I also feel obliged by Hon. Shri Justice U.L.Bhat, the then Chief Justice of Madhya Pradesh High Court because of whom I have got opportunity to render my services as Additional Director of Judicial Officers Training Institute, Jabalpur and to become the Member of Editorial Board of Jyoti Journal.He was a great Administrator besides a great Judge. Nobody can forget, that work culture was developed in M.P. Judiciary by His Lordship. I also pay respect to His Lordship.

At this moment, I also feel kindness and generosity of His Lordship, Hon. Shri Justice K.K. Lahoti, the then Acting Chief Justice of M.P. High Court. I feel myself fortunate to have sitting in the Division Bench alongwith Hon'ble Shri Justice A.K. Shrivastava who had a recognition for his quick memory of Citations and sense of humor on the bench. He always tried to find a way in law, to grant relief especially to Junior Lawyers to motivate them . I am also thankful to Sr. Brother Judge, Hon. Shri Justice N.K. Mody, who is popularly known for his simplicity, cooperation, politeness and quick disposal.

I pay my utmost respect and gratitude to my mentors, my parents, family members and the great international spiritual institution namely Brahma Kumari Ishwari Vishwa Vidhyalaya head quartered at Mount Abu, Rajasthan, because of their values, love, affection and support, I could be able to complete this pious journey of judgeship for a long memorable period of more than 3 and half decades.

From the very inception of judicial system, the assistance of advocates is felt necessary . Without their assistance , courts would not be able to impart justice. I found that the members of Gwalior, Indore and Jabalpur Bar are much more cooperative, helping, laborious and talented than I expected. I cannot miss this opportunity to thank all the Senior Advocates, Members of all the Bars wherever I was posted , Additional Advocate General, Former Additional Advocate General and Government Advocates for their cooperation, unconditional legal assistance, love and affection.

I also extend special thanks to Registrar General,Principal Registrar, Registrar-cum-PPS Shri V.B. Singh , other officers of the registry and entire staff members of High Court for their kind support and due cooperation in the administration of justice.I cannot forget the commendable services rendered honestly and efficiently, to my entire satisfaction by my senior Private Secretary

Shri Dhananjay Buchake. So also P.S.Mrs. Binu Pillai, P.S. , Shri Anand Shrivastava, P.S. Shri Pawan Dharkar, Steno Shri Anil Chaurasiya, Reader Shri Abhishek Pandey and Law Researcher Ku. Preeti Chauhan have very ably and notably worked and discharged their duties with utmost devotion and honesty. I am also thankful for the good services of Jamadar Shri Maharaj Singh, Driver Shri Yogesh Namdev and entire staff posted at my residence.

I cannot forget the services rendered to my entire satisfaction by security staff posted at my residential bungalow, Security Officer (DSP) Shri Parvez Khan, Personal Security Officers Shri Rajendra Sirohi and Shri Jardar Khan.

I also convey my thanks to Dr. R.K. Chaturvedi and Dr. R.K. Sharma Medical Officers, Bank Officers, Protocol Officers for their best services provided to me on every call.

In my tenure as High Court Judge, I had ample opportunities to deal with confidently and comfortably the constitutional and contempt matters apart from other type of litigations. During the long span of time of my Judgeship, I used to prefer to get the matter settled between the parties by way of conciliation and compromise with the object that a litigant should get speedy and final justice as per their own wishes.

Friends, no person is perfect in this Kali Yuga, I am no exception. I may mention that if there were any lapses and shortcomings on my part, I may be excused keeping in mind that to err is human.I may have hurt the feelings of some of you but it was either unknowingly or unintentionally. My sincere apologies, if I have hurt anybody even remotely.

The present judicial system of India was not a sudden creation. It has been evolved as the result of slow and gradual process and bears the imprint of the different period of Indian history. Administration of justice is one of the most essential functions of the State. We need the rule of law for punishing all deviations and lapses from the code of conduct and standard of behavior, which the community speaking through its representatives has prescribed as the law of the Land. The judicial sysytem deals with the administration of the laws through the agency of the courts. A State consists of three organs, viz.the Legislature, the Executive and Judiciary. The Judiciary, it has been said , is the weakest of the three organs. It has neither the power of the purse nor the power of the sword, neither money nor patronage , not even the physical force to enforce its decisions. Despite that , the courts have by and large enjoyed high prestige amongst and commanded respect

of the people. This is so because of the moral authority of the courts and the confidence and the faith of the people have in the role of the courts to do justice between the rich and the poor, the mighty and the weak, the State and the citizen, without fear or favour.

We have to remember that the respect, status and reputation we get in society are all because of this great institution. If our institution faces loss of pulic confidence, then we will be the worst affected in the society.

The Judges and the advocates are the members of the judicial family and without any one of them, adjudication of the *lis* is not possible.Cordial relationship, friendly atmosphere, faith, honesty and other moral values among these two limbs are the basic and necessary ingredients for imparting quick justice in true sense. Every body expects that we persons should work together in accordance with law by maintaining decorum and dignity of the court in a friendly atmosphere.

" रफ्तार कुछ जिन्दगी
की यूं बनायें रख गालिब
कि
दुश्मन भले आगे निकल जाए
पर
दोस्त कोई पीछे न छूटे"

Our judicial system faces certain inherent problems, which show the weaknesses and defects of the system and which requires immediate reform and accountability.

Body consciousness is the root cause of all the evils. The vices like lust, anger, greed, attachment and ego are all having their roots in body consciousness. On the other hand, soul consciousness is the mother of divine virtues To emerge these virtues always remember that we are pure souls.

A precious point of conscious , blissful,

light, energy, the soul .....

This is you

Imagine a tiny point located where thoughts come from.

That point thinks, remembers and

decides .....

This point is you.

The point where every emotion is born
This is you.
A spiritual being interacting through the body .....
This is you
The eternal source of life and life's experiences, the seat of self-esteem and self-respect .....
This is you

In the presence scenario, most of us feel that morality has comedown in every aspect of life due to polluted thoughts which, in turn, is the result of weakening of soul. We can recharge ourselves by way of concentration through meditation with incorporeal God who is the supreme soul and the ocean of all divine virtues. If we will remember incorporeal God always, during performing our duties, we will get charged by divine virtues and we can very well perfectly play and discharge our duties towards the society at large. The more we recharge ourselves, the more we get back the divine virtues.Just as principle of nature, every action has its own reaction.

For example -

" The first thing we do is take a breath.
Then we must give it back.
This is the rhythm of life.
This is a natural law of reciprocity

So, a peaceful mind can think better than a worked up mind. Allow a few minutes of silence to your mind everyday and see how sharping it helps us to set your life the way expect it to be.

Finally, I thank the almighty for giving me this Hon'ble calling in life and helping me to deliver justice in whatever little measure that I did with full satisfaction. This is the only great institution of God where litigants come and say that we may

be dishonest but you are expected to deliver justice honestly.

इसीलिए शायर ने कहा है –

" जिंदगी में बडी शिद्दत से निभाओ
किरदार अपना कि परदा गिरने के बाद भी
तालीयॉं बजती रहें। "

Shakespeare has told us in the lines so often quoted that we are to do " as adversaries do at law, but eat and drink as friends". As I pack up my robes, I hope to continue eating and drinking with you as friends for the rest of my life and with heartfelt gratitude, for your kindness, today and always. I bid you all an affectionate goodbye.

THANK YOU VERY MUCH

"JAY HIND"

NOTES OF CASES SECTION

Short Note

**(35)*

Before Ms. Justice Vandana Kasrekar

W.P. No. 93/2015 (Jabalpur) decided on 22 April, 2015

GOPAL DAS KABRA ...Petitioner

Vs.

UNION OF INDIA & ors. ...Respondents

***Cantonment Electoral Rules, 2007, Rules 10(3) & 28 - Preparation of Electoral Roll - Exclusion of encroacher from electoral roll* - In earlier round of litigation, it was directed that Voter list should be prepared strictly in accordance with Rule 10 - As per Rule 10, Voter list is to be arranged according to house numbers - House numbers are not allotted to encroachers /unauthorized construction - Inclusion of names of encroachers in voter list is bad - Respondents directed to prepare the voter list removing the names of encroachers and residents residing in illegal constructed house without house number given by Cantonment Board - Petition allowed.**

छावनी निर्वाचन नियम, 2007, नियम 10(3) व 28 – मतदाता सूची तैयार की जाना – मतदाता सूची से अतिक्रमणकारी का अपवर्जन – मुकदमेबाजी के पूर्ववर्ती दौर में यह निदेशित किया गया था कि मतदाता सूची को कठोरता से नियम 10 के अनुसार तैयार किया जाये – नियम 10 के अनुसार, मतदाता सूची को मकान नंबरों के अनुसार क्रमांकित किया जाना चाहिए – अतिक्रमणकारियों /अप्राधिकृत निर्माण को मकान नंबर आबंटित नहीं किये जाते – मतदाता सूची में अतिक्रमणकारियों के नामों का समावेश अनुचित – केन्टोनमेंट बोर्ड द्वारा बिना मकान नंबर दिये अतिक्रमणकारी एवं अवैध रूप से निर्मित मकान में निवासरत रहवासियों के नाम हटाकर मतदाता सूची तैयार करने के लिए प्रत्यर्थीगणों को निदेशित किया गया।

Case referred :

2009(2) MPLJ 348.

Vivek Rusia, for the petitioner.
Indira Nair with *J.P. Pandey,* for the respondent No.3.
Prashant Singh, for the intervenors.

Short Note

****(36) (DB)***

Before Mr. Justice Shantanu Kemkar & Mr. Justice Jarat Kumar Jain

W.P. No.1158/2014 (Indore) decided on 1 September, 2014

MOHASEEN KURESHI ...Petitioner

Vs.

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

National Security Act (65 of 1980), Section 3(2) & 3(3) - Period of detention order - Order by State Government - Held - **State Government cannot pass an order of detention for a period of more than 3 months - Since the impugned order of detention is for 12 months at first instance, same is quashed.**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – निरोध आदेश की अवधि – राज्य सरकार का आदेश – अभिनिर्धारित – राज्य सरकार तीन माह से अधिक की अवधि के लिए निरोध का आदेश नहीं पारित कर सकती – चूंकि आक्षेपित निरोध आदेश पहली बार 12 माह के लिए है, उसे अभिखंडित किया गया।

The Order of the Court was delivered by : SHANTANU KEMKAR, J.

Case referred :

2014 Cr.L.J. 2748.

Sudha Shrivastava, for the petitioner.

Mini Ravindran, Dy. G.A. for the respondent/State.

Short Note

****(37)***

Before Mr. Justice Sanjay Yadav

W.P. No. 1065/2006 (Jabalpur) decided on 17 September, 2014

NAVEEN VIDYA BHAWAN ...Petitioner

Vs.

REGIONAL PROVIDENT FUND COMMISSIONER ...Respondent

Employees' Provident Funds and Miscellaneous Provisions Act, (19 of 1952), Sections 14-B & 32A and Employees Provident Funds Scheme, 1952, Para 32-A - Damages - **Petitioners are grant in-aid Private Educational Institutions - Contribution of Employees and Employer -**

Initially the petitioners unsuccessfully challenged the application of Act, 1952 - Contribution was deposited belatedly after the SLP was dismissed by Supreme Court - Regional Provident Fund Commissioner held petitioners liable for damages - Held - In case of APFC Vs. Ashram Madhyamik the damages were reduced to 25% - Maintaining the parity, the damages are directed to be reduced to 25% - Petition partly allowed.

कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम (1952 का 19), धाराऐं 14–बी व 32ए एवं कर्मचारी भविष्य–निधि योजना, 1952, पद 32–ए – क्षतिपूर्ति – याचीगण, सहायक अनुदान प्राप्त प्राइवेट शैक्षणिक संस्थाऐं हैं – कर्मचारीगण और नियोक्ता का अंशदान – आरंभ में याचीगण ने अधिनियम 1952 की प्रयोज्यता को असफलतापूर्वक चुनौती दी – उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका खारिज किये जाने के पश्चात् विलंबित रूप से अंशदान जमा किया गया था – क्षेत्रीय भविष्य निधि आयुक्त ने याचीगण को क्षतिपूर्ति के लिए दायी ठहराया – अभिनिर्धारित – ए.पी.एफ.सी. वि. आश्रम माध्यमिक के प्रकरण में क्षतिपूर्ति को घटाकर 25% किया गया – समानता कायम रखते हुए, क्षतिपूर्ति को घटाकर 25% करने के लिए निदेशित किया गया – याचिका अंशतः मंजूर।

Cases referred :

Misc. Pet. Nos. 1555/1991 & 3040/1991 decided on 15.04.1993, (1991) 1 SCC 396, 2007-III-LLJ 372, (1997) 1 SCC 241, (2006) 4 SCC 46.

Akash Choudhary, for the petitioner.
J.K. Pillai, for the respondent.

Short Note

****(38) (DB)***

Before Mr. Justice Rajendra Menon & Mr. Justice S.K. Gangele

W.P. No. 16575/2011 (Jabalpur) decided on 9 February, 2015

RAHUL BHARTIA (DR.) & ors. ...Petitioners
Vs.
DENTAL COUNCIL OF INDIA & ors. ...Respondents

Dental Council Rules of MDS Course Regulation 2007, Section 1 - Selection of Post graduate students - Stipend - Private Colleges - **Benefit of stipend has been given to students who have been pursuing their studies in Govt. College, but benefit has not been extended to students who are pursuing their studies in private colleges - Criteria of**

admission in Private College and Govt. College is different - Students prosecuting their studies in Govt. College cannot be equated with students prosecuting their studies in private college, as students with higher percentage of marks are being allotted the Govt. College and fee structure is also different - Respondent No. 4 is running an Institute within statutory framework - Direction to respondent No. 4 to pay stipend to its students would infringe the fundamental right to establish and run the educational Institute - Petition dismissed.

एम.डी.एस. पाठ्यक्रम के लिये दंत चिकित्सा परिषद् के नियम, विनियमन 2007, धारा 1 – स्नातकोत्तर विद्यार्थियों का चयन – छात्रवृत्ति – निजी महाविद्यालय – शासकीय महाविद्यालयों में अध्ययनरत विद्यार्थियों को छात्रवृत्ति का लाभ दिया गया परंतु निजी महाविद्यालयों में अध्ययनरत विद्यार्थियों को लाभ नहीं दिया गया है – निजी महाविद्यालय और शासकीय महाविद्यालय में प्रवेश का मानदंड भिन्न है – शासकीय महाविद्यालयों में अध्ययनरत विद्यार्थियों को निजी महाविद्यालयों में अध्ययनरत विद्यार्थियों के बराबर नहीं माना जा सकता, क्योंकि उच्चतर प्रतिशत अंक पाने वाले विद्यार्थियों को शासकीय महाविद्यालय आबंटित किये जा रहे हैं और फीस का ढांचा भी भिन्न है – प्रत्यर्थी क्रमांक 4 संस्था को कानूनी रूपरेखा के भीतर चला रहा है – प्रत्यर्थी क्रमांक 4 को अपने विद्यार्थियों को छात्रवृत्ति देने का निदेश, शैक्षणिक संस्था को स्थापित करने और चलाने के मूलभूत अधिकार का उल्लंघन होगा – याचिका खारिज।

The Order of the Court was delivered by : **S.K. GANGELE, J.**

Cases referred :

AIR 1993 SC 2178, (2013) 6 SCC 452, (2012) 12 SCC 331, 2009 (2) MPLJ 166, (2014) 8 SCC 682, (2011) 13 SCC 760, (2002) 8 SCC 481.

Anurag Dubey, for the petitioners.
A.P. Shroti, for the respondent No.1.
Rahul Jain, Dy. A.G. for the State.

I.L.R. [2015] M.P., 2293
SUPREME COURT OF INDIA
Before Mr. Justice T.S. Thakur, Mr. Justice R.K. Agrawal & Mr. Justice R. Banumathi
Civil Appeal No. 5704/2015 decided on 24 July, 2015

BHANUSHALI HOUSING COOPERATIVE SOCIETY LTD. ...Appellant
Vs.
MANGILAL & ors. ...Respondents

A. ***General Clauses Act, M.P. 1957 (3 of 1958), Section 13 - Singular or Plural*** **- Principle underlying Section 13 of Act, 1957 regarding singular including the plural and vice versa does not have universal application and that principle can apply only when no contrary intention is deducible from the scheme or the language used in Statute. (Para 22)**

क. साधारण खण्ड अधिनियम, म.प्र. 1957 (1958 का 3), धारा 13 – एकवचन या बहुवचन – बहुवचन के समावेश के साथ एकवचन और विपर्यय के संबंध में अधिनियम 1957 की धारा 13 में अंतर्निहित सिद्धांत की प्रयोज्यता सर्वव्यापी नहीं है और यह सिद्धांत केवल तब लागू होगा जब योजना या कानून में प्रयुक्त भाषा से कोई प्रतिकूल आशय नहीं निकाला जा सकता।

B. ***Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 - Dispute Touching Business*** **- Dispute arising out of the purchase of the land owned by respondents is a dispute touching the business of Society. (Paras 7 to 13)**

ख. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – कारोबार से संबंधित विवाद – प्रत्यर्थीगण के स्वामित्व की भूमि के क्रय किये जाने से उत्पन्न विवाद सोसाइटी के कारोबार से संबंधित विवाद है।

C. ***Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 - Dispute - Business Transaction/Business Transactions*** **- Whether a dispute arising out of contract for sale and purchase of immovable property owned by respondents is amenable to adjudication under Section 64 - There was a single transaction whereunder the respondents had agreed to sell to society a parcel of land for use by Society - As respondents were not in the business of selling land as a commercial or business activity, it would**

not be a "business transaction" leave alone "business transactions" - Dispute was not maintainable. (Paras 14 to 23)

ग. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – विवाद – कारोबारी संव्यवहार(एकवचन)/कारोबारी संव्यवहार(बहुवचन)– क्या प्रत्यर्थीगण के स्वामित्व की अचल संपत्ति के विक्रय एवं क्रय हेतु संविदा से उत्पन्न विवाद धारा 64 के अंतर्गत न्यायनिर्णयन के अध्यधीन है – एक एकल संव्यवहार था जिसके अंतर्गत प्रत्यर्थीगण ने सोसाइटी के उपयोग हेतु सोसाइटी को भूखंड विक्रय करने के लिए करार किया था – चूंकि प्रत्यर्थीगण वाणिज्यिक या कारोबारी क्रियाकलाप के रूप में भूमि विक्रय का कारोबार नहीं कर रहे थे, यह "कारोबारी संव्यवहार"(एकवचन) नहीं होगा, "कारोबारी संव्यवहार" (बहुवचन) तो दूर की बात है – विवाद पोषणीय नहीं था।

Cases referred :

AIR 1969 SC 1320, (1982) 2 SCC 244, (1969) 2 SCC 43, AIR 1964 SC 1533, (1981) 2 SCC 693, (1999) 9 SCC 700, (1993) 2 SCC 279, (1979) 2 SCC 616, AIR 1957 SC 532, AIR 1959 SC 219.

JUDGMENT

The Judgment of the Court was delivered by : **T.S. THAKUR, J. :-** Leave granted.

1. The short question that arises for consideration in this appeal, by special leave, is whether a dispute arising out of a contract for sale and purchase of immovable property owned by the respondents was amenable to adjudication under Section 64 of the M.P. Cooperative Societies Act, 1960. By his order dated 1st March, 2004, the Deputy Registrar, Co-operative Societies, Ujjain, before whom the proceedings were initiated, answered that question in the affirmative and decreed specific performance of the contract entered into between the parties. A first appeal preferred by the sellers (*respondents-herein*) before the Joint Registrar Ujjain failed and was dismissed by his order dated 7th August, 2009. Aggrieved by the said two orders, the respondents preferred a second appeal before the M.P. State Co-operative Tribunal, Bhopal who allowed the same and set aside the orders passed by the Deputy Registrar and that passed by the Joint Registrar holding that the dispute raised by the purchaser-society could not be made the subject matter of proceeding under Section 64 of the M.P. Cooperative Societies Act, 1960. The purchaser-society then filed writ petition No.15195 of 2011 which was heard and dismissed by a Division Bench of the High Court of Madhya Pradesh. The

High Court concurred with the view taken by the Tribunal that a dispute arising out of a contract of sale and purchase of immovable property was beyond the purview of Section 64 of the Act. The present appeal calls in the question the correctness of the said judgments and orders.

2. Section 64 of the M.P. Cooperative Societies Act, 1960, may, at this stage, be extracted in extenso :

> *"**64. Disputes:** - (1) Notwithstanding anything contained in any other law for the time being in force, [any dispute touching the constitution, management or business, or the liquidation of a society shall be referred to the Registrar] by any of the parties to the dispute if the parties thereto are among the following:-*
>
> *(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;*
>
> *(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;*
>
> *(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person.*
>
> *(d) a surety of a member, past member of deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society.*
>
> *(e) any other society or the liquidator of such a society; and*
>
> *(f) a creditor of a society.*

(2) For the purpose of sub-section (1), a dispute shall include –

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or of composite society;

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programmed till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

3. A careful reading of the above would show that for a dispute to be brought within the purview of Section 64 two essential requirements must be satisfied *viz. (i)* that the dispute must "touch the constitution, management or business of the society or must relate to the liquidation of the co-operative society;" and *(ii)* that the dispute must be between parties referred to in clauses *'a to f'* of Section 64(1) (supra). It is only when the twin requirements are in the facts and circumstances of a given case satisfied that a dispute can be said to be amenable to adjudication under Section 64. Failure of any one of the two requirements would take the dispute beyond the said provision.

4. In the case at hand the dispute raised by the appellant-society before the Deputy Registrar related to the alleged refusal of the respondent to complete the sale transaction in terms of the agreement to sell executed between the respondents and/or their predecessors-in-interest, on the one hand, and the appellant-society on the other. The nature of the dispute, therefore, did not obliviously touch the constitution and management of the society nor did the dispute have anything to do with the liquidation of the society. Whether or not the dispute sought to be raised was a dispute *"touching the business of the society"* is in that view one of the questions that needs to be examined.

5. As regards the second requirement viz. that the dispute must be between the persons referred in clauses *'a' to 'f'* of Section 64 of the Act, it is common ground that the respondents-sellers were not members of the society nor do they fall under anyone of the clauses 'a', 'b', 'd' or 'f' enumerated under Section 64 (1). This would mean that the respondents must answer the description of persons mentioned in clause (c) to Section 64(1) of the Act. The Tribunal as also the High Court have taken the view that the respondents do not answer the description of parties falling under Section 64 (1)(c). That is because the appellant-society had neither granted any loan to the respondents or any one of them nor did the respondents have any *"business transactions"* with the society. The Tribunal and the High Court have interpreted the words *"business transactions"* to mean a series of transactions in connection with the business of the society. The expression did not, according to them, postulate a single contract for sale or purchase of the property between the society and a third party.

6. Two distinct questions that need to be answered by this Court, therefore, are:

(i) whether the dispute in the case at hand touches the business of the

appellant-society? and

(ii) whether the dispute sought to be raised arising as it is out of the execution of a contract for sale of property by the respondent in favour of the appellant-society constitutes *"business transactions"* within the meaning of Section 64 (1)(c)?

Re: Question No.1:

7. The expression *"business of the society"* has not been defined in the Act or elsewhere. The expression has fallen for interpretation of the courts in the country with commendable frequency. Pronouncements from different High Courts have even led to a cleavage in judicial opinion as to the true meaning and scope of that expression appearing as it was in Section 43(1) of the co-operative Societies Act, 1912 and later in analogous provisions made in different State enactments. One line of decision takes a liberal view of the expression *"business of the Society,"* while the other prefers a narrower interpretation. Both these were noticed by this Court in *Deccan Merchants Co-operative Bank Ltd. vs. M/s. Dalichand Jugraj Jain and Ors.* (AIR 1969 SC 1320). An elaborate discussion on the subject led this Court to declare that the legislature had used the expression *"business of the society"* in a narrower sense and approved the view taken by the High Courts of Madras, Bombay and Kerala in preferences to that taken by the High Courts of Madhya Pradesh and Nagpur. While saying so, this Court enumerated five kinds of disputes mentioned in Section 91 (1) of the Maharashtra Co-operative Societies Act and observed:

> *"The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be*

engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the bank in a building, which has subsequently been acquired by the bank cannot be said to be a dispute touching the business of the bank, and the appeal should fail on this short ground.

xxx xxx xxx

While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word 'touching' is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word 'affects' should also be used in defining the scope of the word 'touching'. "

8. Dealing in particular with the question whether a dispute touching the assets of the society would be a dispute touching the business of the society, this Court observed:

"18 .xxxxx xxxxx xxxxx

..... Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business...."

9. The question was once again considered by this Court in *O.N. Bhatnagar vs. Smt. Rukibai Narsindas & Ors.* (1982) 2 SCC 244 where this Court referred to the decision in *Deccan Merchant's* case (supra) and observed:

"Thus, the Court adopted the narrower meaning given to the word "business" as expressed by the Madras, Bombay

and Kerala High Courts in preference to the wide meaning given by the Madhya Pradesh and Nagpur High Courts. According to the view taken in Deccan Merchants Cooperative Bank case the word "business" in the context means "any trading or commercial or other similar business activity of the Society". It was held that the word "business" in Section 91(1) of the Act has been used in a narrower sense and that it means the actual trading, commercial or other similar business activity of the Society which the Society is authorised to enter into under the Act and the Rules and its bye-laws."

10. On the facts of the case before it, this *Court in Bhatnagar's* case (supra) held that the act of initiating proceedings for removing an act of trespass by a stranger from a flat allotted to one of its members could not but be a part of its business. This Court held that it was as much the concern of the society formed with the object of providing residential accommodation to its members, which was normally its business, as it was of the members to ensure that the flats are in occupation of its members in accordance with the bye laws framed by it, rather than the occupation of a person who had no subsisting reason to be in such occupation. The decision in *Deccan Merchant's* case (supra) was on facts held to be distinguishable and resort to proceedings under Section 64 of the Act, held legally permissible.

11. Reference may also be made to the decision of this Court in *The Co-operative Central Bank Ltd. and Ors. vs. The Additional Industrial Tribunal, Andhra Pradesh and Ors.* (1969) 2 SCC 43, wherein the question was whether the expression business of the society appearing in Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964 covered a dispute in respect of alteration of the conditions of service of an employee of the society. The tribunal and the High Court had in that case taken the view that such a dispute fell outside the purview of Section 61 of the Act. Affirming that view this Court observed:

"In that case [Deccan Merchants case], this Court had to interpret section 91 of the Maharashtra Co-operative Societies Act, 1960. [Maharashtra Act 32 of 1961], the dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted

by an Industrial Tribunal dealing with an industrial dispute.

xxx *xxx* *xxx*

..... Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of Service of the workmen employed by the society cannot be held to be a dispute touching the business of the society."

(emphasis supplied)

12. In the case at hand the objects of the appellant-society as set out in the Articles of Association are as under:

"Objective of this society would be to make arrangement for the construction of building, to purchase, sale, take on rent or rent out, prepare land for construction of building and to make arrangement related to social, educational and entertainment to its members and it would be complete right to this society to carry out such work which will be necessary and proper in its opinion. These rights shall mean and include to purchase land, take land on lease, sale, exchange, mortgage, let out on lease, sub-lease, to give resignation, or to accept resignation and to do all other relative work and to sell the building on instalment on proper and necessary restrictions, to give loan or guarantee of loan for facilitating construction of building, to make repairing, and will include other rights to carry out work related to it."

13. Purchase of land for being used in the manner set out in the objects extracted above is, therefore, one of the facets of the business that the society undertakes. Such purchase is directly linked to the object of developing the acquired land for allotment of house sites to the members of the society. There

is, therefore, a clear and discernible nexus between acquisition/purchase of land and the object of providing house sites to the members which under the circumstances happens to be the main business of the society. It is not a case where the facts giving rise to the dispute are not relatable to the objects of the society or where the connect between the facts constituting the dispute and the objects of the society is remote or their interplay remarkably tenuous or peripheral, as was the position in *Co-operative Central Bank Ltd.'s* case (supra) involving alteration of the conditions of service of the employees of the society. We have in that view no hesitation in holding that the dispute arising out of the purchase of the land owned by the respondents was, in the instant case, a dispute touching the business of the appellant-society. Question No.1 is answered accordingly.

Re: Question No.2:

14. The second essential requirement for a dispute to fall within the purview of Section 64 is that the parties to the dispute must be those enumerated in sub-clauses *'a to f'* under Section 64 of the Act. Clause (a) of Section 64(1) envisages disputes between a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society. This clause has obviously no application to the facts of the present case. That is true even about clause *'b'* whereunder the dispute between a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society is brought within the purview of Section 64. We shall presently deal with clause 'c' to Section 64 (1) upon which counsel for the appellant-society placed reliance but before we may do so we may deal with the application of clauses *(d), (e) and (f)*. Clause *(d)* of Section 64 (1) envisages disputes involving a surety of a member, past member of the society, member or a person other than a member who was appointed by the society; whether or not such a society is a member of the society. So also clauses *(e)* and *(f)* do not have any application to the case at hand as the same deal with disputes between any other society, the liquidator of such a society or creditor of a society.

15. That leaves us with clause (c) of Section 64 (1), which postulates disputes between non-members to whom loans are granted by the society and the society or disputes between the society or a non-member with whom

the society has or had *"business transactions"* or any person claiming under such a society.

16. It was argued on behalf of the appellant-society that the dispute between society, on the one hand, and the respondent, on the other, arising out of the contract for sale and purchase of immovable property fell under this clause inasmuch as the society was a party to the dispute arising out of a transaction that constitutes a business transaction between the society and the respondent non-members. The fact that the dispute related to a single transaction did not, according to the learned counsel for the appellant, make any material difference having regard to the provisions of Section 5 of the M.P. General Clauses Act, 1957. That provision, it was argued, made it clear that words in singular shall include the plural, and *vice-a-versa.* This implied that a single business transaction could also bring the dispute arising out of any such transaction within the purview of Section 64.

17. On behalf of the respondents, it was contended that Section 64(1)(c) had no application to the case at hand not only because a single transaction did not constitute business but also because the legislature had deliberately used the expression *"business transactions"* to make it clear that it is only a series of transactions that would bring the dispute arising out of such transactions within the purview of Section 64. The scheme underlying Chapter VII of the Act that provides for settlement of disputes clearly suggests that it is only when there are multiple transactions which can be described as *"business transactions"* that any dispute arising out of such transactions would come within the purview of Section 64. In the light of such legislative intent, the provisions of General Clauses Act, could not be called in aid by the appellant-society.

18. What is the true scope and meaning of the expression *"business transactions"* appearing in clause (c) of Section 64(1) of the Act is what falls for our consideration. That expression has not been defined in the Act or elsewhere. ***Advanced Law Lexicon (3rd Edition, 2005)*** by ***P. Ramanatha Aiyar*** describes the expression ***"Business transaction"*** as under:

> *"Business transaction is a generic expression used in the sense that it is a transaction which a businessman, in a commercial business, would enter into."*

19. The above meaning ascribed to the expression is fairly accurate hence

acceptable. All that may be added is that in order that a transaction may be treated as *"business transaction"*, it must be a transaction that answers the above description from the stand point of both the parties to the transaction. It cannot be a business transaction from the standpoint of one party to the transaction and something else from the other. It must be business bilaterally. So viewed a single transaction where an owner of immovable property agrees to sell his land to a society may or may not constitute a business transaction, depending upon whether the seller is in the business of selling property for profit. If the seller is not in any such business, the transaction from his stand point will not be a business transaction no matter, from the point of view of the society the transaction may be a business transaction because the society is in the business of buying land and developing it for the benefit of its members. A transaction of sale of property would in such a case fall outside the expression *"business transaction"*. A somewhat similar view was taken by this Court in *Manipur Administration vs. M. Nila Chandra Singh* (AIR 1964 SC 1533). This Court was in that case dealing with the provisions of Manipur Foodgrains Dealers Licensing Orders 1958. The question was whether a single transaction of sale, purchase or storage of food grains was enough to make the person concerned a dealer and whether any such act would constitute business. Repelling the contention that a single transaction would also constitute *"business"*, this Court observed:

> *"In dealing with the question as to whether the respondent is guilty under Section 7 of the Essential Commodities Act, it is necessary to decide whether he can be said to be a dealer within the meaning of clause 3 of the Order. A dealer has been defined by clause 2(a) and that definition we have already noticed. The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 mds. or more at any one time. It would be noticed that the requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale, or storage; and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single,*

casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied. If this element of the definition is ignored, it would be rendering the use of the word "business" redundant and meaningless. It has been fairly conceded before us by Mr. Khanna that the requirement that the transaction must be of 100 mds. or more at any one time governs all classes of dealings with the commodities specified in the definition. Whether it is a purchase or sale or storage at any one time it must be of 100 mds. or more. In other words, there is no dispute before us that retail transactions of less than 100 mds. of the prescribed commodities are outside the purview of the definition of a dealer."

20. Reference may also be made to the decision of this Court in *Barendra Prasad Ray and Ors. vs. Income Tax Officer 'A' Ward, Foreign Section and Ors.* (1981) 2 SCC 693 where this Court interpreted the word *"business"* and held that the same was an expression of wide import and means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning profit. In *B.R. Enterprises etc. vs. State of U.P. and Ors.* etc. (1999) 9 SCC 700 this Court held that business is a term wider than trade. It includes almost anything which is an occupation as distinguished from pleasure. The term must, however, be construed according to its context. To the same effect are the decisions of this Court in *Mahesh Chandra vs. Regional Manager U.P. Financial Corporation and Ors.* (1993) 2 SCC 279, and *S. Mohan Lal vs. R. Kondiah* (1979) 2 SCC 616.

21. Suffice it to say that while the expression *"business"* is of a very wide import and means any activity that is continuous and systematic, perceptions about what would constitute business may vary from public to private sector or from industrial financing to commercial banking sectors. What is certain is that any activity in order to constitute business must be systematic and continuous. A single transaction in the circumstances like the one in the case at hand would not constitute business for both the parties to the

transaction. At any rate, the legislature having used the expression *"business transactions"* has left no manner of doubt that it is not just a solitary transaction between a society, on the one hand, and a third party, on the other, which would bring any dispute arising out of any such transaction within the purview of Section 64(1)(c). The dispute must be between parties who have had a series of transactions, each one constituting a business transaction in order that the provisions of Section 64 are attracted and a dispute arising out of any such transaction brought within its purview.

22. The argument that the plural used in the expression *"business transactions"* must include the singular in view of the provisions of Section 5(b) of the M.P. General Clauses Act has not impressed us. We say so because Section 5 of the M.P. General Clauses Act, 1957 like Section 13 of the Central General Clauses Act postulates singular to include the plural and *vice-versa* only if no different intention appears from the context. That intention, in the case at hand, appears to be evident not only from the scheme of the Act but also from the context in which the expression *"business transactions"* has been used. The purpose and the intent underlying the provision appears to be to bring only such disputes under the purview of Section 64 as are disputes arising out of what is business for both the sides and comprise multiple transactions. Decisions of this Court in *Newspapers Ltd. vs. State Industrial Tribunal, U.P. and Ors.* (AIR 1957-SC 532) and *M/s. Dhandhania Kedia & Co. vs. The Commissioner of Income Tax* (AIR 1959 SC 219) have settled the legal position and declared that the principle underlying Section 13 of the General Clauses Act regarding singular including the plural and vice versa does not have universal application and that the principle can apply only when no contrary intention is deducible from the scheme or the language used in the statute.

23. In the case at hand, that there was a single transaction whereunder the respondents-sellers had agreed to sell to the appellant-society a parcel of land to the society, for use by the society in terms of the objects for which it is established. It may, in that sense, be a transaction that touches the business of the appellant-society but it is common ground that the respondents were not in the business of selling land as a commercial or business activity for it is nobody's case that the respondents were property dealers or had a land bank and were, as a systematic activity, selling land to make money. If the respondents were agriculturists who had agreed to sell agricultural land to the appellant-

company, the transaction was, from their point of view, not a *"business transaction"*. For ought we know that transaction may have been prompted by family necessity, poverty or some such other compulsion. Such a transaction without any business element in the same could not constitute a "business transaction" leave alone *"business transactions"* within the meaning of Section 64(1)(c).

24. For the reasons stated above Question No.2 is to be answered in the negative.

25. In the result this appeal fails and is hereby dismissed, but in the circumstances leaving the parties to bear their own costs.

Appeal dismissed.

I.L.R. [2015] M.P., 2307
SUPREME COURT OF INDIA
Before Mr. Justice Jagdish Singh Khehar &
Mr. Justice Adarsh Kumar Goel
Civil Appeal No. 5924/2015 decided on 5 August, 2015

BALESHWAR DAYAL JAISWAL ...Appellant
Vs.
BANK OF INDIA & ors. ...Respondents

(Alongwith Civil Appeal No 5925/2015, Civil Appeal No. 5926/2015, Civil Appeal No. 5927/2015)

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 18(2), Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Sections 20(3) & 24 and Limitation Act (36 of 1963), Section 29 - Power to condone the delay **- Delay in filing an appeal under Section 18(1) of SARFAESI Act can be condoned by Appellate Tribunal under Proviso to Section 20(3) of Act, 1993 read with Section 18(2) of SARFAESI Act - Appeal allowed. (Para 15)**

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 18(2), बैंकों और वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम (1993 का 51), धाराऐं 20(3) व 24 एवं परिसीमा अधिनियम (1963 का 36), धारा 29 – विलम्ब माफ करने की शक्ति – **SARFAESI** अधिनियम की धारा 18(1) के अंतर्गत अपील प्रस्तुत करने में विलम्ब

को अपीली अधिकरण द्वारा अधिनियम 1993 की धारा 20(3) के परंतुक, सहपठित **SARFAESI** अधिनियम की धारा 18(2) के अंतर्गत माफ किया जा सकता है – अपील मंजूर।

Cases referred :

AIR 2011 MP 205, AIR 2013 AP 24, 2008 (4) MhLj 424, 2009(3) BJ 401, (1969) 3 SCC 471, (1974) 2 SCC 777, (1979) 2 SCC 529, (1985) 4 SCC 404, (2008) 1 SCC 125, (2004) 11 SCC 472, (1995) 5 SCC 5, (2010) 5 SCC 23, (2009) 5 SCC 791, (2004) 4 SCC 252, (2009) 8 SCC 646, (2008) 7 SCC 169, (2015) 5 SCALE 505.

JUDGMENT

The Judgment of the Court was delivered by : **ADARSH KUMAR GOEL, J. :-** Leave granted.

2. The question in this batch of appeals is whether the Appellate Tribunal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act") has the power to condone delay in filing an appeal under Section 18(1) of the said Act.

3. We have heard learned counsel appearing for the parties, including S/Shri Amol Chitale and Akshat Shrivastava, counsel for the appellants-borrowers and Shri Rana Mukherjee, senior counsel and S/Shri Anil Kumar Sangal and Pranab Kumar Mullick, counsel appearing for the Banks.

4. The appellants submit that the Appellate Tribunal has the power to condone delay in filing the appeal beyond by the prescribed period of limitation because of the following reasons:

(i) Section 18(2) of the SARFAESI Act provides that the Appellate Tribunal shall follow the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the RDB Act") in disposing of the appeal unless otherwise provided under the SARFAESI Act or the rules made thereunder. The proviso to Section 20(3) of the RDB Act empowers the Appellate Tribunal to entertain an appeal after expiry of period of limitation, if sufficient cause for not filing

the appeal within the period of limitation was shown. Thus, the proviso to Section 20(3) of the RDB Act is incorporated in Section 18(2) of the SARFAESI Act;

(ii) Section 29(2) of the Limitation Act, 1963 makes the said Act's Sections 4 to 24 applicable to a special or local law prescribing a different period of limitation for a suit, appeal or application unless expressly excluded. There being no provision in the SARFAESI Act excluding the applicability of Sections 4 to 24 of the Limitation Act, delay can be condoned under Section 5 of the Limitation Act, and time can be excluded under Section 14 of the Limitation Act wherever applicable; and

(iii) Section 24 of the RDB Act makes the Limitation Act applicable to an application made to a Tribunal. Section 36 of the SARFAESI Act makes period of limitation prescribed under the Limitation Act applicable to measures taken under Section 13(4). Thus, there is be no exclusion of the Limitation Act.

5. On the other hand, the Banks would contend that:

(i) Section 18(2) of the SARFAESI Act cannot be read as extending provisions of proviso to Section 20(3) of the RDB Act to an appeal filed under Section 18(1) of the SARFAESI Act;

(ii) Section 29(2) of the Limitation Act is not attracted to proceedings before a Tribunal as the period of limitation prescribed under the Limitation Act is applicable only to proceedings before a Court and not before a Tribunal; and

(iii) Provisions of Limitation Act can stand excluded not only by an express provision of a local or special law but also by necessary implication from the scheme of such local or special law. The scheme of the SARFAESI Act by making the Limitation Act expressly

applicable to measures under section 13(4) of the Act impliedly excludes the said Act from appeals or other proceedings.

6. Learned counsel for the parties have brought to our notice that the issue in question has been examined by the High Courts of Madhya Pradesh, Andhra Pradesh, Bombay and Madras. While Madhya Pradesh High Court in *M/s. Seth Banshidhar Media Rice Mills Pvt. Ltd. vs. State Bank of India*[1] held that delay in filing an appeal cannot be condoned by the Tribunal, the Andhra Pradesh High Court in *Sajida Begum vs. State Bank of India*[2], the Bombay High Court in *UCO Bank, Mumbai vs. M/s. Kanji Manji Kothari and Co., Mumbai*[3] and the Madras High Court in *Punnu Swami vs. The Debts Recovery Tribunal*[4] have taken contrary view.

7. At this stage it will be appropriate to reproduce the provisions of Sections 18 and 36 of the SARFAESI Act, Section 20 and Section 24 of the RDB Act and Section 29 of the Limitation Act :

"Sections 18 and 36 of the SARFAESI Act :

18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery

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1. AIR 2011 MP 205
2. AIR 2013 AP 24
3. 2008 (4) MhLj424
4. 2009 (3) BJ 401

Tribunal, whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

36. ***Limitation*** *No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).*

Sections 20 and 24 of the RDB Act :

Section 20 Appeal to the Appellate Tribunal

(1) Save as provided in subsection (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Section 24 ***Limitation***—The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal.

Section 29 of the Limitation Act

29. Savings-

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to

which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

8. The first point for consideration is the applicability of proviso to Section 20(3) of the RDB Act to the disposal of an appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said Section 18(2) makes it clear that the Appellate Tribunal under the SARFAESI Act has to dispose of an appeal in accordance with the provisions of the RDB Act. In this respect, the provisions of the RDB Act stand incorporated in the SARFAESI Act for disposal of an appeal. Once it is so, we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period. Even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held not to be applicable, the proviso to Section 20(3) of the RDB Act is applicable by virtue of Section 18(2) of the SARFAESI Act. This interpretation is clearly borne out from the provisions of the two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to a Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied *inter alia* in *Ram Kirpal Bhagat vs. The State of Bihar*[5], *Bolani Ores Ltd. vs. State of Orissa*[6], *Mahindra and Mahindra Ltd. vs. Union of India*[7] and *Onkarlal Nandlal vs. State of Rajasthan*[8] relied upon on behalf of the appellants. We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) SARFAESI Act and proviso to Section 20(3) of

5. (1969) 3 SCC 471
6. (1974) 2 SCC 777
7. (1979) 2 SCC 529
8. (1985) 4 SCC 404

the RDB Act.

9. The fact that RDB Act and the SARFAESI Act are complimentary to each other, as held by this Court in *Transcore vs. Union of India*[9], also supports this view.

10. We may now deal with the conflicting views of the High Courts on the subject. The Madhya Pradesh High Court has held that the power of condonation of delay stood excluded by principle of interpretation that if a later statute has provided for shorter period of limitation without express provision for condonation, it could be implied that there was no power of condonation. Reliance has been placed on principles of statutory interpretation by Justice G.P. Singh, 12th Edition, 2010, page 310. It was further observed that the Limitation Act was made applicable to a Tribunal under Section 24 of the RDB Act, but there was no similar provision with respect to the Appellate Tribunal. To justify such an inference, reliance has also been placed on *Gopal Sardar* case and *Fairgrowth Investments Ltd. vs. The Custodian*[10]. It was further observed that the object of SARFAESI Act was to ensure speedy recovery of the dues and quicker resolution of disputes arising out of action taken for recovery of such dues. We find the approach to be erroneous and incorrect understanding of the principle of interpretation which has been relied upon. The principle discussed in the celebrated Treatise in question is as follows:

> *"When an amending Act alters the language of the principal statue, the alteration must be taken to have been made deliberately."*

11. It is difficult to appreciate how the above principle justifies the view of the High Court. The change intended in SARFAESI Act has to be seen from the statute and not from beyond it. No doubt the period of limitation for filing appeal under Section 18 of the SARFAESI Act is 30 days as against 45 days under Section 20 of the RDB Act. To this extent, legislative intent may be deliberate. The absence of an express provision for condonation, when Section 18(2) expressly adopts and incorporates the provisions of the RDB Act which contains provision for condonation of delay in filing of an appeal, cannot be read as excluding the power of condonation. As already observed, the proviso to Section 20(3) which provides for condonation of delay (45 days under RDB Act) stands extended to disposal of appeal under the SARFAESI Act

9. (2008) 1 SCC 125 10. (2004) 11 SCC 472

(to the extent that condonation is of delay beyond 30 days). There is no reason to exclude the proviso to Section 20(3) in dealing with an appeal under the SARFAESI Act. Taking such a view will be nullifying Section 18(2) of the SARFAESI Act. We are thus, unable to uphold the view taken by the Madhya Pradesh High Court.

12. We approve the view taken by the Madras, Andhra Pradesh and Bombay High Courts, but for different reasons. The view taken by Andhra Pradesh High Court in *Sajida Begum vs. State Bank of India*[11] is based on applicability of Section 29(2) of the Limitation Act. In our view, Section 29(2) of the Limitation Act has no absolute application, as the statute in question impliedly excludes applicability of provisions of Limitation Act to the extent a different scheme is adopted. If no provision of Limitation Act was expressly adopted, it may have been possible to hold that by virtue of Section 29(2) power of condonation of delay was available. It is well settled that exclusion of power of condonation of delay can be implied as laid down in *Union of India vs. Popular Construction Co.*[12], *Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission*[13], *Commissioner of Customs and Central Excise vs. Hongo India Private Limited*[14] and *Gopal Sardar vs. Karuna Sardar*[15] relied upon on behalf of the Banks.

13. We may now advert to the last question as to whether the Appellate Tribunal under the SARFAESI Act was not a Court and therefore, Section 29(2) of the Limitation Act was not attracted.

14. The Andhra Pradesh High Court in *Sajida Begum* case in holding the Tribunal to be Court, has relied on Sections 22 and 24 of the RDB Act. Section 22 vests powers of Civil Court on the Tribunal only for purposes mentioned therein, such as summoning witnesses, discovery and production of documents, receiving evidence, issuing commission for examining witnesses etc. and deems Tribunals to be courts for specified purposes, such as for Sections 193, 196 and 228 of the Indian Penal Code and Section 195 of the Criminal Procedure Code. These provisions may not be conclusive of the question of the Tribunal being Court for Section 29(2) of the Limitation Act without further examining the scheme of the statutes in question. In *Nahar Industrial Enterprises Ltd. vs. Hong Kong and Shanghai Banking Corpn.*[16], this Court examined the scheme of the two Acts in question and

11. AIR 2013 AP 24
12. (1995) 5 SCC 5
13. (2010) 5 SCC 23
14. (2009) 5 SCC 791
15. (2004) 4 SCC 252
16. (2009) 8 SCC 646

held that the Tribunal was a court but not a civil court for purposes of Section 24 of the CPC. We are of the view that for purposes of decision of these appeals, it is not necessary to decide the question whether the Tribunal under the Banking statutes in question was court for purposes of Section 29(2) of the Limitation Act. We have already held that the power of condonation of delay was expressly applicable by virtue of Section 18(2) of the SARFAESI Act read with proviso to Section 20(3) of the RDB Act and to that extent, the provisions of Limitation Act having been expressly incorporated under the special statutes in question, Section 29(2) stands impliedly excluded. To this extent, we differ with the view taken by the Andhra Pradesh High Court as well as Madras and Bombay High Courts. We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department*[17] and *M.P. Steel Corporation vs. Commissioner of Central Excise*[18].

15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section **18 (1)** of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20 (3) of the RDB Act read with Section 18 (2) of the SARFAESI Act. The contrary view taken by the Madhya Pradesh High Court in *Seth Banshidhar Media Rice Mills Pvt. Ltd.* case is overruled.

16. Accordingly, the appeal filed by the Bank against the judgment of the Andhra Pradesh High Court is dismissed and the appeals filed by the borrowers are allowed. The impugned orders passed by the High Court of Madhya Pradesh (in appeals arising out of SLP (C) No.27674 of 2011 and SLP (C) No.36316 of 2011) are set aside and the matters are remanded to the High Court for being dealt with afresh in accordance with law. The appeal arising out of SLP (C) No.38436 of 2012 has been preferred directly from the order of the Debt Recovery Appellate Tribunal, Delhi passed by the said tribunal relying upon the judgment of the Madhya Pradesh High Court in *Seth Banshidhar Media Rice Mills Pvt. Ltd. case.* The said impugned order is

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17. (2008) 7 SCC 169 18. (2015) 5 SCALE 505

also set aside and the matter is remanded to the Debt Recovery Appellate Tribunal, Delhi for being dealt with afresh in accordance with law.

17. All the appeals are disposed of accordingly.

Appeal disposed of.

I.L.R. [2015] M.P., 2317
WRIT APPEAL
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice K.K. Trivedi
W.A. No. 837/2013 (Jabalpur) decided on 10 July, 2015

NARMADA HYDROELECTRIC DEVELOPMENT CORPORATION ...Appellant
Vs.
SHANKAR & ors. ...Respondents

(Alongwith W.A. Nos. 847/2013, 1124/2013, 1127/2013, 1129/2013, 1132/2013, 1133/2013, 1134/2013, 1135/2013, 1137/2013, 1138/2013, 1139/2013, 1140/2013, 1141/2013, 1142/2013, 1143/2013, 1144/2013, 1145/2013, 1148/2013, 1152/2013, 1153/2013, 1154/2013, 1155/2013, 1157/2013, 1158/2013, 1159/2013, 1160/2013, 1161/2013, 1162/2013, 1163/2013, 1164/2013, 1165/2013, 1166/2013, 1167/2013, 1168/2013, 1169/2013, 1170/2013, 1172/2013, 1173/2013, 1174/2013, 1175/2013, 1176/2013, 1177/2013, 1178/2013, 1179/2013, 1180/2013, 1183/2013, 1188/2013, 1189/2013, 1190/2013, 1191/2013, 1192/2013, 1193/2013, 1194/2013, 1195/2013, 1196/2013, 1197/2013, 1198/2013, 1199/2013, 1200/2013, 1201/2013, 1202/2013, 1203/2013, 1204/2013, 1205/2013, 1206/2013, 1207/2013, 1208/2013, 1209/2013, 1210/2013, 1211/2013, 1212/2013, 1213/2013, 1214/2013, 1215/2013, 1216/2013, 1217/2013, 1218/2013, 1219/2013, 1220/2013, 1221/2013, 1222/2013, 1223/2013, 1224/2013, 1225/2013, 1226/2013, 1227/2013, 1228/2013, 1229/2013, 1230/2013, 1231/2013, 1246/2013, 1247/2013, 1248/2013, 1249/2013, 1250/2013, 1251/2013, 1252/2013, 1253/2013, 1254/2013, 1255/2013, 1256/2013, 1257/2013, 1258/2013 and 1259/2013)

Rehabilitation and Resettlement Policy **- Whether the oustees who have accepted 100% compensation can avail the option of**

acceptance of 50% compensation and opt for alternative commensurate land - Supreme Court had extended the benefit of allotment of land to those who have not withdrawn the SRG benefits/compensation voluntarily or who have received the 100% compensation amount involuntarily - Policy and Order of Supreme Court does not absolve the oustees from refunding 50% of Compensation amount for becoming entitled to avail of the scheme envisaged under R & R Policy - However, on assurance given by Authority through Counsel to give one more opportunity to the oustees to avail the benefit under Para 5.1 of R&R policy on refunding 50% compensation amount received by them within three months from today, as condition precedent for allotment of alternative land, is accepted. (Paras 3 to 17)

पुनर्वास और पुनर्व्यवस्थापन नीति – क्या वे विस्थापित जिन्होंने 100% प्रतिकर स्वीकार किया है, 50% प्रतिकर को स्वीकार करने के विकल्प का उपभोग कर सकते हैं और वैकल्पिक अनुरूप भूमि का चुनाव कर सकते हैं – उच्चतम न्यायालय ने भूमि के आवंटन का लाभ उन्हें दिया है जिन्होंने स्वैच्छिक रूप से एस. आर.जी. लाभ/प्रतिकर वापस नहीं लिया है या जिन्होंने अनैच्छिक रूप से प्रतिकर की 100% रकम प्राप्त की है – नीति एवं उच्चतम न्यायालय का आदेश, पुनर्वास और पुनर्व्यवस्थापन नीति के अंतर्गत परिकल्पित योजना का उपभोग करने के लिये हकदार बनने हेतु विस्थापितों को प्रतिकर राशि का 50% लौटाने के दायित्व से मुक्त नहीं करते – किंतु प्राधिकारी द्वारा अधिवक्ता के जरिये विस्थापितों को, वैकल्पिक भूमि के आबंटन के लिये पूरोभावी शर्त के रूप में आज से तीन माह के भीतर, उनके द्वारा प्राप्त 50% प्रतिकर की रकम लौटाने पर, उन्हें पुनर्वास और पुनर्व्यवस्थापन नीति की कंडिका 5.1 के अंतर्गत लाभ के उपभोग हेतु एक और अवसर देने का आश्वासन स्वीकार किया गया।

R.N. Singh with *Arpan J. Pawar*, for the appellant.
A.A. Barnad, G.A. for the respondent/State.
None for the Private Respondents, though served.

ORDER

The Order of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- Writ Appeal Nos. 847/2013, 1124/2013, 1127/2013, 1129/2013, 1132/2013, 1133/2013, 1134/2013, 1135/2013, 1137/2013, 1138/2013, 1139/2013, 1140/2013, 1141/2013, 1142/2013, 1143/2013, 1144/2013, 1145/2013, 1148/2013, 1152/2013, 1153/2013, 1154/2013, 1155/2013, 1157/2013, 1158/2013, 1159/2013, 1160/2013, 1161/

2013, 1162/2013, 1163/2013, 1164/2013, 1165/2013, 1166/2013, 1167/2013, 1168/2013, 1169/2013, 1170/2013, 1172/2013, 1173/2013, 1174/2013, 1175/2013, 1176/2013, 1177/2013, 1178/2013, 1179/2013, 1180/2013, 1183/2013, 1188/2013, 1189/2013, 1190/2013, 1191/2013, 1192/2013, 1193/2013, 1194/2013, 1195/2013, 1196/2013, 1197/2013, 1198/2013, 1199/2013, 1200/2013, 1201/2013, 1202/2013, 1203/2013, 1204/2013, 1205/2013, 1206/2013, 1207/2013, 1208/2013, 1209/2013, 1210/2013, 1211/2013, 1212/2013, 1213/2013, 1214/2013, 1215/2013, 1216/2013, 1217/2013, 1218/2013, 1219/2013, 1220/2013, 1221/2013, 1222/2013, 1223/2013, 1224/2013, 1225/2013, 1226/2013, 1227/2013, 1228/2013, 1229/2013, 1230/2013, 1231/2013, 1246/2013, 1247/2013, 1248/2013, 1249/2013, 1250/2013, 1251/2013, 1252/2013, 1253/2013, 1254/2013, 1255/2013, 1256/2013, 1257/2013, 1258/2013 and Writ Appeal No.1259/2013

RE :

I.A.Nos.445/2014, 526/2014, 489/2014, 415/2014, 542/2014, 509/2014, 538/2014, 522/2014, 528/2014, 502/2014, 431/2014, 422/2014, 485/2014, 543/2014, 493/2014, 466/2014, 537/2014, 451/2014, 433/2014, 402/2014, 544/2014, 437/2014, 508/2014, 476/2014, 514/2014, 409/2014, 521/2014, 545/2014, 541/2014, 480/2014, 417/2014, 516/2014, 446/2014, 519/2014, 517/2014, 426/2014, 449/2014, 404/2014, 416/2014, 518/2014, 529/2014, 403/2014, 401/2014, 549/2014, 507/2014, 440/2014, 530/2014, 540/2014, 532/2014, 513/2014, 405/2014, 515/2014, 531/2014, 460/2014, 421/2014, 533/2014, 536/2014, 494/2014, 511/2014, 525/2014, 436/2014 and 455/2014 **in Writ Appeal Nos.** 1127/2013, 1129/2013, 1132/2013, 1134/2013, 1135/2013, 1137/2013, 1139/2013, 1140/2013, 1141/2013, 1145/2013, 1153/2013, 1154/2013, 1155/2013,1157/2013, 1159/2013, 1161/2013, 1164/2013, 1165/2013, 1166/2013, 1168/2013, 1170/2013, 1173/2013, 1174/2013, 1175/2013, 1176/2013, 1177/2013, 1178/2013, 1180/2013, 1183/2013, 1190/2013, 1191/2013, 1194/2013, 1195/2013, 1196/2013, 1197/2013, 1202/2013, 1203/2013, 1206/2013, 1207/2013, 1209/2013, 1210/2013, 1211/2013, 1212/2013, 1215/2013, 1216/2013, 1219/2013, 1220/2013, 1222/2013, 1223/2013, 1227/2013, 1228/2013, 1230/2013, 1231/2013, 1246/2013, 1248/2013, 1249/2013, 1250/2013, 1251/2013, 1253/2013, 1255/2013, 1256/2013 and **Writ Appeal** No.1259/2013 respectively.

Shri R.N. Singh, Senior Advocate with Shri Arpan J. Pawar, Advocate for the appellants.

Shri A.A. Barnad, Government Advocate for the respondent-State.

None for the Private Respondents, though served.

These applications have been filed by the appellants to bring on record subsequent events and in particular the steps taken by the State Government on the basis of recommendation made by the High Level Committee. A Special Package dated 07.06.2013 was offered to the original land oustees, who had not vacated the affected area inspite of having received compensation amount. That package was challenged before the Supreme Court by Narmada Bachao Andolan, which petition, however, was dismissed on 06.08.2013. It is further stated in these applications that during the pendency of the writ petitions and for the same reason concerned writ appeals in which these applications have been filed, the Private respondents and also other majority of writ petitioners, have accepted the special package dated 07.06.2013, being very attractive and beneficial to the oustees. As a result, it is prayed that the concerned appeals in which these applications have been moved, be disposed of in the light of the arrangement accepted by the parties.

2. Although these applications have been filed in January, 2014 and have been duly served on the opposite party (private respondents), no response has been filed nor any appearance has been made to contest these applications and the concerned appeals. That impels us to accept the request of the appellants to infer that the concerned private respondents have no pending lis having acted upon the special package. As a result, the concerned appeals are worked out between the parties on that basis. Accordingly, the concerned appeals between such parties need not be continued any further and can be disposed of on that basis. Hence, these applications are **allowed.**

3. As a result, the respective writ appeals, in which applications under consideration have been filed be treated as **disposed** of on the above terms.

RE : Writ Appeal No. 837/2013 with

Writ Appeal Nos. 847/2013, 1124/2013, 1133/2013, 1138/2013, 1142/2013, 1143/2013, 1144/2013, 1148/2013, 1152/2013, 1158/2013, 1160/2013, 1162/2013, 1163/2013, 1167/2013, 1169/2013, 1172/2013, 1179/

2013, 1188/2013, 1189/2013, 1192/2013, 1193/2013, 1198/2013, 1199/2013, 1200/2013, 1201/2013, 1204/2013, 1205/2013, 1208/2013, 1213/2013, 1214/2013, 1217/2013, 1218/2013, 1221/2013, 1224/2013, 1225/2013, 1226/2013, 1229/2013, 1247/2013, 1252/2013, 1254/2013, 1257/2013 and Writ Appeal No.1258/2013

Shri R.N. Singh, Senior Advocate with Shri Arpan J. Pawar, Advocate for the appellants.

Shri A.A. Barnad, Government Advocate for the respondent-State.

None for the Private Respondents, though served.

Heard counsel for the appellants.

1. The matters are on final hearing Board at serial No.11 in the weekly list. When the matters were called out for hearing, no appearance was made on behalf of the private respondents. The Court Reader notified the matters as having reached, on the electronic board, for inviting attention of the Counsel appearing for the private respondents, who have filed Vakalatnama for the respective private respondents. The Court waited for quite some time. Although arguments of Shri R.N. Singh, Senior Advocate had concluded but since no appearance is made, we have no option but to proceed with the order, dictated in open Court.

2. These appeals take exception to the common order passed by the learned Single Judge dated 22.08.2013, in writ petitions filed by the private respondents.

3. The facts emerging from the record are that the private respondents (writ petitioners) are affected by Narmada Dam Project. They were offered compensation. Each one of them has availed of compensation amount. There is no dispute that they are oustees within the meaning of Rehabilitation and Resettlement Policy (in short "R & R Policy") formulated by the State Government. As per the said policy, the oustees were given option either to accept 100% compensation amount or to opt for alternative commensurate land by accepting only 50% of the compensation amount. This has been provided in para 5.1 of the R & R Policy. The same reads thus:-

> "At least fifty percent amount of compensation for the acquired land shall be retained as initial installment towards the payment

of the cost of the land to be allotted to the oustee family. However, if an oustee family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation, it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer. In such cases, oustee families will have no entitlement over allotment of land and shall be paid full amount of compensation in one installment. An option once exercised under this provision shall be final, an no claim for allotment of land in lieu of the allotted land can be made afterwards. If any oustee family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector who will after necessary enquiry certify that this will not adversely affect the interest of the oustee family. Such application of the Scheduled Tribes oustee families will be accepted only after the above said certification by the Collector."

4. While considering the said policy, the Division Bench of this Court in paragraph 64(i) opined as follows:-

"The displaced families and encroachers are entitled to allotment of agricultural land as far as possible in terms of paragraphs 3 and 5 of the R & R Policy of 1993 amended in 2002, and we accordingly direct the respondent No.1 to locate Government land or private land and allot such land as far as possible, to the displaced families and encroachers, if they opt for such land and refund 50% of the compensation amount received by them to be retained towards the instalments of price of land, and if they agree to other terms stipulated in paragraphs 5 of the R & R Policy of 1993"

The decision of the Division Bench was subject matter before the Supreme Court. With reference to the observation found in para 64(i) in the decision of the Division Bench of this Court, the Supreme Court in para 86 of its judgment observed thus:

"In view of the above, the direction given by the High Court in paragraphs 64(1) of the judgment, is modified to the extent

that the displaced families who have not withdrawn SRG benefits/compensation voluntarily and submit applications for allotment of land before the Authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R & R Policy, and for that purpose, the appellants must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein."

5. The private respondents, even though they have accepted the compensation amount in full, yet claim to be entitled to avail of the R & R scheme in terms of para 5.1, as construed by the Division Bench of this Court; and further they must be given sufficient time for refund of 50% of the compensation amount. For that, the allotment of alternative land to them should not be deferred. The learned Single Judge thus proceeded to consider whether the option specified in para 5.1 of the R & R Policy can be availed of by the private respondents (writ petitioners), who had already accepted 100% compensation amount but on the second thought would want to avail of the option given in para 5.1 of the R & R Policy.

6. Indubitably, Para 5.1 of the R & R Policy, by itself, does not provide for such option to the oustee family who has already exercised the option of accepting 100% compensation amount; but that option became available because of the decision of the Division Bench of this Court in paragraph 64(i) referred to above. Although, the Supreme Court modified the other observations in paragraph 64(i) of the Division Bench decision of this Court, did not either expressly or impliedly overturn the option created to the oustees in terms of paragraph 64(i). In that, the oustees who had involuntarily received 100% of compensation amount but would want to avail of the option of alternative land by refunding 50% of the compensation amount received by them to be retained towards the installment of price of land and if they agree to abide by other terms stipulated in para 5 of R & R Policy. Learned Single Judge held that the sweep of the observations made by the Supreme Court in para 86 gave option to such oustees without depositing or refunding any compensation amount whatsoever. This is the limited aspect that needs to be addressed in the present appeals, as questioned by the appellants.

7. Learned Senior Counsel for the appellants in all fairness submitted that the appellant/Authority was not questioning the mechanism evolved by the Division Bench of this Court in paragraph 64(i) of its judgment of creating a new category of oustees who could also avail the option provided in para 5.1 of the R & R Policy by refunding 50% of the compensation amount received by them. In other words, the limited challenge in these appeals, as aforesaid, is whether the oustees who have availed of 100% compensation can lateron opt for alternative land without refunding 50% of the compensation amount. The learned Single Judge in the impugned decision has directed the appellants to give alternative land to such oustees in terms of para 5.1 of the R & R Policy, irrespective of deposit or refund of 50% compensation amount by the concerned oustees.

8. We have already extracted the relevant portion of paragraph 64(i) of the decision of the Division Bench of this Court and paragraph 86 of the Supreme Court order modifying paragraph 64(i) of the High Court's decision. We have no difficulty in accepting the claim of the private respondents that the Supreme Court has modified paragraph 64(i) of the decision of the Division Bench of the High Court. However, what has been modified is that the displaced families who had **"not withdrawn** SRG benefits/compensation **voluntarily"** can submit application for allotment of land before the Authority concerned and their claims may have to be considered if they agree to abide by other terms and conditions in the R & R Policy. The Supreme Court decision, therefore, has extended the scope of para 5.1 of R & R Policy to those who have not accepted the 100% compensation amount (but only 50%) as provided by the scheme; and in addition to those who have received the 100% compensation amount **"involuntarily"**, by refunding 50% of the compensation amount. These two categories of oustees have been equated and held to be entitled to the benefit of the scheme in para 5.1 of R & R Policy.

9. This position remains altered. Even the appellant/Authority is not questioning that arrangement in the present appeals. What is challenged, therefore, is the observation and direction issued by the learned Single Judge, as not in consonance with the spirit of the R & R Policy or the Supreme Court decision. We find merits in the grievance of the appellant in this behalf. We accept the argument that the Supreme Court judgment if read as a whole and in particular para 86 does not absolve the oustees from refunding 50% of the compensation amount for becoming entitled to avail of the scheme envisaged

under Para 5.1 of R & R Policy. That condition cannot be relaxed any further unless the policy provides for the same.

10. Further, in our opinion, the relief granted by the Single Judge is, in a way, in excess of the relief claimed by the petitioners. The principal relief claimed by the petitioners reads thus:-

> "(c) This Hon'ble Court be pleased to issue writ/order/ direction, permitting the petitioner to pay the compensation and SRG amounts to the authorities, after the allotment of land "as far as possible' by the project authorities in terms of the R & R Policy and of the judgment of the Apex Court dated 11.05.2011. The petitioner may be permitted to refund the compensation amount in 20 yearly equal installments form the first year after unencroached and suitable land of not less than equal quality and nature as his submerging land is allotted to him, as directed by the Hon'ble Supreme Court. The petitioner may be permitted to return the amounts even earlier if possible for him. Until the return of the compensation amount, the lands of the petitioner may be mortgaged with the authorities to the proportionate extent, in terms of the R & R Policy."
>
> (emphasis supplied)

11. After the judgment is pronounced, till this point, the counsel for the private respondents Shri Rahul Choubey has appeared before us and informs us that he was busy in some other Court and therefore could not remain present till now and that the Senior Counsel Smt. Sobha Menon, engaged in some of the matters to espouse the cause of the private respondents is in personal difficulty today.

12. Even though the entire judgment has been dictated, we permitted the counsel for the private respondents to address us on merits.

13. After hearing learned counsel for the private respondents, we find no reason to deviate from the view already expressed, which is in conformity with paragraph 86 of the Supreme Court decision. Nothing is brought to our notice that the argument of the private respondents (writ petitioners) before the Supreme Court was in the context of prayer Clause (c) of the Writ Petitions as reproduced hitherto, of giving time (20 years) to refund 50% compensation amount already

received by them. The argument dealt with in paragraph 86 of the Supreme Court decision is, however, about some oustees having received the compensation amount "involuntarily". The Supreme Court has opined that such oustees are also entitled to avail of para 5.1 of R & R Scheme. Thus understood, the fact that the compensation amount was received by the concerned private respondents "involuntarily" as is contended, will make no difference. In any case, it is unnecessary for us to enter upon the said disputed factual position - as to whether the amount received by the private respondents was thrusted on them because the writ petition filed by the private respondents was limited to avail the option given in para 5.1 of the R & R Policy; and not to declare the acquisition of the land owned and possessed by the oustee, as illegal.

14. The relief in the writ petition essentially is for allotment of alternative agricultural land and to give 20 years time to refund the 50% of compensation amount received by the concerned oustee. The stand taken by the appellant/ Authority was not of denying benefit of para 5.1 of the R & R Policy to the private respondents (writ petitioners). The stand, however, was that if the private respondents (writ petitioners) refund 50% compensation amount received by them, their claim for allotment of alternative agricultural land could be considered. As a matter of fact, the counsel appearing for the Authority has gone a step further and has stated before us that the Authority will have no objection whatsoever if the private respondents, opt for option specified in para 5.1 of the R & R Policy upon deposit of 50% amount of compensation already received by them without paying any interest thereon – only whence their claim for allotment of alternative commensurate agricultural land can be considered even now, provided the deposit is made within 3 months from today. Those private respondents (writ petitioners) who are interested in availing of this option are free to do so.

15. As a matter of fact, the private respondents have received the compensation amount, be it voluntarily or thrusted upon them (involuntarily) almost around 10 years back and have availed of the same till now. If the Authority is waiving the requirement of interest on refund of 50% compensation amount, it is incomprehensible that the writ petitioners can be heard to reject such an offer, and especially when the substantial period of extension of time for refund as prayed in the relief claimed in the writ petitions, is already exhausted. In prayer clause (c), the writ petitioners have asked for permission to refund the compensation amount in 20 years in installments. Indeed, this

prayer was made in the year 2013. The amount received by the petitioners, as aforesaid, is as back as in the year 2005-06. In our opinion, the voluntary offer made today by the counsel for the appellant/Authority before us, is further indulgence shown to the affected persons who can still avail of the same within 3 months from today.

16. As noted earlier, this arrangement would only mean that the private respondents (writ petitioners), will have to refund 50% of the compensation amount received without any liability to pay interest thereon, even though the amount has been used profitably by the said person(s) for all these years. Waiver of interest by the Authority, as is pointed out by the appellant, would be burdened on the State exchequer. At the same time, however, the private respondents/allottees would be doubly benefited because of the inflation and escalation cost of the land, which will be offered in lieu of the acquired land elsewhere.

17. As a result, we reiterate our order of **allowing these appeals** on the above terms. The assurance given by the appellants through counsel to give one more opportunity to the oustees eligible to avail the benefit under para 5.1 of R & R Policy on refunding 50% compensation amount received by them within three months from today, as condition precedent for allotment of alternative land, is accepted.

Ordered accordingly.

Order accordingly.

I.L.R. [2015] M.P., 2327

WRIT APPEAL

Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice K.K. Trivedi

W.A. No. 204/2015 (Jabalpur) decided on 21 July, 2015

UNION OF INDIA & ors. ...Appellants

Vs.

GOPAL DAS KABRA & ors. ...Respondents

(Alongwith W.A. No. 288/2015)

Cantonments Act (41 of 2006), Sections 2, 10 & 28 - Resided - **On conjoint reading of Sections 28 and 2(zt), it is clear that the person**

should have had resided during the specified period in a "house" and has not abandoned all intention of occupying such house by himself or his family - House pre-supposes that it has been erected after taking due permission and recognized by appropriate Authority - Electoral Roll to be prepared consisting of persons who have resided in lawful houses to which house number has been allocated for a period of not less than six months immediately preceding the qualifying date.

(Paras 25, 27 & 37)

छावनी अधिनियम (2006 का 41), धाराऐं 2, 10 व 28 – निवासरत – धाराऐं 28 व 2(जेड टी) के संयुक्त पठन से यह स्पष्ट है कि व्यक्ति को "मकान" में विर्निदिष्ट अवधि के दौरान निवासरत रहा होना चाहिए और जिसने स्वयं या उसके परिवार द्वारा उक्त मकान के अधिभोग का पूर्ण आशय त्यागा नहीं है – मकान से पूर्वकल्पित है कि उसका निर्माण सम्यक् अनुमति से किया गया है और समुचित प्राधिकारी द्वारा मान्यता प्राप्त है – मतदाता सूची को ऐसे व्यक्तियों का समावेश करके तैयार किया जाना चाहिए जो विधि पूर्ण मकानों में निवासरत है, जिसे अर्हता की तिथि से तुरंत पूर्व, ऐसी अवधि जो छः माह से कम नहीं, के लिए मकान नंबर आबंटित किया गया है।

Cases referred :

2009(2) MPLJ 348, AIR 1957 SC 304, (1980) 4 SCC 211.

Indira Nair with *Rajas Pohankar,* for the appellants in W.A. No. 204/2015 & for the respondents in W.A. No. 288/2015.

Prashant Singh with *Manas Mani Verma,* for the appellant in W.A. No. 288/2015.

Vivek Rusia, for the respondent No.1 in both W.A. Nos. 204/2015 & 288/2015.

Prashant Singh, for the respondent No.2 Intervener in W.A. No. 204/2015.

K.N. Fakhruddin, for the intervener in W.A. No. 204/2015.

J U D G M E N T

The Judgment of the Court was delivered by :

A.M. KHANWILKAR, C.J. :- These two writ appeals take exception to the judgment of the learned Single Judge of this Court dated 22.04.2015 in W.P.No.93/2015.

2. That writ petition was filed by one Gopal Das Kabra (respondent No.1) seeking direction against the concerned Authorities to prepare voters list strictly in accord with Rule 10 of the Cantonments Electoral Rules, 2007 (hereinafter referred to as "the said Rules"), by removing the names of encroachers and residents of illegally constructed houses and which have not been allotted house number by the Cantonment Board, Pachmarhi. Consequential relief prayed, is that, the Authorities be restrained from conducting election to Ward of Members on the basis of the impugned voters list (Annexure-P/12).

3. The writ petitioner claims to be a permanent resident of Pachmarhi area. He had contested election of Cantonment Board, Pachmarhi in the year 2008 and was defeated by a narrow margin of 292 votes. He had filed W.P.No.7169/2008 before this Court seeking similar direction against the concerned Authorities to strictly adhere to Rule 10 while preparing the electoral rolls of Cantonment Board, Pachmarhi. That writ petition was disposed of on 08.07.2010 with direction to the Cantonment Board, Pachmarhi to strictly abide by Rule 10 while preparing electoral rolls for 2010-11.

4. The appellants/Authorities had challenged that decision by way of W.A.No.798/2010. The Division Bench of this Court directed the Authorities to prepare the electoral rolls as per the mandate of Rule 10(3), to be arranged according to house numbers. The Division Bench rejected the argument of the Authorities that there are several encroachments on the land of Cantonment Board; for which proceedings have already been initiated, but the encroachers could not be evicted due to reasons beyond the control of the Board. It was argued on behalf of the appellants/Board that as it was not possible for the Board to prepare the electoral rolls of occupants of such unauthorized structures in absence of allotment of house numbers; and if house number was to be allotted, it would amount to regularizing the encroachment. The Division Bench, however, opined that there was no obligation on the Cantonment Board to allot house numbers in respect of the structures which are unauthorized or illegal. It went on to observe that substantial compliance of provisions of Rule 10(3) is possible by marking the encroachment as unauthorized construction. The Division Bench further observed that against the names of persons occupying unauthorized structures, that fact can be mentioned in the electoral rolls for the purpose of compliance of Rule 10(3)

of the said Rules. However, by the subsequent order passed on 02.08.2013 in review petition filed by the writ-petitioner being R.P.No.972/2012, the Court deleted the observations made in the order dated 24.09.2010, - which read "and mention them accordingly in the electoral rolls for the purposes of compliance of Rule 10(3) of the Rules".

5. The writ petitioner then filed a contempt petition bearing No.742/2012, which was disposed of on 30.09.2013 with direction to the Authorities to take all necessary steps to comply with the decision of the Division Bench dated 24.09.2010 as modified on 02.08.2013, expeditiously. The writ petitioner then pursued the matter with the concerned Authorities and in the wake of fresh election to be held in or around December, 2014, apprehending that the Authorities may indulge in the same illegality in preparation of the electoral rolls, approached this Court by way of Writ Petition No.93/2015, for the reliefs as mentioned hitherto.

6. It may be relevant to mention that, in the meantime pursuant to the directions given by the Court in PIL, the Authorities took action against the unauthorized structures and proceeded to demolish as many as around 1200 unauthorized structures in furtherance of the Court order (as noted in order dated 17.04.2015 in W.P.No.11909/2013 (PIL)). Even after removal of the unauthorized structures, the names of persons who were occupying those structures have been retained in the electoral rolls. According to the writ petitioner, if the unauthorized structures were non-existent, treating the persons who occupied the said structures as continuing to reside in that house, would be preposterous; and for which reason, names of such persons in any case should be effaced and deleted from the voters list prepared by the Authorities, for ensuring free and fair election.

7. The learned Single Judge by the impugned judgment has allowed the writ petition and has directed the Authorities to publish updated voters list as per Rule 10, by dropping the names of encroachers and residents, who were in occupation of illegally constructed houses. The learned Single Judge, in the impugned judgment, has noted that in the previous round of litigation, inspite of direction given by the Court, the Authorities/Board prepared a common voters list enlisting the names of residents occupying legal structures. In substance, it is held that the voters list must contain names of persons residing in authorised structures bearing house numbers allotted by the competent

Authority. The learned Single Judge has opined that on conjoint reading of Rule 9 and Rule 10, it mandates preparation of voters list only of persons occupying houses which have been recognized by the Cantonment Board as legal by allotting house numbers. Before the learned Single Judge, reliance was placed on Section 28 of the Cantonments Act, 2006 (for brevity "Act of 2006") to contend that exclusion of persons from the voters list merely because they were occupying illegal structures/houses, was not envisaged by the said provision. This contention has been negatived by the learned Single Judge in the light of observations made by the Division Bench of this Court in the earlier round of litigation. Accordingly, direction has been issued by the learned Single Judge to the Authorities/Cantonment Board to correct the voters list in conformity with Rule 10 by removing the names of encroachers and residents, residing in illegal houses which do not bear house numbers allotted by the Cantonment Board, Pachmarhi. Against this decision, present appeals have been filed by the Authorities/ Cantonment Board and persons aggrieved by the direction so issued by the learned Single Judge.

8. In the appeal filed by the Authorities/Board while issuing notice on the appeal on 24.04.2015, the Court passed interim order allowing the appellants/ Board to continue with the election program on the basis of already published voters list but made it clear that the same will be subject to the outcome of the present appeals. We were informed that the election results, however, have not been notified as per the provisions of the Act of 2006.

9. The principal challenge in the present appeals, is that, the direction issued by the learned Single Judge violates Section 28(1) of the Act of 2006. It will result in denial of opportunity to large number of persons who are otherwise eligible to be enlisted as voters. Further, the learned Single Judge has misconstrued and misapplied the observations of the Division Bench in its order dated 24.09.2010, which has been modified by the subsequent order dated 02.08.2013. According to the appellants, on conjoint reading of the two orders, it is amply clear that the Board is obliged to prepare electoral rolls by including the name of every person who was resident in the concerned constituency, irrespective of the fact that he was occupying the structure bearing house number or it was unauthorized structure. According to the appellants, the expression "resided" in Section 28(1) must be understood in that context, for providing inclusive representation to all the residents in the constituency.

According to the appellants, the judgment of the Division Bench in the case of *Mohan Mahavar and others vs. Union of India and others* [1] was directly on the point concerning the election to Cantonment Board.

10. *Per contra,* counsel for the original writ petitioner/respondent has supported the conclusion reached by the learned Single Judge and submits that the election to constitute Cantonment Board, Pachmarhi held in April-May 2015 on the basis of the voters list, which includes the names of persons who were occupying unauthorized and illegal structures in the concerned consistency and moreso even after the structures occupied by them have already been demolished, was nothing short of rigging of elections by posting names of large number of unqualified or ineligible persons. That by no standards can be said to be free and fair election. He has relied on the factum of compliance report filed by the Authorities/Board before this Court in W.P.No.11909/2013(PIL) and companion cases to buttress his submission that the Cantonment Board has admitted of having demolished as many as around 1200 unauthorized/illegal structures. In continuity, it is submitted that it is unfathomable that a person who does not have any house in the concerned constituency can be considered as resident, to be enlisted as voter for participating in the election to constitute the Cantonment Board.

11. After having heard the counsel appearing for the respective parties including the intervener, the moot question which arises for our consideration is, who can qualify to be a voter and for inclusion of his name in the electoral rolls prepared in terms of Section 27 of the Act of 2006 ? Secondly, whether the issue is already answered against the Authorities/Board in the previous round of litigation (W.P.No.7169/2008) filed by the same petitioner and decision of the Division Bench in W.A. No.798/2010 passed on 24.09.2010 as modified on 02.08.2013 in review petition ? We may also have to ponder on the argument about the legal exposition in the case of *Mohan Mahavar and others* (supra).

12. Taking the last point first, the question decided in the case of *Mohan Mahavar and others* (supra) was essentially as to whether the members of Armed Forces and other Defence personnel residing in the unit lines and other buildings in the cantonment were qualified to be enrolled as electors and for inclusion of their names in the electoral rolls of Cantonment. The observations in this decision will

1. 2009(2) MPLJ 348

have to be understood in that context and will be binding precedent in respect of similar issue. The Court, however, was not called upon to consider the question which has now been agitated before us in these appeals, namely, whether a person occupying illegal/ unauthorized structure in the Cantonment area can claim to have any right to be enrolled in the electoral rolls prepared for the concerned constituency. The issue, which arises for our consideration, if we may say so, came up for consideration at the instance of the same writ petitioner in W.P.No.7169/2008; albeit, in relation to the electoral rolls prepared by Cantonment Board, Pachmarhi for the year 2003 and 2009-10. The learned Single Judge whilst disposing that writ petition had observed that a fair reading of Rule 10 would reveal that the respondent-Board besides preparing the electoral roll by dividing it into separate parts for each ward, was also under obligation to arrange the names of electors in each part according to their house numbers. On that basis, the learned Single Judge directed the Cantonment Board to conduct the election strictly on the basis of electoral rolls prepared as per the mandate of Rule 10 of the said Rules.

13. To be precise, about the view expressed by the learned Single Judge, we deem it apposite to extract the relevant portion of the order dated 08.07.2010 in W.P.No.7169/2008, which reads thus:

> "A fair reading of the aforesaid Rules reveals that the respondent Board besides preparing the electoral roll by the dividing it into separate part for each ward are also under an obligation to arrange the name of electoral in each part of according to house numbers.
>
> Trite it is that when the Rules provide for doing of things in certain manner the functionaries are bound to follow the same.
>
> Having thus considered the petition is disposed of with a direction to respondent No.1 to strictly adhere to the provisions contained in Rule 10 of the Rules 2007 while preparing the electoral roll of 2010-11 of the Cantonment Board, Pachmarhi.
>
> The petition is disposed of in above terms. However, no costs."
>
> (emphasis supplied)

14. This decision was challenged in W.A.No.798/2010 by the Cantonment Board. The argument of the Cantonment Board came to be rejected by the Division Bench vide judgment dated 24.09.2010. The relevant extract of said judgment reads thus:

> "Learned counsel for the appellant while assailing the order of the learned Single Judge made two fold submissions, firstly that the writ petition ought to have been entertained as it pertains to election dispute for which appropriate remedy is the election petition, secondly that there are several encroachments on the land of Cantonment Board for which proceedings have already been initiated, however, encroachers could not be evicted as no adequate police force was made available to the Cantonment Board. Learned counsel therefore submitted that appellant No.1 is not in a position to comply with Rule 10(3) of the Rules, as house numbers cannot be allotted to encroachers and the same would amount to regularizing the encroachment.
>
> We are not impressed with the submission putforth by the learned counsel for the appellants. Rule 19(3) of the Rules mandates that name of electorals in each part of the roll shall be arranged according to house numbers. In our opinion, the appellants are under no obligation in view of Rule 10(3) of the Rules to allot house numbers in respect of structures which are unauthorised or illegal. Substantial compliance of provisions of Rule 10(3) is required to be made and that can be done by marking the encroachments as unauthorised construction and mention them accordingly in the electoral roll for the purposes of compliance of Rule 10(3) of the Rules.
>
> So far as the contention of the learned counsel for the appellants that the appropriate remedy for the respondents was to file an election petition is concerned, suffice it to say that the respondents have not questioned or challenged the election in any manner. Respondents in the writ petition had only sought enforcement of the Rules and for this reason, the election petition was not an appropriate remedy.

For the aforementioned reasons, we do not find any reason to differ with the view taken by the learned Single Judge. The appeal deserves to and is hereby dismissed."

(emphasis supplied)

15. It is indisputable that the appeal preferred by the Cantonment Board was rejected and that the Cantonment Board has allowed that decision to attain finality. It is the writ petitioner who resorted to remedy of review petition, in the context of some confusion created by the Cantonment Board on the basis of observation found in the abovesaid order of the Division Bench. The Division Bench of this Court vide order dated 02.08.2013 passed in the review petition, modified the observation found in the last sentence of 3rd last paragraph of the order dated 24.09.2010 on the following terms:-

"Having heard learned counsel for the parties, the order passed on 24.9.2010, in Writ Appeal No.798/2010, is modified to the extent that the following words appearing in the first paragraph of second page of the order, which reads as under:

"and mention them accordingly in the electoral roll for the purpose of compliance of Rule 10(3) of the Rules" shall stand deleted.

In view of the aforesaid, the respondents and the competent authority are now free to proceed to prepare the electoral roll in accordance to the statutory requirement.

Accordingly, the review application stands disposed of."

16. Even this order has been allowed to attain finality by all concerned. The effect of the modification, in no way, extricates the Cantonment Board from preparing the electoral rolls strictly in conformity with Rule 10, as interpreted by the learned Single Judge and which reasoning was affirmed by the Division Bench whilst rejecting the argument of the appellants essentially based on impracticability and impermissibility of allotting house numbers to encroachers /illegal structures.

17. Going by the view taken in this decision, by necessary implication, the argument now canvassed by the Cantonment Board or the persons aggrieved

by the decision impugned in these appeals, was negatived. In that, the grievance of the same writ petitioner in the said proceeding was about wrongful inclusion of names of large number of persons who were occupying illegal/unauthorized structures, which did not bear house numbers given by the Cantonment Board.

18. Assuming for the sake of argument, we have to decide the issue for the first time in the present proceedings, the answer would remain the same. Before we examine the relevant provisions of the Act of 2006, to answer the moot question posed hitherto, it may be necessary to recapitulate that Cantonments are not covered under the State Municipal Laws nor meant to be local self- governments under Part IX or IXA of the Constitution of India as such. Indeed, the Cantonments may be established in a given State or Union Territory, but it would still be outside the State Municipal Laws, being Central territories under the Constitution. Article 1(2) of the Constitution refers to the States and Union Territories as specified in the First Schedule to the Constitution. Article 1(3) refers to the territory of India, which comprises of the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired. For governing and administering the Cantonments, the Parliament has enacted the Cantonments Act, 2006 whilst repealing the Cantonments Act, 1924. It will be useful to refer to the statement of objects and reasons for enacting the Cantonments Act, 2006, the same reads thus:

"INTRODUCTION

The law relating to administration of Cantonments was being administered by the Cantonments Act, 1924 (2 of 1924). The said Act had been amended more than twenty times. To impart greater demoratisation and improvement of their financial base to make provision for development activities it was found necessary to frame a comprehensive new legislation. Accordingly, the Cantonments Bill was introduced in the Parliament.

STATEMENT OR OBJECTS AND REASONS

The Cantonments Act, 1924 (2 of 1924) makes provisions relating to the administration of cantonments. As cantonments are Central territories under the Constitution, the civil bodies

functioning in these areas are not covered under State municipal laws.

2. In view of the present day, aspirations and needs of the people residing in cantonment areas and in order to bring in modern municipal management procedures/techniques in such areas, it is proposed to enact a new legislation by replacing the Cantonments Act, 1924 to provide for -

(i) greater democratization;

(ii) reservation of seats in Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes;

(iii) better financial management;

(iv) extension of centrally sponsored development schemes to such areas;

(v) management of defence lands and their audit etc.

3. The new legislation has been modified with a view to re-enact the existing Act in the context of Seventy-Fourth Constitutional Amendment and to provide for better urban management in cantonment as recommended by the Standing Committee of Parliament on Defence and the Action Taken Note of the Government on their recommendations. Broadly, the proposed modifications could be caegorised as under:-

(i) Greater Democratisation;- The Bill envisages enhanced representation for elected members to make proper balance between the elected and nominated one. Reservation of seats in the Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes would also fall in this category. In this proposed Bill, parity has been brought between the official and elected members of the Board and with this, the number of elected members would increase. The enhanced representation for elected members will cater for increased civil population in the cantonment areas.

(ii) Land Management;- Over the years, the defence land

ownership has increased to 17.31 lakh acres out of which about 2 lakh acres of such lands are situated within 62 notified cantonment being managed under the existing Act. There is no statute to cover the management of about 15 lakh acres of defence lands lying outside the cantonments. As on date, these defence lands are regulated by executive instructions (not covered under any statute), issued by the Central Government from time-to-time through Acquisition, Custody, Relinquishment, etc. of Military Lands in India (ACR) Rules, 1944, which are non-statutory in nature. The Management of Cantonment Board properties and the defence lands outside the Cantonments is different from each other in a sense that the former is covered under the existing Act and the Cantonment Property Rules, 1925 made thereafter, whereas, there is no such legislation or rules for the latter. The Standing Committee of Parliament (12th Lok Sabha) recommended that provisions may be made in the Cantonments Act itself regarding management of defence lands, their records, consolidation of earlier policies and land audit.

Statutory provisions have accordingly made and a new Chapter on management of defence lands has been added in the Bill. The provisions contained in this chapter will, inter alia, enable the Central Government to notify the defence lands, consolidate land management policies and records in regard to defence lands, carry out land audits to detect abuse if any, nonutilisation and sub-optimal utilization of lands.

The Standing Committee of Parliament has also recommended making legal provisions to tackle encroachments on defence lands situated all over the country.

Accordingly, the problem of encroachment is not proposed to be tackled through the provisions contained in Clauses 239, 248, 249, 253 and 257 of the proposed Bill. This would be in addition to the powers available to the Government under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(iii) Development impetus;- In addition, provisions have been made which would given necessary impetus to development activities, To keep pace with recent developments, provisions have also been made for developmental and welfare activities like (town-planning, old age homes, houses for disabled and working women hostels, rain water harvesting, non-conventional energy and other miscellaneous developmental activities which are important to sustain the environment and taking steps for social development.

(iv) Resource Generation- Provisions have been incorporated in the new Bill to streamline financial administration, improve finance base and change the tax mechanism keeping in view the needs of modern municipal administration. Provisions have also been made for a Cantonment Development Fund in which, any sum received from Government or an individual or association (by way of gift or deposit) or from centrally sponsored scheme, may be credited.

The Standing Committee of Parliament (12th Lok Sabha) had also made a recommendation for extension of centrally sponsored development schemes in cantonments for uniform development of States. Provisions in clauses 10 and 108 of the Bill have therefore been made making every Board a 'deemed municipality' for the purpose of Article 243-O(e) of the Constitution. This would enable the Cantonment Boards to avail benefits and advantages of centrally sponsored schemes for social and economic development as are presently available to other municipalities in various States.

Under Article 285 of the Constitution, the properties of Central Government are exempted from all taxes imposed by local authorities in the States. Representations were received that for the services rendered by the local bodies and the financial implications involved, some payment in the form of service charges may be made to them. Consequently, the Central

Government issued certain executive orders making provision for payment of service charges to local bodies since 1954.

There is no specific statutory provisions to give legal backing to the said decision/orders made by the Government in this regard from time-to-time. It is, therefore, proposed to make a provision in the Bill for payments to be made to the Cantonment Boards for service charge by the Central and the State Governments, after ascertaining the same.

4. The Bill seeks to achieve the above objectives."

(emphasis supplied).

19. We may usefully refer to the preamble of the Act of 2006, which reads thus :

"An Act to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratization, improvement of their financial base to make provisions for developmental activities and for matters connected therewith or incidental thereto."

20. It must be borne in mind that being a special law for effective and just administration of Central territories, the provisions must be understood in the context of the legislative intent for enacting such a special law. Notably, the Cantonment Board is incorporated and constituted under the Act of 2006, which is deemed to be a municipality under clause (e) of Article 243P of the Constitution only for the purposes set out in Section 10(2) of the Act. As per Chapter IV of the Act, the Cantonment Board is made responsible for effective and just administration of Cantonment lands, which are primarily required for defence or military installations. Indeed, because of the vastness of the Cantonment areas, protecting the territories of Cantonment lands is a serious challenge. Encroachments in Cantonment areas may pose serious threat to the existing Defence or Military installations and impede its development plans. Any approach that may encourage unauthorized occupation and encroachments in the Cantonment area, therefore, would be counter-productive and must be eschewed. Indeed, the Act of 2006 itself recognizes that portion of the Cantonment area may be carved out as a civil area, to be notified by the Central Government under Section 46(1) of the Act of 2006. That does not

mean that liberal approach must be adopted to bestow rights on the encroachers/occupants of unauthorized structures including in the civil area of the Cantonment. To ensure efficient and just land management and developmental activities of the Cantonments, by the Cantonment Board, the provisions such as in Chapter III and IV of the Act of 2006 have been introduced. That would necessarily mean that the Board is primarily responsible to ensure that only lawful and permissible activities in the Cantonments (which are Central territories and meant for Defence or Military installations) are allowed.

21. Reverting to Section 28 of the Act, it provides for qualification of electors. The said section reads thus:

> "**28. Qualification of electors.**- (1) Every person who, on such date as may be fixed by the Central Government in this behalf by notification in the Official Gazette hereinafter in this section referred to as" the qualifying date", is not less than eighteen years of age and who has resided in the cantonment for a period of not less than six months immediately preceding the qualifying date shall, if not otherwise disqualified, be entitled to be enrolled as an elector. Explanation.- When any place is declared a cantonment for the first time, or when any local area is first included in a cantonment, residence in the place or area comprising the cantonment on the aforesaid date shall be deemed to be residence in the cantonment for the purposes of this sub- section.
>
> (2) A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the qualifying date-
>
> (i) is not a citizen of India, or
>
> (ii) has been adjudged by a competent court to be of unsound mind, or
>
> (iii) is an undischarged insolvent, or
>
> (iv) has been sentenced by a Criminal Court to imprisonment for a term exceeding two years for an offence which is declared

by the Central Government to be such as to unfit him to become an elector or has been sentenced by a Criminal Court for any offence under Chapter IXA of the Indian Penal Code (45 of 1860):

Provided that any disqualification incurred by a person under clause (iv) shall terminate on the lapse of three years from the expiry of the sentence or order.

(3) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in sub- section (2), his name shall be removed from the electoral roll unless, in the case referred to in clause (iv), the disqualification is removed by the Central Government."

(emphasis supplied)

22. On a bare reading of this provision, it is clear that any person having resided in the Cantonment for a period of not less than six months immediately preceding the qualifying date, is entitled to be an elector unless he is disqualified because of applicability of any of the condition specified in subsection (2). In the Act of 2006, expression "resided" has been used, unlike the expression "ordinarily resident" used in Section 19 (b) of the Representation of the People Act, 1950 governing the qualification of an elector. The expression "resided" has not been defined in the Act. What is defined, however, is the expression "resident", in section (2)(zt). The reads thus:

"2(zt) "resident", in relation to a cantonment, means a person who maintains therein a house or a portion of a house which is at all times available for occupation by himself or his family even though he may himself reside elsewhere, provided that he has not abandoned all intention of again occupying such house either by himself or his family;"

(emphasis supplied)

23. The Dictionary meaning of word/expression "resided" as found in The Major Law Lexicon by P. Ramanatha Aiyar, 4th Edition 2010, reads thus:

"Resided. The word "resided" is not defined by the Act. In

its dictionary sense of the word, 'to reside', means, to dwell permanently or for a long period, temporary place of residence or a casual place of stay is thus excluded from being called a residence. *T.Sareetha v. T. Venkata Subbaiah,* AIR 1983 AP 356, 361. *Lalithamma v. R. Kannan,* AIR 1966 Mys 178, 182 [Hindu Marriage Act (25 of 1955). S.19(iii), 9]

The expression "resided" appearing in the section is wide enough to cover temporary as well as permanent residence. What would constitute residence within the meaning of S.488 would depend on the facts of each case. It is neither permissible nor possible to fix any period of time which would raise an inference of a residence sufficient to attract the jurisdiction of the CrPC under S. 488. *Tulsiram Dewaji v. Naradabai,* MLJ : QD (1956-1960) Vol. II C1935 : 1957 Jab LT 1004 : 1957 MPLJ 692 [CrPC (5 of 1898), S.488]. The word "resided" in S. 488(8), CrPC, (5 of 1898) implies something more than a mere brief or flying visit and would include temporary as well as permanent residence. *Abdul Hamid v. Bibi Ashoafunnissa,* MLJ : QD (1961-1965) Vol. II C2501 : AIR 1965 Pat 344.

Where both the parties are working at two different places having their separate residential houses, both places would be fit for the residence of the spouses, if they visit each other, such visits cannot be termed as casual or flying, and they would come under the terms "resides" and "resided". *Pritma Sharma v. Mohinder S. Bharadwaj*, AIR 1984 Punjab & Haryana 305, 307."

See also (1) last resided; (z) ordinarily resided."

24. Besides the meaning of expression "resident", it may also be useful to refer to some other words defined in Section of the Act, such as Section 2(d) which reads thus :

2(d) "building" means a house, outhouse, stable, latrine, shed, hut or other roofed structure whether of masonry, brick, wood, mud, metal or other material, and any part thereof, and includes

a well and a wall other than a boundary wall but does not include a tent or other portable and temporary shelter;

Section 2(h) reads thus :

2(h) "civil area" means an area declared to be a civil area by the Central Government under sub-Section (1) of section 46;

Section 2(i) reads thus :

2(i) "civil area committee" means a committee appointed under section 47;

Section 2(r) reads thus :

2(r) "entitled consumer" means a person in a cantonment who is paid from the Defence Service Estimates and is authorized by general or special order of the Central Government to receive a supply of water for domestic purposes from the Military Engineer Services or the Public Works Department on such terms and conditions as may be specified in the order;

Section 2(x) reads thus :

2(x) "Group Housing" means a group of houses for dwelling purposes and may comprise all or any of the following: namely (a) a dwelling unit, (b) open spaces intended for recreation and ventilation, (c) roads, paths, sewers, drains, water supply and ancillary installations, street lighting and other amenities, (d) convenient shopping place, schools, community hall or other amenities for common use;

Section 2(y) reads thus :

2(y) "Government" in relation to this Act means the Central Government;

Section 2(zb) reads thus :

2(zb) "hut" means any building, no material portion of which above the plinth level is constructed of masonry or of squared timber framing or of iron framing;

Section 2(zc) reads thus :

> 2(zc) "inhabitant", in relation to a cantonment, or local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein, or declared as such by the Chief Executive Officer and in case of a dispute, as decided by the District Magistrate;

Section 2(zi) reads thus :

> 2(zi) "occupier" includes an owner in occupation of, or otherwise using his own land or building;

Section 2(zl) reads thus :

> 2(zl) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant;

Section 2(zw) reads thus :

> 2(zw) "shed" means a slight or temporary structure for shade or shelter.

25. On conjoint reading of Sections 28 and 2 (zt), in particular, it is clear that the person should have had resided during the specified period in a "house" or a portion of a house "which is at all times available for occupation by himself or his family" and he has not abandoned all intention of occupying such house by himself or his family, only whence he would qualify to be an elector unless disqualified by application of any condition specified in sub-Section (2) of Section 28 of the Act. The qualification is linked to the factum of occupation of a "house" in the Cantonment area during the specified period.

26. The expression "house", however, has not been defined in the Act. That expression in common parlance is very wide, as can be noticed from the Major Law Lexicon by P. Ramanatha Aiyar 4th Edition 2010.

27. Be that as it may, to qualify the expression "resident" in the Cantonment during the specified period, the person must maintain therein a house or portion of a house which is at all time available for his occupation by himself or his

family. To "maintain a house", pre-supposes that it must be a house in existence on the qualifying date (in this case 01.04.2014); and which has been erected after taking due permission and recognized by the appropriate Authority of the Cantonment Board consequent to allocation of house number. Inasmuch as, a house, a building or a house in the building can be permitted and so recognized by the competent Authority of the Cantonment, only if it is erected after due permission as mandated in Section 234 of the Act and also numbered by the appropriate Authority of the Cantonment in terms of Section 259 of the Act. In law, only such house can be reckoned by the Board and will be available for lawful occupation at all times. The expression, "at all times available for occupation" in Section 2 (zt), can neither be said to be superfluous nor unintended. A priori, the expression "resided" employed in Section 28, deserves and must be given strict interpretation as occupation of a house or a portion of a house which has been erected after obtaining due permission/sanction of the appropriate Authority and is so recognized by the appropriate Authority by allotting house number therefor. Only such house can be said to be available for occupation at all times. Any other interpretation would be counter-productive and would encourage the floating population encroaching upon the Cantonment areas which need to be effectively secured and protected because of the sensitive Defence or Military installations thereat. It is not unknown, that for political reasons, the Cantonment Authorities are often forced to turn Nelson's eye to the encroachments on the Cantonment lands – both in the civil area and also in the notified areas, for obvious reasons. Precisely, this grievance is the subject matter of Public Interest Litigation being W.P.No.11909/2013 and connected matters, in which, this Court had to direct the appropriate Authority to remove all the unauthorized structures by following due process.

28. Giving liberal meaning to the expression "resided" in section 28 of the Act, to also include encroachers and occupants of unauthorised structures would enable the "floating population", which may be quite significant in some areas, to participate in electing representatives on the Board who will care more for their votary and take populist decisions (obviously a case of conflict of interests). Inclusion of such elected representatives may inevitably jeopardise the legislative intent of introducing stern measures for effective and just management of Cantonment lands (spread over to the extent of 17.31 lakh acres of defence lands as on the date of introduction of the Bill to enact the

Act of 2006). Further, participation of encroachers /unauthorised occupants – which will be large in number because of the increasing encroachments on the Cantonment lands, is not only a threat to the just and proper land management of the Cantonment but also, inevitably, impact the conduct of free and fair elections in the concerned Constituency. The inclusion of elected representatives on the Cantonment Board is to cater for safeguarding the interests of civil population in the civil areas of the Cantonment. The civil population would necessarily mean – those who abide by the Rule of law and have erected houses in the Cantonment areas with due approvals and the house so constructed has been recognized by the Cantonment Authorities by allotting house number. Any other view would result in awarding premium on the illegal activity of such persons which often is accomplished in an organized manner. That will be anathema to the intent of the Act of 2006 to preserve and protect the Cantonment lands in larger national interests and also for security reasons because of sensitive defence or military installations on such lands.

29. It is well established position that right to vote or to be enrolled as an elector in the electoral rolls, is only a statutory right. It is not a fundamental right. In other words, when it comes to participation in the installation of democratically elected representatives for the good governance of the Cantonment areas, that claim must be subservient to the rigours stipulated in provisions such as Section 28 of the Act.

30. It is unfathomable that a person who does not have a lawful house in the Cantonment area or whose house has already been demolished by the Authority in furtherance of the direction given by this Court or is liable to be so demolished, can by any stretch of imagination be treated as qualified to be an elector.

31. There is thin distinction between the expressions 'resident" and "inhabitant", as defined in the Act. The expression "inhabitant" as defined in Section 2(zc) would also reinforce the view that we have taken. In that, inhabitant means a person who is "ordinarily residing" or carrying on business or owning or occupying immovable property in the Cantonment area. A person, who does not occupy a lawful immovable property (house) or has been dispossessed after removal of the unauthorised structure earlier occupied by him after following due process, by no standards can claim to be qualified

to be enlisted in the electoral rolls. The view taken by us is also reinforced by the statutory Rules framed under the Act 2006, titled "Cantonment Electoral Rules, 2007. Chapter-II deals with the electoral rules. The same reads thus:

"CHAPTER II

ELECTORAL ROLLS

8. **Registration** – No person shall be entitled to be recognized in the electoral roll for more than one ward and no person shall be so registered for any ward more than once.

9. **Qualification of elector** – Every person who is eligible for enrolment as an elector under sub-section (1) of section 28 of the Act, and is not otherwise disqualified under sub-section (2) of the said section shall be enrolled as an elector.

10. **Preparation of electoral rolls**- (1) The Board or where a Board is not constituted, the Officer Commanding the Station, shall prepare on 1st July of each year, in English and in the language commonly used in the District in which Cantonment is located, an electoral roll in Form 1.

(2) The electoral roll shall be divided into separate parts for each ward.

(3) The names of electors in each part of the roll shall be arranged according to house numbers.

Explanation – For the purpose of this sub-rule, any building or unit line used for the purpose of lodging troops shall be deemed to be a house.

(4) The names of electors in each part of the electoral roll shall be numbered as far as practicable, consecutively with a separate series of numbers beginning with number one.

11. **Manner of ascertaining names of electors for**

inclusion in the electoral roll – (1) The Chief Executive Officer may for the purpose of preparing the electoral roll, send letters of request in From I-A to the occupants of dwelling houses in the Cantonment and every person receiving any such letter shall furnish the information called for therein to the best of his ability.

(2) The Chief Executive Officer shall ascertain the names of members of the Armed Forces and other personnel residing in the unit lines or other buildings, who are eligible for registration in the electoral roll of the Cantonment, from the Officer Commanding the Station or the Officer Commanding the Unit, as he deems necessary.

12. **Notice of publication of electoral rolls** – (1) Copies of the electoral roll prepared under rule 10 shall be displayed at the notice board of the office of Cantonment Board, and at the same time notice of their preparation shall be displayed in Form II at the notice Board of the said Office and as such places throughout the Cantonment, there being at least one such place in each ward, as the Board, or where a Board is not constituted, the Officer Commanding the Station, may specify.

(2) The notice shall also specify the mode in which claims and objections are to be preferred and disposed of."

(emphasis supplied)

32. Rule 10 mandates that the names of electors in each part of the roll shall be arranged in accordance with "house number" and into separate parts for each Ward. Rule 11 also recognizes that a person "occupying a dwelling house" may be considered for being included in the electoral roll. The use of expression "house number" is not a mere formality. House number, is allotted by the appropriate Authority as required under Section 259 to recognize such house as legal and permissible for occupation at all times in the Cantonment area.

33. We are of the opinion, that the mandate of Section 28 read with Section 2 (zt) of the Act and read with Rule 10 of the Rules, is that, the person must not only have resided in the Cantonment for a period not less than six months, before the qualifying date, but must also have maintained a house or a portion of house erected after due approvals and is so recognized by the appropriate Authority by allocating house number therefor. Only such house would fulfill the requirement of being available at all times for occupation for himself or his family.

34. The argument of the appellants that the sweep of provisions in the Rules referred to above, is in excess of the provisions of the Act in particular subsection (2) of Section 28, in our opinion, is completely ill-advised. The requirement of occupation of a lawful house as is recognized by the Cantonment, is discernable from the conjoint reading of Section 28 and 2(zt) read with Section 234 and 259. The person must be occupant of a dwelling house, which has been permitted to be erected in the Cantonment area and has been so recognized by the appropriate Authority of the Cantonment consequent to allocation of house number therefor.

35. Even the argument, as advanced by the appellants, that such interpretation would be rewriting of Section 28 of the Act if examined in the context of Section 34 (1) (e) of the Act, providing for removal of a member from the Board for having himself done or aided or abetted encroachments and illegal constructions on defence land in contravention of the provisions of the Act and the Rules and Bye-laws made thereunder, does not commend to us. The fact that the acts of commission or omission ascribable to Section 34 (1) (e), has not been specified as disqualification in Section 28 (2) does not mean that the person who has himself done or aided or abetted encroachment and illegal construction on the Cantonment land should be treated as qualified to be an elector. We have elaborately examined the relevant provisions of the Act and on conjoint reading of those provisions have no manner of doubt that to qualify to be an elector the person must have occupied a lawful house which is recognized by the appropriate Authority of the Board by allocation of house number therefor and thus can be said to be available for occupation for all times. Notably, Section 34 deals with an entirely different situation. It is an enabling provision vesting power in the Central Government to remove a member from the Board. There is marked difference between the provisions stipulating qualification and disqualification. The provision such as Section 34 deals with disqualification incurred even after election of that person as

member of the Board. The qualification provided in Section 28 is regarding the entitlement for being enrolled in the electoral rolls. Suffice it to observe that there is no substance in this argument. Similarly, we are not impressed by the argument that Rule 10 only prescribes for the procedure for preparation of the voters list. Indeed, it is a provision regarding the manner of preparation of electoral rolls but will have to be conjointly read with the other provisions in the Act and the Rules framed thereunder. The provisions in the Act and Rules by itself are indicative of the view that we have taken and elaborated in the earlier part of the judgment.

36. We may now advert to the factual position mentioned across the Bar during the course of arguments which itself justifies the approach adopted by us. As has been pointed out earlier, the Cantonment Board has admitted of having demolished as many as over 1200 (Twelve Hundred) illegal structures in furtherance of the direction issued by this Court in Public Interest Litigation. It was also pointed out to us that as against 781 voters in the given Constituency after the demolition of unauthorised structures, 479 persons who were occupying unauthorised structures have ceased to be residing in the Cantonment area. In absence of maintaining a lawful house which has been allocated house number in the Cantonment area, it is incomprehensible as to how such person can claim to be an elector. For the same reason, the fact that wrongful inclusion of name of elector has not been specified as a ground to challenge the election of the returned candidate in Rule 55, it would not necessarily follow that the election can be lawfully conducted on the basis of such large number of ineligible persons enrolled as electors. We may agree for the time being that no remedy has been provided in the Act of 2006 to question the conduct of election on the basis of such palpably defective, if not bogus electoral rolls. In the case of *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*[2], the Constitution Bench of the Supreme Court has held that the essence of elections is preparation of proper electoral rolls as per the stipulations provided therefor. Further, holding elections without discharging such obligation would be amenable to challenge at the instance of the parties concerned. Again in the case of *Bar Council of India Vs. Surjeet Singh*[3], the Supreme Court rejected similar objection and instead held that remedy under Article 226 can be invoked in such cases. We say so because the Cantonment Board is deemed to be a municipality within the meaning of Article 243P (e) only for the purposes

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2. AIR 1957 SC 304 3. (1980) 4 SCC 211

set out in Section 10 (2) of the Act. The election to install an elected representative on the Board is conducted by the Officials of the Board under the provisions of the Act and Rules framed thereunder and not by the State Election Commission, for which the constitutional bar of interfering with the election process will not be applicable.

37. Taking overall view of the matter, therefore, we agree with the conclusion reached by the learned Single Judge in allowing the writ petition and directing the appellants-Authorities/Board to conduct the ensuing election strictly on the basis of the electoral rolls prepared as per the mandate of Rule 10 of the Rules of 2007, consisting of persons who have resided in lawful houses to which house number has been allocated by the appropriate Authority of the Cantonment, for a period of not less than six months immediately preceding the qualifying date. Any other approach, in law, will be contrary to the spirit of the conduct of free and fair elections for electing the representative to espouse the cause of civil population, and who in turn are required to swear by the oath to abide by the Rule of Law.

38. Accordingly, these appeals must fail. Hence, the same are dismissed being devoid of merits. Accompanying applications are also disposed of on the same terms. The interim relief is vacated with directions to the Board to conduct elections on the basis of freshly prepared (revised) electoral rolls forthwith, in conformity with the provisions of the Act and the Rules framed thereunder by including the names of only qualified electors keeping in mind the observations made in this judgment.

Ordered accordingly.

Order accordingly.

I.L.R. [2015] M.P., 2352
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 13693/2013 (Jabalpur) decided on 11 October, 2013

RADHA BAI (SMT.) ...Petitioner
Vs.
SHANKAR LAL KACHHI ...Respondent

A. Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Belated amendment **- No amendment which was apparently in the**

knowledge of the concerning party could be allowed after the process to record evidence is started. (Para 3)

क. सिविल प्रक्रिया संहिता (1908 का 5) , आदेश 6 नियम 17 – विलंबित संशोधन – ऐसे किसी संशोधन की अनुमति साक्ष्य अभिलिखित करने की प्रक्रिया आरंभ होने के पश्चात् नहीं दी जा सकती जो प्रत्यक्ष रूप से संबंधित पक्षकार को ज्ञात है।

***B. Civil Practice - Scope of interference by High Court in orders passed by the subordinate courts in exercise of jurisdiction vested in it by law* - Right to cross examine witness is closed in a very speaking manner by the trial court in which the conduct of the petitioner is shown - Such order has been passed by the trial court under its vested discretionary jurisdiction - It is settled law that such orders passed by the subordinate courts under the vested discretionary jurisdictions of such courts, should not be interfered at the stage of revision or writ petition under Article 227. (Paras 4 & 5)**

ख. सिविल कार्यपद्धति – अधीनस्थ न्यायालयों द्वारा विधि द्वारा उनमें निहित अधिकारिता के प्रयोग में पारित किये गये आदेशों में उच्च न्यायालय द्वारा हस्तक्षेप की परिधि – विचारण न्यायालय द्वारा बहुत सकारण ढंग से साक्षी के प्रतिपरीक्षण के अधिकार को समाप्त किया गया जिसमें याची के आचरण को दर्शाया गया है – उक्त आदेश को विचारण न्यायालय द्वारा उसमें निहित वैवेकिक अधिकारिता के अंतर्गत पारित किया गया है – यह स्थापित विधि है कि अधीनस्थ न्यायालयों द्वारा उक्त न्यायालयों में निहित वैवेकिक अधिकारिता के अंतर्गत पारित किये गये आदेशों में पुनरीक्षण या अनुच्छेद 227 के अंतर्गत रिट याचिका के प्रक्रम पर हस्तक्षेप नहीं किया जाना चाहिए।

Cases referred :

(2006) 12 SCC-1, 2012 (3) MPLJ 37 (SC), AIR 1973 SC-76, AIR 2011 SC 1353.

A.K. Sharma, for the petitioner.

ORDER

U.C. MAHESHWARI, J. :- He is heard on the question of admission.

The petitioner/ plaintiff has filed this petition under Article 227 of the Constitution of India, being aggrieved by the order dated 29.7.13 (Annex.P/1)

passed by II Civil Judge-II, Jabalpur in COS No.77-A/10 whereby dismissing her application filed on the same day under order 6 rule 17 of the CPC for amendment of the plaint, her right to cross-examine the defendant's witness has been closed and the case has been fixed for final arguments on 7.8.13.

2. Petitioner's counsel after taking me through the impugned amendment application Anenx.(sic:Annex.) P/5 and the copy of the plaint argued that such proposed amendment is necessary in the matter because in the lack of such proposed description in the pleadings of the plaint the matter could not be adjudicated effectively by the court between the parties but the trial court has dismissed the same under wrong premises and, in such premises, after dismissing such application also committed error in closing the right to cross examine the witnesses of the respondents. In continuation he said that such examination could not be carried out on the date because the counsel of the petitioner became busy before some other court and could not reach to the trial court to cross-examine the witness of the respondents but without considering such cause, the right to cross-examine, has been closed and prayed to allow the aforesaid application and permit the petitioner to cross-examine the witness of the respondents in the matter by admitting and allowing this petition.

3. Keeping in view the arguments advanced, I have carefully gone through the papers placed on the record, in the available circumstances the proposed amendment as stated in the application Annex.P/5 does not appear to be necessary. Even otherwise, in view of the settled proposition of the law laid down by the Apex Court in the matter of *Ajendra Prasad Ji N. Pandey and another Vs. Swami Keshavrakeshdasji N. and others* (2006) 12 SCC-1 and in the matter of *J.Samuel and others Vs. Gattu Mahesh and others-2012(3) MPLJ 37 (SC)*, holding that after starting the process to record the evidence in the matter, no such amendment could be allowed which was apparently in the knowledge of the concerning party on the date of filing his pleadings. The impugned application could not have been allowed by the trial court because the facts proposed in the application were very well in the knowledge of the petitioner on the date of filing the suit. Even on the date on which the issues were settled between them or in any case at the time of recording the plaintiff's evidence but no such amendment application was filed at that stage. So, in such premises, I have not found any perversity in the order impugned in dismissing the aforesaid application of order 6 rule 17 of

the CPC. Consequently, till this extent, the order of the trial court is hereby affirmed.

4. So far the other part of the impugned order whereby her right to cross-examine the respondents witness has been closed is concerned, the impugned order in that regard has been passed by the trial court in very speaking manner in which the conduct of the petitioner is also shown. So, in such premises, the same does not require any interference.

5. Apart the aforesaid, it is also apparent that such order has been passed by the trial court under the vested discretionary jurisdiction of the such court and it is settled proposition of the law as laid down by the Apex Court in the matter of *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar,Hyderabad and Another Vs. Ajit Prasad Tarway, Manager(Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad*- AIR 1973 SC-76 and in the matter of *Kokkanda B.Poondacha and others Vs. K.D.Ganapathi and another*-AIR 2011 SC 1353, that such orders passed by the subordinate courts under the vested discretionary jurisdiction of such court, could not be interfered at the stage of revision or writ petition under Article 227 of the Constitution of India, so, in such premises also, the impugned order does not require any interference at this stage.

5. In the aforesaid premises, I have not found any perversity, illegality, irregularity or anything against the propriety of the law in the impugned order of the trial court. Consequently, this petition being devoid of any merit deserves to be and is hereby dismissed at the stage of motion hearing.

Petition dismissed.

I.L.R. [2015] M.P., 2355
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 5277/2014 (Jabalpur) decided on 17 April, 2014

MAN SINGH THAKUR ...Petitioner
Vs.
STATE OF M.P. ...Respondent

Education Department (Technical Branch) Contingency Paid Employees Recruitment and Conditions of Service Rules, M.P. 1978,

***Rule 7 and Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 - Krammonati* - Employees on regular work charged and contingency paid establishment being governed by same set of Rules 1978 and 1979 are entitled to same benefit - Denial of benefit of krammonati scheme is bad - Respondents directed to settle the claim in the light of judgment passed in Teju Lal Yadav's case. (Paras 5 to 8)**

शिक्षा विभाग (तकनीकी शाखा) आकस्मिकता वेतन भोगी कर्मचारियों की भर्ती तथा सेवा शर्तें नियम, म.प्र. 1978, नियम 7 एवं कार्य भारित व आकस्मिकता वेतन भोगी कर्मचारी पेंशन नियम म.प्र. 1979 – क्रमोन्नति – नियमित कार्य भारित व आकस्मिकता वेतन भोगी स्थापना के कर्मचारीगण, नियम 1978 व 1979 के समान समूह द्वारा शासित होने के नाते समान लाभ के हकदार हैं – क्रमोन्नति योजना के लाभ से इंकार करना अनुचित है – प्रत्यर्थीगण को तेजूलाल यादव के प्रकरण में पारित निर्णय के आलोक में दावे का निपटान करने के लिये निदेशित किया गया।

Cases referred :

W.P. No. 11507/2007 (s) decided on 23.1.2009, W.P. (S) No. 1070/2003 decided on 7.11.2005, W.A. No. 966/2009 decided on 27.10.2009, SLP (Civil): (CC) 14582/2010 decided on 27.9.2010.

Shiv Kumar Dubey, for the petitioner.
S.S. Bisen, G.A. for the respondent/State.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- With consent of learned counsel for the partied the matter is heard finally.

2 Petitioner, a Member of Work Charged and Contingency Paid Establishment is aggrieved of non grant of benefit of stagnation allowance/ Krammonati which is being made available to the employees of regular establishment, but declined to the petitioner vide order dated 23.5.2013.

3 Factual background giving rise to the controversy briefly are that, the petitioner was initially engaged on daily wages in Government Engineering College, on 16.3.1982 as a labour. That by order dated 12.2.1985 was brought on regular work charged and contingency paid establishment with effect from 15.1.1985.

4 That the State Government through its General Administration Department formulated a Krammonati scheme vide Memorandum No.F1-1/1नि0भ0प्र0/99 dated 17.3.1999/19.4.1999 providing that regular government servant during their entire service would be entitle for two krammonati on completion of 12 years/24 years in case during their entire service period they are not promoted/upgraded/selected on higher posts. That vide circular No.5-4/1/वे.आ.प्र-/98 dated 27/29.3.2001 besides regular employees following category of employees on Workcharged and Contingency Paid Establishment was also included:

> "(13) शासन की उपरोक्त क्रमोन्नति योजना का लाभ उन्हीं शर्तो के अध्यधीन नियमित स्थापना के वाहन चालकों तथा कार्यभारित एवं आकस्मिकता निधि वाहन चालकों को भी प्राप्त होगा ।
>
> (14) कार्यभारित एवं आकस्मिकता सेवा से नियमित सेवा में आये हुए वाहन चालकों के संबंध में 12/24 वर्ष की सेवावधि की गणना दोनों सेवाओं की सेवावधि को जोड़कर की जावेगी ।
>
> (15) कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले वाहन चालकों को भी नियमित कर्मचारियों के समान 12/24 वर्ष की सेवा के आधार पर क्रमोन्नति योजना का लाभ प्राप्त होगा ।"

5 That one Tejulal Yadav, a hostel peon, Government Mahila Polytechnic College, Jabalpur, taking exception to the discrimination meted out to other work charged and Contingency Paid Establishment Regular Employee, than the drivers, filed a Writ Petition No.11507/2007 (s) which was decided on 23.1.2009 wherein while taking into consideration the recruitment Rules, viz., M. P. Education Department (Technical Branch) Contingency Paid Employees Recruitment and Conditions of "Service Rules, 1978 and M.P. (Work Charged and Contingency Paid Employees)Pension Rules, 1979, and the decision in Writ Petition (S) No.1070/2003 (*K. L. Asre v. State of Madhya Pradesh and others*) decided on 7.11.2005 that all the employees governed by Rules of 1978 and 1979 form One Class, i.e., Work Charged And Contingency Paid Employees they cannot be discriminated merely because only the drivers were being carved out for the benefit of Krammonati Scheme. It was held:

> "11- The principles laid down in the case of *Shri K.L. Asre* (supra) has been made applicable to time keepers, working in the work

charged and contingency paid establishment. If time keepers and drivers in the work charged establishment are entitled to promotion under the time bound scheme, there is no reason as to why the said benefit be not extended to other employees constituting the same class in the work charged and contingency paid establishment. The policy is made applicable to drivers of this establishment and the reason for not making the said policy applicable to other categories of the work charged and contingency paid establishment is not indicated in the return. No reason is given as to why a different policy is being adopted in the case of other employees in the work charged and contingency paid establishment and the benefit granted to drivers in the said establishment is not extended to other employees like the petitioner. Respondents being a ?State? has to give similar benefit to employees similarly situated and forming a common class. They may be justified in granting some additional benefit to some of the employees in comparison to others, but the justification and reasons for such a classification has to meet the test of Article 14 of the Constitution and the decision has to be reasonable, fair and justified by cogent reasons and relevant considerations. Except for contending that the Policy is not applicable to employees working in the work charged and contingency paid establishment, no justification is forthcoming from the respondents with regard to further classification amongst the employees working in the work charged and contingency paid establishment with regard to implementation of the Policy ? Annexure P/3 and P/4. When the employees working in the work charged and contingency paid establishment constitute a common class, all benefits which are extended to one set of employees namely drivers as per the policy and the time keepers in the light of the judgment in the case of *K.L. Asre* (supra), has to be granted by the respondents to the present petitioners also. In the absence of proper justification for adopting a different policy and cogent reason given justifying the reasonableness in the classification and differentiation done fulfilling the requirement of Article 14 of the Constitution, discrimination cannot be permitted. Parity in employment is required to be maintained and, therefore, keeping in view the circumstances and

the action of the respondents in adopting a pick and choose method violative of Article 14 of the Constitution in the case of employees who form a homogenous class, the action discriminatory in nature cannot be upheld by this Court."

6 The decision was later on affirmed in W. A. No.966/2009 (*State of M. P. and others v. Tejulal Yadav*) decided on 27.10.2009 and its affirmation on merit in Special Leave to Appeal (Civil): (CC) 14582/2010 preferred by the State of M. P. which was dismissed on 27.9.2010.

7 The impugned order dated 23.5.2013 which deny the benefit of Krammonati Scheme to the petitioners when is tested on the anvil of the law which has come to be settled that including the driver other employees on the regular workcharged and contingency paid establishment being governed by the same set of Rules 1978 and 1979 are entitled for the similar benefit, does not stand the scrutiny. The Authorities concern have failed to appreciate that the law having been settled in equally applicable to similarly situated persons and no exceptions can be carved out as has been done in the present case.

8. In view whereof, the impugned order is set aside. Respondents are directed to settle the claim of th petitioner in consonance with the decision in *Teju Lal Yadav* (Supra) within a period of three months from the date of communication of this order.

9 Petition is allowed to the extent above.

Petition allowed

I.L.R. [2015] M.P., 2359
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 5590/2014 (Jabalpur) decided on 30 April, 2014

SHOUKAT SAEED ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Constitution - Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) & 200 - Maintainability of Writ - **Writ Petition filed for a direction to lodge FIR - In view of remedy available**

u/s 156(3) and 200 of Cr.P.C., power u/A 226 of Constitution of India could not be invoked - Petition dismissed with liberty to approach appropriate forum. (Paras 6, 8 & 9)

संविधान – अनुच्छेद 226 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) व 200 – रिट की पोषणीयता – प्रथम सूचना रिपोर्ट दर्ज करने के निदेश हेतु रिट याचिका प्रस्तुत की गई – दं.प्र.सं. की धारा 156(3) व 200 के अंतर्गत उपलब्ध उपचार को दृष्टिगत रखते हुए, भारत के संविधान के अनुच्छेद 226 के अंतर्गत शक्ति का अवलंब नहीं लिया जा सकता – उचित फोरम के समक्ष प्रस्तुत करने की स्वतंत्रता के साथ याचिका खारिज।

Case referred :

2013(5) MPHT 336 (SC).

Pramod Singh Tomar, for the petitioner.
Santosh Yadav, P.L. for the respondents No. 1,2, & 3.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J. :- Heard on the question of admission.

2. The petitioner has filed this petition under Article 226 of the Constitution of India for issuing appropriate writ against the authorities of the respondents for following reliefs:

1. To call the relevant records from the respondents No.2 and 3 for the perusal of this Hon'ble Court.

2. By the issuance of a writ in the nature of Mandamus respondents may be directed to register the First Information Report against the respondent No.4.

3. That the respondents are directed to comply the rules laid down by the Hon'ble Court in case of *Lalita Kumari Vs. Govt. of U.P.*

4. Direct the respondents to conduct proper investigation as per the procedure provided by the Code of Criminal Procedure, 1973.

5. Direct the respondents to keep the petitioner informed with the status and progress of investigation.

6. Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of the present case.

3. In the course of arguments on admission, in view of the provisions of Section 156(3) read with Sections 190, 200 and 202 of the Code of Criminal Procedure, on making certain query from the petitioner's counsel regarding entertainability of this petition under Article 226 of the Constitution of India on account of availability of the alternative forum under the above mentioned provision to raise the question raised in this petition, on which petitioner's counsel submits that on earlier occasion in the identical circumstances taking into consideration the decision of the Apex Court in the matter of *Lalita Kumari Vs. Government of U.P.* reported in 2013(5) M.P.H.T. 336(SC), some orders have been passed. In such premise after making some arguments on facts of the matter, petitioner's counsel prayed for admission and allowing this petition.

4. Having heard the counsel, keeping in view the arguments advanced, I have carefully gone through the averments of the petition as well as papers placed on record. Inter alia, the petitioner has prayed to issue appropriate direction to the authorities of the respondents No.1 to 3 to hold an enquiry with respect of the facts stated in his reports Annexure P/1 given to the SHO, Police Station Kotwali, Bhopal and Annexure P/2 given to the Superintendent of Police, Bhopal with a further direction that on holding such enquiry, if it is found that the respondent No.4 has committed any alleged cognizable offence then the crime be registered against him.

5. According to the provisions of Section 154 of Cr.P.C., on receiving information of cognizable offence by the SHO of the Police Station, if first information report is not registered by him then concerning informer or the affected person has a right to approach the Superintendent of Police as per procedure prescribed under such Section with a prayer to make any alternative arrangement for investigation under the discretion of such authority. As per case of the petitioner inspite giving the information of the alleged cognizable offence committed by the respondent No.4, any of the aforesaid police authorities has not taken any steps either to hold enquiry or register the offence

against the respondent No.4, on which the petitioner has preferred this petition for appropriate direction to such authorities.

6. Mere perusal of Section 156(3) of Cr.P.C. it is apparent that on filing the application by the affected person or victim before the Judicial Magistrate against the accused of a cognizable offence then concerning Magistrate on consideration under his discretion may direct the authorities of the police to register the crime and investigate the same. So firstly in view of availability of alternative remedy to the petitioner, this petition is not entertainable. Secondly, on such application of Section 156(3) of Cr.P.C. if the cognizance is not taken by the Judicial Magistrate then in that circumstance, the petitioner has a remedy to file appropriate private complaint under Section 200 of the Cr.P.C. with respect of the alleged offence against the respondent No.4 before the Court of Judicial Magistrate and such judicial Magistrate under his discretion may either send the matter to the police to hold the enquiry and submit the report or may record the statements of the complainant and his witnesses under Section 200 and 202 of Cr.P.C. and on appreciation of the same may take the cognizance of the alleged offence against the accused like respondent No.4, if the ingredients of the same are prima facie made out against him. Accordingly second forum is also available to the petitioner. So in such premise also this petition could not be entertained.

7. The case law in the matter of *Lalita Kumari* (supra) cited by the petitioner's counsel is concerned, in the available circumstances the same is distinguishable on facts and is not helping the petitioner. So far the principle laid down in the cited case is concerned, this Court did not have any dispute.

8. In view of the aforesaid, I am of the considered view that in view of availability of the appropriate forum to the petitioner under the the substantive law and the statutory provisions for redressal of his grievance either through the application under Section 156(3) of the Cr.P.C. or by private complaint under section 200 of Cr.P.C. then in that circumstances, the extraordinary inherent jurisdiction of this Court enumerated under Article 226 of the Constitution of India could not be invoked for issuing any writ against the authorities of the respondents No.1 to 3 as prayed in this petition.

9. In view of the aforesaid discussion and the legal position, I am not inclined to admit this petition filed under Article 226 of the Constitution of

India. Consequently, the same is hereby dismissed at the stage of motion hearing but by extending a liberty to the petitioner to approach the appropriate forum with appropriate proceeding for redressal of his dispute raised in this petition.

10. There shall be no order as to costs..

C.C as per rules.

Petition dismissed.

I.L.R. [2015] M.P., 2363
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 12666/2013 (Jabalpur) decided on 5 May, 2014

JAMUNA PRASAD ...Petitioner
Vs.
BALKISHAN & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 21 Rule 97 - Objection to Execution of Decree - Recording of Evidence **- While deciding objection detailed enquiry is not required - Court may decide the objection on the basis of averments and documents on record - Executing Court while exercising discretion has rejected the application for recording evidence - Any order passed by Executing Court in exercise of discretionary jurisdiction could not be interfered under Article 227 of Constitution of India - No error committed by Executing Court - Petition dismissed. (Paras 9 to 11)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 – डिक्री के निष्पादन के विरूद्ध आक्षेप – साक्ष्य अभिलिखित किया जाना – आक्षेप का विनिश्चय करते समय विस्तृत जांच अपेक्षित नहीं – अभिलेख के प्राक्कथनों एवं दस्तावेजों के आधार पर न्यायालय आक्षेप का विनिश्चय कर सकता है – निष्पादन न्यायालय ने विवेकाधिकार का प्रयोग करते हुए साक्ष्य अभिलिखित किये जाने हेतु आवेदन को अस्वीकार किया है – निष्पादन न्यायालय द्वारा वैवेविक अधिकारिता के प्रयोग में पारित किये गये किसी आदेश में भारत के संविधान के अनुच्छेद 227 के अंतर्गत हस्तक्षेप नहीं किया जा सकता – निष्पादन न्यायालय द्वारा कोई त्रुटि कारित नहीं की गई – याचिका खारिज।

Cases referred :

AIR 1998 SC 1754, 2004(2) MPLJ 310, AIR 1973 SC 76.

Avinash Zargar, for the petitioner.
Shobhitaditya, for the respondent No.1.

ORDER

U.C. MAHESHWARI, J. :- The petitioner-objector has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 17.5.2013 passed by the IIIrd Additional Judge to the Court of 1st Civil Judge Class-I, Bhopal in Execution Case No.55-A/2012 whereby his application filed under Section 151 C.P.C., to adduce the evidence through witnesses in support of his application under Order 21 rule 97 C.P.C. pending in the aforesaid execution proceeding to resist the execution of decree, by holding that recording of such evidence is not necessary, has been dismissed.

2. Petitioner's counsel after taking me through the petition and papers placed on record alongwith impugned order argued that as per procedure prescribed under the Code of Civil Procedure, on filing the objection by a third party having independent right of possession over the property in dispute to resist the execution of decree under execution passed between the decree-holder and the judgment-debtor, the Court is bound to decide such objection after extending the opportunity to adduce the evidence to the parties in support of their contention and in such premise, the executing Court did not have the authority to decide such objection merely on the basis of the application, reply, documents and affidavits filed by the parties in support of their respective case. In such premise, the executing Court has committed grave error in holding that in the impugned proceeding of Order 21 rule 97 of CPC, recording of the evidence of parties is not necessary. The same could not be considered and adjudicated only on the basis of the documents and the affidavits filed by the parties. He also said that if such opportunity is not extended to the petitioner then he would be deprived to prove his case. With these submissions, he prayed to allow his application by setting aside the impugned order by admitting and allowing this petition.

3. On the other hand, responding the aforesaid argument, Shri Shobhitaditya, learned counsel for respondent No.1, the decree-holder by justifying the impugned order said that the same being passed in accordance

with the procedure prescribed under the law does not require any interference at this stage. In continuation, he said that the impugned order could not be interfered in view of the principles laid down by the Apex Court in the matter of *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another* reported in AIR 1998 SC 1754 which is further followed by this Court in the matter of *Hamid Khan Ansari Vs. Lilabai and other* reported in 2004 (2) MPLJ 310. In the aforesaid judgment of the Apex Court, it has been held that there is no any fixed procedure to record the evidence of the witnesses in the proceeding carried out on the application of Order 21 rule 97 C.P.C. The same could be adjudicated under the discretion of the Court on the basis of the documents and affidavits filed by the parties. Because under such provision, the Court has to enquire the subject matter whether the objector has a independent right of possession over the property to resist the decree or he is also bound by the decree passed between the decree-holder and the judgment-debtor. With these submissions, he prayed for dismissal of this petition.

4. Having heard the counsel, keeping in view their arguments, I have carefully gone through the petition as well as papers placed on record alongwith impugned order so also the case laws cited by the respondent's counsel.

5. It is undisputed on record that the impugned decree under execution has been passed in a suit of the respondent No.1 for eviction against the respondents No.2A and 2B and in pendency of the execution proceeding, the present petitioner has filed the impugned objection under Order 21 rule 97 CPC saying that he is in possession of the disputed property under his independent title and ownership right and in such premise the impugned decree is not binding against him. It is also stated that decree under execution was obtained by the respondent No.1 under the collusion with the respondents No.2A and 2B and by executing such decree, the respondents with their joint efforts want to dispossess the petitioner from the disputed property and in support of such contention, he has also filed some documents.

6. On the other hand, mere perusal of the impugned order and papers on record, it is apparent that the impugned decree has been passed in contested suit of the respondent No.1 against the respondents No.2A and 2B and in the record of such suit, the name of the petitioner has come on record as sub-tenant of the respondents No.2A and 2B in the alleged premises.

7. In aforesaid circumstances, it is apparent that after filing the aforesaid

objection to resist the execution of decree by the objector and reply of the same on behalf of the respondent No.1, the impugned application was filed on behalf of the petitioner permitting him to adduce the evidence through witnesses but on consideration the same was dismissed by the executing Court holding that under the provisions of Order 21 rule 97 CPC, the enquiry is directed and such enquiry could be carried out on the basis of the objection, reply, affidavits and the documents placed by the parties on record and for that purpose, recording evidence of the witnesses is not required. The same is under challenge in this petition.

8. Before giving any finding on the question involved, I deem fit to reproduce the relevant part of the aforesaid cited case of the Apex Court in the matter of *Silverline Forum Pvt Ltd.* (supra), in which it was held as under:-

> 12-13. It is clear that executing Court can decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21, Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.

9. In view of the aforesaid it is apparent that a detailed enquiry or collection of the evidence in support of application under Order 21 rule 97(2) of the CPC is not necessary. The Court has authority to adjudicate the same on admitted facts or even on the averments made by the resistor with further observation that a Court can direct the parties to adduce the evidence for such determination if the Court deems it necessary. Accordingly such discretion is left with the Court. On perusing the impugned order, it appears that taking into consideration the averments of the judgment and decree under execution and other papers available on record filed by the parties under the vested discretionary jurisdiction, the executing Court has rejected the impugned application of the petitioner.

10. It is also settled proposition of law that whenever any order is passed by the executing Court or the subordinate Court in its vested discretionary jurisdiction then in that circumstances under the revisional jurisdiction

enumerated under Section 115 of the CPC or under the superintending jurisdiction of this Court under Article 227 of the Constitution of India, such order could not be interfered by this Court. My such approach is based on the decision of the Apex Court in the case of *Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another Vs. Ajit Prasad Tarway* reported in AIR 1973 SC 76, in which it was held as under:-

> Civil P.C. (1908) S.115- Interference by High Court- Lower appellate courts order within its jurisdiction – High Court should not interfere even if the order is right or wrong or in accordance with law or not, unless it has exercised its jurisdiction illegally or with material irregularity
>
> (Placitum)

11. In view of the aforesaid settled legal position, in the available circumstances, I am of the considered view that the executing Court has not committed any error in dismissing the impugned application of the petitioner, with the observation that the objection filed under Order 21 Rule 97 of C.P.C. could be considered and adjudicated on the basis of the available record. Accordingly, I have not found any perversity, irregularity, illegality or anything against the propriety of law in the order impugned. Consequently, it does not require any interference at this stage.

12. Resultantly, by affirming the impugned order, this petition is hereby dismissed. There shall be no order as to costs.

C.C. as per rules.

Petition dismissed.

I.L.R. [2015] M.P., 2367
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 13900/2006 (S) (Jabalpur) decided on 3 July, 2014

IQBAL AHMAD ...Petitioner
Vs.
STATE OF M.P. ...Respondent

(Work Charged & Contingency Paid Employee) Pension Rules,

M.P. 1979, Rules 2(b), (h), (e) & 6 - Petition for declaring him as Permanent Work Charged & Contingency Paid Employee **- Petitioner initially engaged on daily wages - Continuous service of 25 years - Held - Only when a worker is appointed as per the stipulation contained in the Rules of 1979 and against a vacant post, then only he is entitled to be declared as Permanent Work Charged & Contingency Paid Employee - Petition dismissed. (Paras 9 to 12)**

(कार्य भारित व आकस्मिकता वेतन भोगी कर्मचारी) पेंशन नियम, म.प्र. 1979, नियम 2(बी), (एच), (ई) व 6 – स्थाई कार्य भारित एवं आकस्मिकता वेतन भोगी कर्मचारी के रूप में घोषित किये जाने हेतु याचिका – याची आरंभिक रूप से दैनिक वेतन पर लगाया गया – 25 वर्ष की निरंतर सेवा – अभिनिर्धारित – कोई कर्मी केवल तभी स्थाई कार्य भारित एवं आकस्मिकता वेतन भोगी कर्मचारी के रूप में घोषित किये जाने के लिए हकदार है जब उसे 1979 के नियमों में अंतर्विष्ट शर्त के अनुसार और रिक्त पद पर नियुक्त किया जाता है – याचिका खारिज।

Cases referred :

(2005) 1 SCC 639, (2006) 2 SCC 702.

S. Verma, for the petitioner.
None, for the respondent.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Petitioner vide present petition seeks direction to respondents to declare the petitioner as permanent work charge contingency paid employee w.e.f 18.8.1984 and direct respondents to pay the pay scale of permanent work charge contingency paid employee w.e.f 18.8.1984.

2. Initially engaged on daily wages w.e.f 19.8.1969 the petitioner was made full time Carpenter and was paid wages on monthly basis. That the services of the petitioner was terminated vide order dated 31.12.2001. The order was however, reversed in a reference under Industrial Dispute Act, 1947 vide award dated 5.7.2004 whereby, the petitioner was directed to be reinstated. Consequently the petitioner was reinstated vide order dated 22.12.2004.

3. Contending interalia that having continuously worked for 25 years, right accrues in favour of the petitioner for being appointed as a permanent work charged and contingency paid employee under the M.P. (Work Charged and Contingency Paid Employee) Pension Rules, 1976.Petitioner thus claims for relief for declaring him as permanent work charged and contingency paid employee under the Rules of 1976.

4. The Rules of 1976 which are brought on record as Annexure P-5 are Rules framed under the proviso under Article 309 of the Constitution of India.

5. Rule 2 (b)of the Rules of 1976 defines 'Contingency paid Employees' as a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to "Office contingencies" excluding the employees who are employed certain period only in the year.

6. Rule 2(h) defines "Work Charged Employee" as a person employeed upon the actual execution as distinct from general supervision of a specified work or upon subordinate supervision of departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster roll employed on work.

7. Rule 2 (e) defines "Regular Employees under the State Government" means Government Servants who are in regular employment holding permanent or temporary posts under the State Government as distinct from posts in the Workcharged establishment or posts paid from contingencies.

8. Rule 6 specifies that Work Charged and contingency paid employees for the purpose of the Rules of 1976 shall be divided into the following two categories:

(i) Permanent

(ii) Temporary

9. Employees who have been in service for fifteen years or more on the 1st January 1974 shall be eligible for the status of permanent work charged or contingency paid employees.

10. Thus, fair reading of these provisions lead to irresistible conclusion that it is only when a worker is appointed in furtherance to or in accordance with the stipulations contained in Rules 1976 only they are entitled for being considered to be declared as Permanent Work charged and contingency paid employee.

11. In the case at hand petitioner fails to establish that he was engaged in work charged and contingency paid employee establishment in the manner prescribed in the Rules of 1976 and against the vacant post as would entitle him to be declared as permanent work charged and contingency paid employee.

12. Even the stipulation in Standard Standing Order is of no assistance to the petitioner as unless established that the petitioner was engaged against vacant post and in due process of law no benefit would enure in favour of the petitioner under the M.P. Industrial Employment (Standing Orders) Rules 1963 framed under the M.P. Industrial Employment (Standing Orders) Act 1961.

13. In this context reference can be had of *Mahendra L.Jain and others V. Indore Development Authority and others:* (2005) 1 SCC 639 wherein it is held:

> "35.The questions which have been raised before us by Dr. Dhawan had not been raised before the Labour Court. The Labour Court in absence of any pleadings or any proof as regard application of the 1961 Act and the 1963 Rules had proceeded on the basis that they would become permanent employees in terms of Order 2(ii) and 2(vi) of the Annexure appended thereto. The Appellants did not adduce any evidence as regard nature of their employment or the classification under which they were appointed. They have also not been able to show that they had been issued any permanent ticket. Dr. Dhawan is not correct in his submission that a separate ticket need not be issued and what was necessary was merely to show that the Appellants had been recognized by the State as its employees having been provided with employment code. We have seen that their names had been appearing in the muster

rolls maintained by the Respondent. The Scheme of the employees provident fund or the leave rules would not alter the nature and character of their appointments. The nature of their employment continues save and except a case where a statute interdicts which in turn would be subject to the constitutional limitations. For the purpose of obtaining a permanent status, constitutional and statutory conditions precedent therefor must be fulfilled. "

14. Furthermore, in *M.P. Housing Board and another V.Manoj Shrivastava:* (2006) 2 SCC 702 it is held:

15. A daily wager does not hold a post unless he is appointed in terms of the Act and the rules framed thereunder. He does not derive any legal right in relation thereto.

17. It is now well-settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. [*See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others, , Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and others, , Dhampur Sugar Mills Ltd. v. Bhola Singh, , Manager, Reserve Bank of India, Bangalore v. S. Mani and Others, and Neeraj Awasthi*].

15. Having thus considered since no relief can be granted to the petitioner petition fails and is dismissed.

Petition dismissed.

I.L.R. [2015] M.P., 2371
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 7094/2014 (Jabalpur) decided on 5 September, 2014

SUDHA JAISWAL (SMT.) ...Petitioner
Vs.
SUNIL JAISWAL ...Respondent

A. ***Court Fees Act (7 of 1870), Section 7(iv)(c),(v) - Valuation and court fee payable - Consequential relief*** **- Consequential relief means**

some relief which would follow directly from declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in Act and cannot be claimed independently of a declaration as a substantive relief. (Para 11)

क. न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(c),(v) – मूल्यांकन और देय न्यायालय फीस – परिणामिक अनुतोष – परिणामिक अनुतोष का अर्थ है कोई अनुतोष जो दी गई घोषणा से तुरंत बाद आयेगा, जिसका मूल्यांकन अंतिम रूप से सुनिश्चित किये जाने योग्य नहीं और जो अधिनियम में कहीं भी विनिर्दिष्ट रूप से उपबंधित नहीं और जिसका दावा घोषणा से स्वतंत्र रूप से मूल अनुतोष के रूप में नहीं किया जा सकता।

***B. Court Fees Act (7 of 1870), Section 7(iv)(c),(v) - Ad valorem Court Fee - Consequential relief* - Suit for declaration that the suit property is joint Hindu family property and further declaration that if any alienation has taken place, the same may be declared as not binding - Second part of relief is consequential relief and not in sequence as it cannot be granted unless first relief is granted - Petitioner rightly directed to pay ad valorem court fee - Petition dismissed. (Paras 13 & 14)**

ख. न्यायालय फीस अधिनियम (1870 का 7), धारा 7 (iv)(c),(v) – मूल्यानुसार न्यायालय फीस – परिणामिक अनुतोष – घोषणा हेतु वाद कि वाद संपत्ति संयुक्त हिंदू कुटुम्ब संपत्ति है और अतिरिक्त घोषणा कि यदि कोई अन्यसंक्रामण हुआ है, उसे बाध्यकारी नहीं होना घोषित किया जाये – अनुतोष का द्वितीय भाग परिणामिक अनुतोष है और न कि उसी क्रम में इस कारण इसे प्रथम अनुतोष प्रदान किये बिना प्रदान नहीं किया जा सकता – याची को मूल्यानुसार न्यायालय फीस अदा करने के लिए उचित रूप से निदेशित किया गया – याचिका खारिज।

Cases referred :

1958 AIR 245 (sic: AIR 1955 Mad 682), AIR 1981 PH 368, 2002(1) SCC 389, AIR 1967 MP 221, AIR 2010 SC 2807, W.P. No. 1888/2012 decided on 20.04.2014, AIR 1932 ALL. 485 (FB), AIR 1980 SC 691, AIR 2008 SC 2033.

P.C. Bhardwaj with *Neelema Pandey,* for the petitioner.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Heard on admission.

1. Order dated 09.04.2014 in Civil Suit No.5-A/2013 by First Additional District Judge, Shahdol is being assailed vide this writ petition under Section 227 of the Constitution of India.

2. Vide impugned order trial Court while allowing the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 filed by defendant No.2 has directed the petitioner/plaintiff to pay ad valorem Court fees on the value of plaint as per provisions envisaged under Section 7 (iv) (c) and (v) of the Court Fees Act, 1870.

3. In the suit in question, plaintiff seeks following relief:

> "अ– यह घोषित किया जावें कि स्व0 भागवत प्रसाद जायसवाल द्वारा छोडी गयी चल व अचल सम्पत्ति जिसका ब्यौरा वाद पत्र में दिया गया है जो संयुक्त समान स्वत्वाधिकार की अविभाज्य संपत्ति घोषित किया जावें साथ ही यह भी घोषित किया जावें कि यदि प्रस्तुत वाद के पूर्व कोई अन्तरण किया गया हो तो वह अन्य उत्तरजीवी उत्तराधिकारियों के हितों पर बंधनकारी न होकर प्रभावहीन घोषित किया जावें।
>
> ब– यह कि वादी के हित में प्रतिवादीगण इस आशय का स्थायी व्यादेश आज्ञप्ति में प्रसारित किया जावें कि बिना विधिवत बटवारे के प्रतिवादीगण उक्त संपत्ति को खुर्दबुर्द न करें न ही गिरवी या अन्तरण करें इस आशय का स्थायी व्यादेश आज्ञप्ति में प्रसारित किया जाना अनुतोषित है।"

4. The plaintiff affixed the fixed Court fees, though had valued the suit for Rs.122 crores.

5. Objections were raised on behalf of defendant No.2 that since as per relief clause 'अ' the plaintiff has sough (sic:sought) consequential relief of a declaration that any past transaction is not binding on the plaintiff, she is liable to pay the Court fees as per provisions under Section 7 (iv) (c) & (v) of Court Fees Act.

6. The trial Court finding substantial force in the objection has by impugned order directed to pay Court fees as per section 7 (iv) (c) & (v) of 1870 Act.

7. Section 7 (iv) (c) & (v) of 1870 Act respectively provides :

"7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

(i) ...

(ii) ...

(iii) ...

(iv) In suits—

(a) ...

(b) ...

(c) for a declaratory decree and consequential relief – to obtain a declaratory decree or order, where consequential relief is prayed.

(d) ...

(e) ...

(f) ...

In all such suits the plaintiff shall state the amount at which he value the relief sought.

(v) for possession of lands, houses and gardens – in suits for possession of lands, houses and gardens, according to the value of the subject matter, and such value shall be deemed to be – where subject matter is land, and

(a) such land is assessed to land revenue or land revenue is payable in respect of such land-twenty times the land revenue so assessed or so payable;

(b) such land forms a part of land which is assessed to land revenue or in respect of which land revenue is payable twenty times of the land revenue

proportionately worked out for such part of land;

(c) such land is not assessed to land revenue – twenty times of the land revenue worked out at the rate of [ten rupees] per acre;"

8. The plaintiff opposed the application contending inter alia that except a declaration and permanent injunction, which is consequential, no other relief having been sought, the plaintiff has rightly affixed fixed Court fees.

9. The trial Court observed :

"वादिया ने जहां विवादित संपत्ति में स्वयं का एवं प्रतिवादीगण का समान अधिकार एवं विवादित संपत्ति को संयुक्त समान स्वत्वधिकार के अविभाज्य संपत्ति घोषित किया जाना चाहा गया है तथा स्थाई निषेधाज्ञा की जो सहायता विवादित संपत्ति को बिना विधिवत् बंटवारे के गिरवी, अंतरण या खुर्दबुर्द न किया जाये यह घोषणा के साथ पारिणामिक सहायता के अंतर्गत कवर होती है तथा इस आधार पर वादिया को न्यायालय फीस अधिनियम की धारा 7 (iv) (सी) के अनुसार वाद मूल्यांकन अधिनियम की धारा 8 के तहत मूल्यांकन करना था जो कि वादिया द्वारा नहीं किया गया है।

इसी प्रकार विवादित संपत्तियों में जो रिहायसी मकान वयवसायिक भवन एवं दुकान हैं उनका मूल्यांकन न्यायालय फीस अधिनियम की धारा 7 (V) के तहत किया जाना था जो कि वादिया के द्वारा नहीं किया गया है।"

10. It is the contention on behalf of the petitioner that the trial Court has misconstrued the sequential relief as the consequential relief which has led to an erroneous direction to pay Court fees as per section 7 (iv) (c) & (v) of 1870 Act. Petitioner has relied on the following decisions : *Sathappa Chettiar vs. Ramnathan Chettiar* : 1958 AIR 245; *Niranjan Kaur vs. Nirbigan Kaur* : AIR 1981 PH 368; *Kamleshwar Kishore Singh vs. Paras Nath Singh* : 2002 (1) SCC 389; *Baldeo Singh Raghuraj Singh vs. Gopal Singh Raghuraj Singh* : AIR 1967 M.P.221; *Suhrid Singh vs. Randhir Singh* : AIR 2010 SC 2807; *Joginder Singh vs. Ramesh* : PH [CR.No.5894/2013]; *Amar Gupta vs. Sanjiv Kumar; Ashok Kumar Bafna vs. Kewal Chand Bafna* : [W.P.No.1888/2012 decided on 20.04.2014]; *N.N.Estate Private Ltd. vs. Surinder Goyal; Kalu Ram vs. Babulal* : AIR 1932 All. 485 (FB); *Murli Dhar vs. Bansidhar* : 1961 *U.P.High Court; Neelavathi vs. N. Natarajan:* AIR 1980 SC 691; *Anathula Sudhakar vs. P.Buchi Reddy* :

AIR 2008 SC 2033.

11. The expressions consequential relief as it appear under Section 7 (iv) (c) has taken a meaning from various judicial pronouncements "means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief." In *Kalu Ram vs. Babulal* : AIR 1932 All. 485 (FB) it was observed that "if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere 'on consequential relief' in the above sense the plaintiff must pay Court fees on the substantial relief."

12. Trite it being that the question of Court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. (see - Neelawathi vs. N.Natarajan : AIR 1980 SC 691). In the case at hand fair reading of paragraph 8 of the plaint reveals that the plaintiff has been excluded from the suit property which she – plaintiff alleges to be a Joint Hindu Family Property and seeks a declaration to that effect and the consequential relief. In paragraph 8 it is averred :

> "8. यह कि वादिनी को प्रतिवादीगण के विरूद्ध वाद कारण दिनांक 5.9.13 को प्रतिवादी कमांक 1 व 2 द्वारा समस्त संपत्ति पर अपना स्वामित्व बताये हुये बटवारे का प्रस्ताव अस्वीकार किये जाने के कारण यह वाद प्रस्तुत करना न्यायहित में उदभूत हुआ तदैव वाद कारण जिला शहडोल में वियुत्पन्न होने से श्रीमान न्यायालय को वाद वादी श्रवण करने का श्रवणाधिकार प्राप्त है।"

Consequence thereof the relief sought is :

> "अ– यह घोषित किया जावें कि स्व0 भागवत प्रसाद जायसवाल द्वारा छोडी गयी चल व अचल सम्पत्ति जिसका ब्यौरा वाद पत्र में दिया गया है जो संयुक्त समान स्वत्वाधिकार की अविभाज्य संपत्ति घोषित किया जावें साथ ही यह भी घोषित किया जावें कि यदि प्रस्तुत वाद के पूर्व कोई अन्तरण किया गया हो तो वह अन्य उत्तरजीवी उत्तराधिकारियों के हितों पर बंधनकारी न होकर प्रभावहीन घोषित किया जावें।"

13. The relief is in two parts and unless the suit property is declared to a

Joint Hindu Family Property, the relief in the second part of relief clause (अ) cannot be granted, which in substance is not a relief in sequence but in consequence, which makes the petitioner/plaintiff liable for the Court fees as per section 7 (iv)(c).

14. As regard to liability determined under Section 7 (v) of 1870 Act, apparent, it is from the pleadings that the plaintiff besides being excluded from the suit property is deprived from the possessions thereof which being the consequence of the declaration sought, the petitioner is rightly held liable to pay Court fees as per section 7 (c) of 1870 Act.

15. Being analysed thus, no case is made out to interfere with the decision arrived at by Trial Court.

16. Consequently, petition fails and is dismissed. No costs.

Petition dismissed.

I.L.R. [2015] M.P., 2377
WRIT PETITION
Before Mr. Justice S.C. Sharma
W.P. No. 13230/2013 (Indore) decided on 25 November, 2014

MANISH ...Petitioner
Vs.
STATE OF M.P. & anr. ...Respondents

Constitution - Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 160 - Summon - Territorial jurisdiction **- Summon issued to witness at Indore by Crime Branch Mumbai under Section 160 of Criminal Procedure Code, 1973 - Held - Petitioner cannot be called as he is not residing within Mumbai jurisdiction - Respondent no. 2 is free to visit Indore & record statement - Summons quashed - Petition allowed. (Paras 2 & 9)**

संविधान – अनुच्छेद 226 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 160 – समन – क्षेत्रीय अधिकारिता – मुंबई अपराध शाखा द्वारा दंड प्रक्रिया संहिता 1973 की धारा 160 के अंतर्गत इंदौर के साक्षी को समन जारी किया गया – अभिनिर्धारित – याची को बुलाया नहीं जा सकता क्योंकि वह मुंबई क्षेत्राधिकार के भीतर निवासरत नहीं है – प्रत्यर्थी क्रमांक 2 इंदौर जाकर कथन अभिलिखित

करने के लिये स्वतंत्र है – समन अभिखंडित – याचिका मंजूर।

Cases referred :

2010 CRI.L.J. 56, W.P. No. 2245/2012 decided on 7.9.2012.

Parties through their counsel.

(Supplied: Paragraph numbers)

ORDER

S.C. SHARMA, J. :- The present writ petition has been filed against the summons issued under Section 161 of Code of Criminal Procedure, 1973 dated 29.10.2013 and 2.11.2013 by the Senior Inspector of Police Economic Offence Singh, (sic:Wing) Unit-III, Crime Branch, CID Police Office, Compound Erawford Marg, Mumbai.

2. The facts of the case reveal that some criminal case has been registered against certain individuals for the offence under sections 420, 467, 468, 471, 34 of IPC and notices have been issued under Section 160 of Cr.P.C. to the present petitioner to appear before the respondent No.2 at Mumbai.

3. Shri Sethi, learned Sr. Counsel at the outset has drawn the attention of this Court towards Section 160 of Code of Criminal Procedure, 1973 and his contention is that the witness cannot be called to Mumbai in light of the statutory provisions of law. To buttress his argument, he has placed reliance upon a judgment delivered by the Gauhati High Court in the case of *M/s Pusma Investment Pvt. Ltd. & Ors. Vs. State of Meghalaya & Ors*. [2010 CRI.L.J. 56].

4. On the other hand, it has been argued by learned counsel for the respondent No.2 before this Court that the petitioner as he is a witness can certainly be called to Mumbai for recording his statement and the notices have been issued in consonance with the statutory provisions as contained under Section 160 of Code of Criminal Procedure, 1973.

5. Head learned counsel for the parties and perused the record.

6. The statutory provision governing the field as contained under Section 160 of Code of Criminal Procedure, 1973 reads as under :-

"160. Police officer' s power to require attendance of

witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence."

7. Paragraph 5 of the judgment delivered by the Gauhati High Court in the case of *M/s Pusma Investment Pvt. Ltd.* (supra) reads as under :-

"5. Section 160, Cr.P.C. authorizes a police officer making an investigation, by order in writing, (I) to require the attendance before himself, (ii) of any person, who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case, and (iii) who is residing within the limits of his own police station or any adjoining police station. The expression "who being within the limits of his own" read with the words following it, namely, "or any adjoining station" can only mean the person, who is to be summoned, must reside within the limits of the police station of the police officer making the investigation. So read, it becomes clear that such police officer making the investigation can enforce the attendance of a person acquainted with the facts and circumstances only if the latter resides within the limits of his own police station or adjoining station. If the person being summoned does not reside within the limits of the police station of the police officer making the investigation or, at any rate, within the limits of the adjoining police station, it appears that

such police officer cannot enforce his attendance even though he may be acquainted with the facts and circumstances of the case being investigated by him. The proviso to sub-section (1) of Section 160 says that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. Then, sub-section (2) of Section 160 further provides that the State Government may, by rules made in this behalf, provide for the payment by the officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence. Conjoint reading of both the sub-sections and the proviso to sub-section (1) of Section 160 plainly indicate, firstly that the person to be summoned by the officer making the investigation must reside within the local limits of his own police station or within the adjoining area, secondly, that in the case of a male person under the age of fifteen years or woman, their attendance cannot be enforced at any place other than their residence even if they reside within the limits of the police station of the police officer making the investigation or within the limits of the adjoining police station and, thirdly, that reasonable expenses of every person other than a male person under the age of fifteen years or woman attending such requisition at any place within the limits of the police station shall have to be paid by the concerned police officer as per rules framed by the State Government in this behalf. If the contention of the learned Additional Advocate General that under Section 160, the police officer making the investigation is not disabled from requiring the attendance of a witness residing beyond the local limits of this police station or adjoining station, is accepted, that will amount to ignoring the words "being within the limits of his own or any adjoining station". In my opinion, such interpretation is against all canons of interpretation. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplus-age, if they can have appropriate application in circumstances conceivably within the contemplation of the statute (see *Ashwini*

Kumar Ghosh v. Arabinda Bose, AIR 1952 SC 369). "In the interpretation of statutes", observed Das Gupra, J. In *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.* AIR 1961 SC 1170 (at page 1174), " the Courts presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect." The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. When the language of Section 160 is plain and unambiguous, this Court cannot plunge headlong into a discussion of a reason which motivated the Legislature into enacting this provision and took into consideration the hardship and inconvenience being caused to the investigating agency if they are not allowed to enforce the attendance of witnesses residing beyond their police station or adjoining police station. The rule of purposive construction cannot also be invoked in this provision. The correct principle, according to the learned author, G.P. Singh, J., is that after the words have been construed in the context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule. But the rule cannot be used to " the length of applying unnatural meanings to familiar words or of so stretching the language that it former shape is transformed into something which is not only significantly different but has a name of its own especially when " the language has no evident ambiguity or uncertainty about it. (see Principles of Statutory, Interpretation, 9th Edn. pp. 119- 120). In the view that I have taken, the impugned notices are ultra vires the provisions of Section 160 of the Code of Criminal Procedure,1973 and cannot be sustained in law. I have carefully gone through the case *Anirudha S. Bhagat* (2005 Cri LJ 3346) (supra) cited by the learned Additional Advocate General, but, with respect, I find myself unable to agree with view taken by the Division Bench of the Bombay High Court for the reasons already stated

in the foregoing."

8. The aforesaid statutory provision coupled with the judgment delivered by the Gauhati High Court, the petitioner who a witness residing at Indore cannot be called to Mumbai as he is not residing within the limit over which the respondent No.2 is exercising his jurisdiction, meaning thereby at Mumbai.

9. It is true that this Court has earlier decided almost similar matter in the case of *Vinod Patidar Vs. State of M.P. & Anr.* decided on 7.9.2012 [WP No.2245/2012], wherein persons residing at Mhow were directed to appear before the National Investigation Agency, Hydrabad. In the aforesaid case, a crime was registered at Police Station, National Investigation Agency, Hydrabad and the statutory provisions of National Investigation Agency Act, 2008 permitted the Investigating Officer to call the witness to Hydrabad. Section 32 of the Act of 2008 did permit the Station House Officer, Police Station, National Investigation Agency, Hyderabad to call a witness residing anywhere in the country and in those circumstances, the aforesaid judgment was delivered. Paragraph Nos. 7 to 9 of the aforesaid judgment reads as under :-

> "7. Learned counsel for the petitioner has placed reliance upon a judgment delivered by Guahati High Court of learned Single Judge, in the case of *M/s Pusma Investment Pvt. Ltd.* (supra). This court has carefully gone through the aforesaid judgment and in the aforesaid case the persons involved, residing at Delhi were required to attend the office of Investigating Officer at Shillong. Offences in the aforesaid case were relating to the Indian Penal Code and was not a case at all registered by the NIA and therefore, the judgment relied upon by the learned counsel is of no help to the petitioner. The Division Bench of Bombay High Court while dealing with the similar controversy in two cases has upheld the action of NIA in summoning the witness in the same manner in which it is being done in the present case. In the case of *Maruti Keshavrao Wagh* (Supra) and in the case of *Aniruddha S. Bhagat Vs. Ramnivas Meena* (2005 CRI.L.J. 334), the Bombay High court justified the action of the NIA in issuing summons to the witnesses, who were from different states/different police station. The Division Bench of Bombay High Court in the case of *Maruti Keshavrao*

Wagh (supra) in paragraphs 7, 8, 9, 10, 11 and 12 has held as under :-

7. Shri Dixit, learned Sr. Advocate placed reliance on the reported judgments in the cases of (1) *Mathews Peter Vs. Asstt. Police Inspector* (2002 CRI.L.J. 1585) and (2) *M/s Pusma Investment Pvt. Ltd. Vs. State of Meghalaya* (2010 CRI.L.J. 56). Shri Sharma, learned ASG has placed reliance on the reported judgment of the Division Bench of the Bombay High Court in the case of *Anirudha S. Bhagat Vs. Ramnivas Meena* (2005 CRI.L.J. 334).

8. We have considered the submissions advanced, perused the documents placed on record and the case law cited supra.

9. The Division Bench of this Court in the case of *Anirudha S. Bhagat* (supra) has held in paragraph No.11 as under:

" 11. As regards Section 160 is concerned undoubtedly it states that summons can be issued to any person being within the limits of his own or any adjoining station. We are concerned here with the main body of the Section 160. We are not dealing with the proviso thereto. The said provision of law nowhere states that such person must be within the limits of such police station or adjoining police station at the time of issuance of the summons but it specifically refers to the fact that such summons can be issued to any person for the purpose of gathering the information from such person, he being acquainted with the facts and circumstances of the case. Obviously, the provision is made in that regard in order to

enable the Investigating Officer to collect the required information from every person who is acquainted with the facts and circumstances of the Case in respect of which the investigation is being carried out. At the same time it is also to be noted that, under Section 160(2) it is provided that the State Government may, by rules made in that behalf, provide for payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence. In other words, a person residing at one place can be required to appear at different place and any expenditure incurred by such person for such attendance can be reimbursed in accordance with the rules framed by the State Government in that regard. This apparently discloses the intention of the legislature to make necessary provision which can enable the Investigating Officer to secure the attendance of a person in the Police Station or at any other place required by Investigating Officer, albeit person must be one who is acquainted with the facts and circumstances of the case. The very purpose of the provision being to enable the Investigating Officer to gather the information from whomsoever is acquainted with the facts and circumstances of the case in relation to which the investigation is carried out, the provision of law cannot be interpreted in a manner which will defeat very purpose for which the provision is introduced in the said Code. If the contention of the learned Advocate for the petitioner is accepted, it will virtually result in reading down the provision of Section 160 in the manner in which it nowhere states

that at the time of issuance of the summons the person against whom summons is issued has necessarily to be a resident or a person carrying on his business within the limits of local police station or that he should be from the territorial limits of the adjoining police station. Once it is revealed to the Investigating Officer that at the relevant time the person had occasion to be acquainted with the facts and circumstances of the case in respect of an offence which had occurred or he had been within the territorial limits of the police station to which the police officer is attached to or in the territorial limits of the adjoining police station, nothing prevents the police officer to summon the person even though at the time of issuance of the summons, the person is found to be either residing or carrying business beyond the territorial limits of the police station to which the Investigation Officer is attached to. Any other interpretation of Section 160 would defeat the very purpose of the provision of law comprised under the said section. Being so, the contention sought to be raised by the petitioner regarding absence of territorial jurisdiction for issuance of the summons by the Investigating Officer is to be rejected. The view that we are taking in the matter is very clear from the proviso to the section itself. Only exception made under the proviso is in relation to the minors of certain age and females."

10. In the facts of the case, we find that the statement is made on behalf of the respondents by Shri Sharma, learned ASG that in case the petitioner find any difficulty in making necessary arrangements in short time at his disposal for attending the office at Delhi, then the

petitioner would be provided some more time so that he can make necessary arrangements to reach the office of Investigating Agency at Delhi.

11. We are not convinced to take a different view than the view adopted by the Division Bench of Bombay High Court in the case of *Anirudha S. Bhagat* (supra).

12. Writ Petition is rejected."

8. This court has carefully gone through the judgment of Division Bench of Bombay High Court delivered in the case of *Anirudha S. Bhagat* (supra) and *Maruti Keshavrao Wagh* (supra), and is of the considered opinion that the interpretation of Section 160 as offered by the learned counsel for the petitioner would defeat the provisions of law under the said section.

9. The same view has been expressed by the Delhi High Court in the case of *Anant Brahmachari* (supra), wherein again issuance of summons by NIA, Police Officer to a person beyond territorial jurisdiction of the Police Station has been upheld. The contention of the learned counsel for the petitioner regarding territorial jurisdiction and the summons issued by the Investigating Officer of NIA is hereby rejected. This court is of the considered opinion that the Investigating Officer in exercise of power conferred under the Act of 2008 read with Code of Criminal Procedure, 1973 has rightly been issued as Annexure- P/1, directing the presence of the petitioner at Hyderabad. No case of interference in the matter is made out and the writ petition deserves to be dismissed. Accordingly, it is dismissed. However, as the date required for attendance of summon was 1st/2nd day of March, 2012, the Investigating Officer shall be free to issue fresh summons directing presence of the petitioner in accordance with law."

10. In light of the aforesaid judgment in which this Court has again discussed the provisions of section 160 of Code of Criminal Procedure, 1973, is of the considered opinion that the petitioner cannot be called to Mumbai in the peculiar facts and circumstances of the case. The respondent No.2 in case requires

the statement of petitioner, he is certainly free to visit Indore and to record the statement of the petitioner keeping in view the statutory provisions as contained under the Code of Criminal Procedure, 1973. The summons dated 29.10.2013 and 2.11.2013 are quashed.

11. With the aforesaid, the writ petition stands allowed.

12. No order as to costs.

Petition allowed.

I.L.R. [2015] M.P., 2387
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 10546/2013 (Indore) decided on 18 December, 2014

THE DALY COLLEGE, INDORE ...Petitioner
Vs.
STATE OF M.P. & ors. ....Respondents

(Alongwith W.P. No. 5328/2011, W.P. No. 992/2012, W.P. No. 10955/2013, W.P. No. 1836/2014, W.P. No. 1881/2014, W.P. No.1910/2014, W.P. No. 1928/2014, W.P. No. 1930/2014 & W.P. No. 2044/2014)

A. Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 2(n)(iv) - Unaided school - Proviso to Section 12(1)(c) - **Allocation of 25% of the strength of children to weaker section of the society in pre-school classes (Nursery to class 1) - Held - Provisions of Section 12(1)(c) has been made applicable to admission to pre-school education by private unaided schools as specified in Section 2(n)(iv) of the Act. (Paras 12 to 19)**

क. बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 2(एन)(iv) – गैर अनुदान प्राप्त विद्यालय – धारा 12(1)(सी) का परंतुक – पूर्व–विद्यालयी कक्षाओं में (नर्सरी से कक्षा 1 तक) समाज के कमजोर वर्गों के बालकों की संख्या 25% नियत करना – अभिनिर्धारित – गैर अनुदान प्राप्त निजी विद्यालयों द्वारा पूर्व–विद्यालयी कक्षाओं में प्रवेश हेतु धारा 12(1)(सी) के उपबंध लागू किये गये हैं जैसा कि अधिनियम की धारा 2(एन)(iv) में विनिर्दिष्टित है।

B. Constitution - Article 21-A and Right of Children to

***Free and Compulsory Education Act, (35 of 2009), Section 12(1)(c)* - Proviso - Right of education to all children of the age of 6 to 14 years - Admission of 25% of the strength of children in pre-school classes for free & compulsory education to weaker section - Held - It is obligatory to give such admissions as the Court has duty to enforce not only fundamental rights but also to enforce legal rights. (Para 20)**

ख. संविधान – अनुच्छेद 21–ए एवं बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(1)(सी) – परंतुक – 6 से 14 वर्ष की आयु के सभी बालकों के लिए शिक्षा का अधिकार – निःशुल्क और अनिवार्य शिक्षा हेतु पूर्व–विद्यालयी कक्षाओं में बालकों की संख्या का 25% कमजोर वर्गों के लिए प्रवेश – अभिनिर्धारित – उक्त प्रवेश देना बाध्यकारी है जैसा कि न्यायालय का कर्तव्य न केवल मूलभूत अधिकारों का प्रवर्तन करना है बल्कि विधिक अधिकारों का भी प्रवर्तन करना है।

***C. Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 6 & 12(1)(c)* - Establishment of schools by the State within a period of three years from commencement of the Act - Provisions of Section 12 ceased to have effect after 3 years - Held - Section 12(1)(c) of the Act is not dependent on establishment of schools by the State under Section 6 of the Act within three years. (Para 26)**

ग. बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 6 व 12(1)(सी) – अधिनियम आरंभ होने से तीन वर्षों की अवधि के भीतर शासन द्वारा विद्यालयों को स्थापित किया जाना – तीन वर्षों के पश्चात् धारा 12 के उपबंधों का प्रभाव समाप्त हो गया – अभिनिर्धारित – अधिनियम की धारा 12(1)(सी) शासन द्वारा अधिनियम की धारा 6 के अंतर्गत तीन वर्षों के भीतर विद्यालय स्थापित करने पर निर्भर नहीं।

***D. Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(1)(c) and Right of Children to Free and Compulsory Education Rules, M.P. 2011, Rule 2(1)(k) - Limits of neighbourhood* - Rule 2(1)(h) - Extended limit of neighbourhood - Held - Rule 2(1)(k) and Rule 2(1)(h) are applicable in pre-school admission. (Para 33)**

घ. बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(1)(सी) एवं बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार नियम, म.प्र. 2011, नियम 2(1)(के) – पड़ोस की सीमाऐं – नियम 2(1)(एच) – पड़ोस की विस्तारित सीमा – अभिनिर्धारित – नियम 2(1)(के) और

नियम 2(1)(एच) पूर्व–विद्यालयी में प्रवेश पर लागू होते हैं।

E. Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(2) - **Whether Private unaided schools are entitled for reimbursement of the expenses incurred by the school on 25% children given admission in pre-school classes from weaker section - Held - Yes, it has to be reimbursed by the State. (Paras 36 & 37)**

ङ. बालकों के लिए निःशुल्क और अनिवार्य शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 12(2) – क्या गैर अनुदान प्राप्त निजी विद्यालय, पूर्व–विद्यालयी कक्षाओं में कमजोर वर्ग से प्रवेश दिये गये 25% बालकों पर वहन किये गये खर्चों की प्रतिपूर्ति के हकदार है – अभिनिर्धारित – हां, इसकी प्रतिपूर्ति शासन द्वारा की जायेगी।

Cases referred :

(2012) 6 SCC 1, (2012) 6 SCC 102, (2014) 8 SCC 1, W.P. (C) No. 8533/2010 judgment dated 19.02.2013 (Delhi High Court).

A.K. Sethi with *Gaurav Chhabra,* for the petitioner in W.P. No. 10546/2013. .

A.K. Sethi with *Manish Nair,* for the petitioner in W.P. No. 1910/2014.

A.K. Sethi with *Rahul Sethi & Chetan Jain,* for the petitioner in W.P. No. 1881/2014 and W.P. No. 10955/2013.

A.M. Mathur with *Abhinav Dhanodkar*, for the petitioner in W.P. No. 5328/2011.

Gaurav Chhabra, for the petitioners in W.P. No. 1930/2014, W.P. No. 1928/2014, W.P. No. 2044/2014, W.P. No. 992/2012 & W.P. No. 1836/2014.

Vinita Phaye, for the respondent/State.

ORDER

PRAKASH SHRIVASTAVA, J. :- This order will govern the disposal of W.P. Nos.10546/2013, 5328/2011, 992/2012, 10955/2013, 1836/2014, 1881/2014, 1910/2014, 1928/2014, 1930/2014 & 2044/2014 since all these writ petitions involve the same issue in similar fact situation.

2. For convenience, the facts have been noted from W.P. No.10546/

2013.

3. In brief, the case of the petitioner is that it is a registered society running a unaided school which also has pre-school classes. The petitioner had submitted the declaration form under Rule 11 of the Right to Education Rules, 2011 in the prescribed Form No.1 and it was granted recognition under Rule 11(4) of the Rules. The grievance of the petitioner had started when on the basis of the Circular dated 16.1.2013 the show-cause notice dated 26.8.2013 was issued to the petitioner to allocate 25% of the strength of children to the weaker section of society in the pre school classes, i.e. Nursery (Pre-KG), K.G.1 (LKG), K.G.1 (UKG) and Class 1. Hence the petitioner has filed this writ petition challenging the Circular dated 16.1.2013 and the show-cause notice dated 26.8.2013.

4. A reply has been filed by the respondents taking the stand that the provisions of RTE Act is applicable to the pre-school classes also and the petitioner is required to comply with the same and give admission to the student of weaker section of society to the extent of 25% in pre-school.

5. Learned counsel appearing for the petitioners have submitted that the Right to Education Act is applicable only to the children of age group of 6 to 14 years and to the schools from Class I and is not applicable to pre-schools and children below 6 years, therefore, the impugned circular and the show-cause notice cannot be sustained and the petitioners cannot be forced to give admission to the students of weaker section in the pre-school classes. They have also submitted that their liability to give admission in pre-school classes to the extent of 25% has come to an end after expiry of 3 years in terms of Section 6 of the Act. In some of the writ petition, argument about neighbourhood and reimbursement has also been advanced.

6. Counsel for the respondents has supported the impugned action.

7. I have heard the learned counsel for the parties and perused the record.

8. The first issue which has been raised by counsel for the petitioners is about the applicability of Right of Children to Free and Compulsory Education Act, 2009 (for short "RTE Act") to pre-school classes i.e. Nursery, K.G.1, K.G. 2 etc.

9. The RTE Act has been enacted to provide for free and compulsory

education to the children. Though in the preamble, in definition Clause 2(c), 2(f) and Section 3 of the Act the children between the age group of 6 to 14 have been included, but the Act in addition to making provision for the children between the age group of 6 to 14 also contains certain provisions for the children below the age of 6 years.

10. Section 2(n) of the Act defines 'School' and under Section 2(n)(iv) the recognized unaided schools not receiving any kind of aid or grant to meet the expenses from the appropriate Government or the local authority and imparting elementary education, are covered within the meaning of school. Section 2(n)(iv) reads as under :-

> "**2. Definitions**.-In this Act, unless the context otherwise requires,
>
> (n) "**school**" means any recognised school imparting elementary education and includes
>
> (i) **********
>
> (ii) **********
>
> (iii) **********
>
> (iv) an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority."

11. Undisputedly all the writ petitioner Schools before this Court are covered within the meaning of school as defined in Section 2(n)(iv) of the Act.

12. Section 12 of the Act provides for the extent of school's responsibility for free and compulsory education. Section 12(1)(c) and proviso to Section 12 which is relevant for the present controversy, read as under :-

> "**12. Extent of school's responsibility for free and compulsory education.**-(1) For the purposes of this Act, a school,
>
> (a) **********
>
> (b) **********

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education."

13. In terms of Section 12(1)(c) read with the proviso, the petitioner unaided schools imparting pre-school education are required to admit children belonging to the weaker section and disadvantaged group in the neighbourhood in the pre-school classes.

14. The constitutional validity of the provisions of RTE Act and specially Section 12(1)(c) of the RTE Act qua the unaided non minority schools has been examined by the Supreme Court in the matter of *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*, reported in (2012) 6 SCC 1. The Supreme Court after examining the provisions of the RTE Act in the light of Article 21, 21-A, 19(1)(g) and Article 41, 45 & 46 of the Constitution has upheld the validity of Section 12(1)(c) of the Act. It has been expressed by the Supreme Court that the RTE Act seeks to remove all the barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission. The question whether Section 12(1)(c) of the Act impedes the right of the non minority to establish and administer an unaided educational institution, has also been answered in negative. It has been categorically held that after the commencement of the RTE Act by virtue of Section 12(1)(c) read with Section 2(n)(iv), the State, while granting recognition to the private unaided non minority school, may specify permissible percentage of the seats to be earmarked for the children who may not be in a position to pay their fee or charges. The argument of discrimination has also been repelled by observing that Section 12(1)(c) provides for a level playing field in the matter of right to education to children who are prevented from accessing education because they do not have means or their parents do not have means to pay for their

fees.

15. In the matter of *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another,* reported in (2012) 6 SCC 102, the matter relating to the validity of Article 15(5) and 21-A of the Constitution was referred to the Constitution Bench and the Constitution Bench in the matter of *Pramati Educational and Cultural Trust (Registered) and others Vs. Union of India and others,* reported in (2014) 8 SCC 1 while considering the said issue, has also expressed opinion on validity of the RTE Act and has rejected the submission on behalf of the non minority private schools that Article 21-A of the Constitution and the RTE Act violate their right under Article 19(1)(g) of the Constitution. In the present matters all the writ petitioners before this court are non minority unaided schools.

16. Thus the validity of the RTE Act has already been upheld and in the present batch of writ petitions the validity of proviso to Section 12 is not under challenge and the issue is about its scope and applicability.

17. Since the proviso to Section 12 is clearly worded and in terms of the said proviso, the provisions of Section 12(1) (c) of the Act has been made applicable to admission to pre school education being imparted by unaided school specified in Section 2(n)(iv), therefore, the argument of the counsel for the petitioners that RTE Act is not applicable to pre school education, has no merit and deserves to be rejected.

18. The similar issue of admission in pre school under RTE Act had come up before the Delhi High Court and the Division Bench of the Delhi High Court by the judgment dated 19.2.2013 in W.P. (C) No.8533/2010 in the matter of *Social Jurist, A Civil Rights Group Vs. Govt. of NCT of Delhi* and connected writ petitions after examining the scheme of the RTE Act in reference to the argument that the provisions of RTE Act do not apply to the admission to the pre-elementary (pre-primary and pre-school) classes by private unaided schools and after considering the proviso to Section 12, has held that though the scheme of the Act is to provide full time elementary education but the extent of school's responsibility for free and compulsory education as contemplated under Section 12 is equally applicable to pre school classes to a school defined under Section 2(n) of the Act. The Delhi High Court in this regard after noting proviso to Section 12 has held as under :-

"25.....In the wake of the above proviso, it could be safely concluded that the extent of the schools. responsibility for free and compulsory education as contemplated under Section 12 is equally applicable to a school defined under Section 2(n) of the Act. In respect of admission even to pre-school education, a school specified in sub-clauses (iii) and (iv) shall admit the children to the extent of at least twenty-five percent of the strength of that class belonging to weaker section and disadvantaged group in neighbourhood and provide free and compulsory education till its completion. To this extent, there is no dispute between the parties. Though the Act was enacted to give effect to the object of Article 21A of the Constitution which relates to the children in the age group of 6 to 14 years as a fundamental right, in our opinion, the provisions of Section 11 and the proviso to Section 12 of the Act are traceable to Article 41 and 45 of the Constitution. As already noted. in terms of Article 41, the State shall of course within the limits of its economic capacity and development, make effective provision for securing the right to education irrespective of the age. Proviso to Section 12(1)(c) is an exception to the intent and object of the Act to provide free and compulsory education at the elementary level as in the wake of the above provision. admission to Class-I in respect of children defined under Section 2(d) and 2(e) is made applicable to pre-school education as well. Though, pre-school is not defined under the Act, it is to be presumed that it is the education prior to elementary education. The above discussion leads to the following conclusions that the Act is applicable to elementary education for the children at the age of six years to fourteen years."

19. Thus Delhi High Court has taken the view that though the other provisions of the RTE Act do not apply to the private unaided schools referred in Section 2(n)(iv) imparting pre elementary education but the provisions relating to the admission to the extent of 25% of strength of class to the children belonging to weaker section and disadvantaged school, do apply to them. Hence the view taken by this court above is duly supported by the judgment

of Delhi High Court.

20. The counsel for the petitioners have also advanced argument based upon Article 21-A of the Constitution of India and have submitted that under Article 21-A right to education to all children of the age of 6 to 14 years is a fundamental right but education to children below 6 years is not a fundamental right, therefore, petitioners can not be forced to give admission to children below 6 years of weaker section and underprivileged section of society in pre school classes. Such an argument also cannot be accepted because this Court has duty to enforce not only the fundamental right but also to enforce legal rights and obligations. Proviso to Section 12 contains legal right of specified children below 6 years and obligation of the petitioners to give such admissions. Proviso to Section 12 is also relatable to Article 45 contained in Chapter 4 of the Constitution relating to directive principles of the State policy providing for State's responsibility to make provision for early childhood care and education to all children until they complete the age of 6 years.

21. The petitioners have challenged part of the Circular dated 16/1/2013 relating to 25% admission to children of weaker section in pre school classes.

22. Under Section 11 of the Act the appropriate Government is entrusted with the responsibility of making necessary arrangement for providing pre-school education for children. Section 11 reads as under :-

> **"11. Appropriate Government to provide for pre-school education.**-With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children."

23. Exercising the rule making power contained in Section 38 of the Act, the State of Madhya Pradesh has framed the rules namely Right of Children to Free and Compulsory Education Rules, 2011 (M.P.) (for short "the State Rules). The Rule 11 of the said rules provides for grant of recognition to the schools and Rule 11(4)(a) makes it clear that the recognition is subject to complying with the provisions of Section 12(1)(c) in pre-school admission. Rule 11(4)(a)(ii) and (vii) reads as under :-

"11. School Recognition.

(1) **********

(2) **********

(3) **********

(4)(a) The District Education Officer on being satisfied that the school fulfills the norms and standards prescribed under section 19 shall issue the recognition certificate in Form-2 appended to these rules. The certificate shall be for a period of three years and shall be issued within 45 days from the date of making application for recognition. The certificate of recognition shall be subject to following conditions :-

i. **********

ii. the school shall give admission to a minimum of 25% in class I for the children of disadvantaged group and children of weaker section from the limit of neighbourhood. In case the school is aided school it shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent:

Provided that where a school imparts pre school education, the provisions of clause (a) to (c) of sub-section (1) of section 12 shall apply for admission to pre school;

iii. **********

iv. **********

v. **********

vi. **********

vii. the recognition shall be withdrawn in case of violation of the terms and conditions of recognition."

24. The State Government has issued the Circular dated 16.1.2013

providing for admission to the children of weaker section and disadvantaged group in pre-school primary education to the extent of 25% as under:-

"(i) प्रारंभिक कक्षा में प्रवेश –

अधिनियम में किए गए प्रावधान अनुसार गैर अनुदान प्राप्त प्रायवेट स्कूल की कक्षा 1 में न्यूनतम 25 प्रतिशत प्रवेश दिया जाएगा। यदि स्कूल में प्रि–स्कूल शिक्षा दी जाती है तो उसकी प्रवेशित कक्षा नर्सरी/केजी–1/केजी–2 में प्रवेश दिया जाएगा लेकिन यदि कोई स्कूल कक्षा 6 से प्रारंभ होती है तो वहां अधिनियम का यह प्रावधान लागू नहीं होगा।

यदि प्रायवेट स्कूल में नर्सरी और कक्षा 1 दोनों में सीधे प्रवेश होता है तो दोनों में सीधे प्रवेशित बच्चों की संख्या का न्यूनतम 25 प्रतिशत बच्चों को प्रवेश मिलेगा। उदाहरण के लिए यदि नर्सरी में 40 बच्चे प्रवेशित होते है तो 10 सीट वंचित समूह एवं कमजोर वर्ग के बच्चों से भरी जाएगी। यदि कक्षा 1 में 100 बच्चों की भर्ती होती है और इसमें से 40 बच्चें नर्सरी के तथा 60 बच्चे सीधे भरे जाते है तो कक्षा 1 में 60 बच्चों मे से 15 बच्चों का प्रवेश आरक्षित सीट पर होगा।"

25. The above Circular has apparently been issued by the State Government to implement the provisions contained in proviso to Section 12 of the Act and to discharge its obligation under Section 11 of the Act. The above circular does not run counter to proviso to Section 12 read with Section 12(1)(c), therefore, the petitioners' challenge to the above circular has no merit. The petitioners have failed to demonstrate as to how the above Circular is beyond the provisions of the Act or is without jurisdiction.

26. Counsel for the petitioners have raised the issue that under Section 6 of the Act the appropriate Government and the local authority had the duty to establish school within such area or limits of neighbourhood; where it is not so established, within a period of 3 years from the commencement of the Act and therefore, after expiry of 3 years, the petitioners cannot be asked to enforce the provisions of Section 12(1)(c) of the Act. Such an argument has no merit because implementation of Section 12(1)(c) of the Act is not dependent upon the establishment of the schools by the State under Section 6 of the Act and there is no time limit prescribed upto which the provisions of Section 12 of the Act are to operate, therefore, it is not open to the petitioners to contend that the provisions of Section 12 have ceased to have effect after 3 years.

27. The petitioners have also raised an issue that if the petitioner Schools give admission to children of underprivileged and weaker section of society in pre Nursery class then they can not be compelled to give admission to such children while giving fresh direct admissions in KG-1, KG-2 or other pre school classes. Such an argument deserves to be rejected at the outset because by virtue of proviso to Section 12, the provision contained in Section 12(1)(c) apply to admission in all the pre school classes be it, pre KG, KG-1, KG-2 or whatever name they are called. The school covered by Section 12(1)(c) read with the proviso are required to admit such children to the extent of 25% strength of the class while giving direct admission in any of the pre school classes.

28. In W.P. No.5328/2011 counsel for the petitioner has urged the additional ground that for pre-school admission the limits of neighbourhood have not been defined.

29. Rule 2(1)(k) provides the limits of neighbourhood for classes 1 to 8 and reads as under :-

> **"2(1)(k)** " Limit of neighbourhood" means, in case of classes I to V, in rural area, the village and adjoining villages and adjoining wards of urban area, if any, and in urban areas, the ward and adjoining wards and adjoining villages, if any, and in case of classes VI to VIII, area of 3 k.m. from this limit;"

30. Rule 2(1)(h) prescribes extended limits of neighbourhood and reads as under :-

> **"2(1)(h) "Extended limit of neighbourhood"** means the neighbourhood area of the limit of neighbourhood defined under clause (k);

31. Rule 4 prescribes areas or limits for the purpose of Section 6 and relevant Rule 4(1) reads as under :-

> **"4. Areas or limits for the purpose of section 6.**
>
> (1) The areas or limits of neighbourhood within which a school has to be established by the State Government shall be the area or limit as defined in clause (k) of sub-rule (1) of rule 2."

32. By virtue of Rule 7(3) the limits of neighbourhood prescribed in Rule 4(1) are applicable for admission in pursuance to Clause 12(1)(c). The Rule 7(3) reads as under :-

> **"7. Admission of children belonging to weaker section and disadvantaged group.**
>
> (1) **********
>
> (2) **********
>
> (3) The areas or limits of neighbourhood specified in rule 4(1) shall apply to admissions made in pursuance of clause (c) of sub-section (1) of section 12.
>
> Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of sub-section (1) of section 12 admit the children from the extended limit of neighbourhood as defined under clause (h) of sub-rule (1) of rule 2."

33. By virtue of the proviso to Section 12, the provisions of Section 12(1)(c) are applicable to the petitioners-schools for which limits of neighbourhood have been prescribed in Rule 2(1)(k), therefore, the limits of neighbourhood prescribed for Class I in Rule 2(1)(k) and extended limit in Rule 2(1)(h) becomes applicable for pre-school admission also. Counsel for the State in this regard has referred to the Circular dated 10.2.2014 issued by the State Government containing the details relating to the manner of granting admission from neighbourhood and providing as under:-

> **(ii) पड़ोस के बच्चों को प्रवेशः–**
>
> "नियम 2 (ट) - "पड़ोस की सीमा" से अभिप्रत है, कक्षा एक से पांच की दशा में ग्रमीण क्षेत्र में ग्राम तथा उसकी सीमा से लगे हुए ग्राम तथा नगरीय क्षेत्र की सीमा से लगे वार्ड, यदि कोई हो, तथा नगरीय क्षेत्र में, वार्ड तथा उसकी सीमा से लगे हुए वार्ड तथा उसकी सीमा से लगे हुए ग्राम, यदि कोई हो।
>
> नियम 2 (ज) "पड़ोस की विस्तारित सीमा" से अभिप्रत है, खण्ड (ट) के अधीन परिभाषित पड़ोस की सीमा के पड़ोस क्षेत्र। अतः गैर अनुदान प्रायवेट स्कूलों में अधिनियम के अंतर्गत न्यूनतम 25 प्रतिशत बच्चों को प्रवेश में प्राथमिकता का कम निन्नानुसार होगाः–

(i) जिस गांव (ग्रामीण क्षेत्र) या जिस वार्ड (नगरीय क्षेत्र) में स्कूल स्थित है उस गांव/वार्ड के बच्चों को पहले प्रवेश दिया जाएगा।

(ii) इसके बाद यदि सीट रिक्त रहती है तो पड़ोस की सीमा के गांव/वार्ड के बच्चों को प्रवेश मिलेगा।

(iii) इसके बाद भी यदि सभी आरक्षित सीट नहीं भरी जाती है तो पड़ोस की विस्तारित सीमा के अंतर्गत आने वाले गांव/वार्ड के बच्चों को प्रवेश दिया जाएगा।"

(ix) पड़ोस की सीमा की बसाहटों की जानकारी :--

"जिला शिक्षा अधिकारी द्वारा जन शिक्षक या अन्य के सहयोग से प्रत्येक स्कूल के पड़ोस की सीमा और पड़ोस की विस्तारित सीमा में आने वाली बसाहटों की जानकारी तैयार कराई जायेगी। यह जानकारी प्रत्येक गैर अनुदान प्राप्त प्रायवेट स्कूल को दी जाएगी। इससे यह सुविधा होगी कि प्रत्येक प्रायवेट स्कूल के पास यह जानकारी रहेगी कि उसके लिये न्यूनतम 25 प्रतिशत प्रवेश देने के लिए पड़ोस की सीमा क्या होगी और कौन–कौन सी बसाहटों के बच्चे इससे लाभान्वित होंगे। इसी प्रकार वार्डवार एवं ग्रामवार यह जानकारी भी तैयार करायी जाए की उस वार्ड/ग्राम के पड़ोस में कौन–2 से प्रायवेट स्कूल आते है। इससे बच्चों के पालकों/अभिभावकों को भी यह सहज जानकारी हो सकेगी कि उन्हे किन–2 स्कूलों में प्रवेश की इस सुविधा का लाभ मिल सकेगा। यह जानकारी तैयार कर इसका प्रचार प्रसार भी स्थानीय समाचार पत्रों में समाचार विज्ञप्ति जारी कर किया जाये और जन प्रतिनिधियों तथा पार्षद/पंच को भी इसकी जानकारी दी जाये।"

34. Even in Clause I of the declaration which is to be furnished along with Form-1 for recognition, the limits of neighbourhood for the purpose of Section 12(1)(c) of the Act is to be disclosed.

35. Thus, the counsel for the petitioner is not right in his contention that the limit of neighbourhood have not been specified. Even otherwise learned counsel for the State has also fairly stated before this Court that if the petitioners have any doubt about the limits of the neighbourhood from which they have to give admission in the pre-school classes to the extent of 25%, then it would be open to them to approach the competent authority and their grievance will be redressed without any delay.

36. Counsel for the petitioner in W.P. No.5328/2011 has also raised the issue that there is no provision for reimbursement of the expenditure incurred by the school on the 25% children given admission in pre-school classes from under

privileged and weaker section of society. Such a contention also has no merit because Section 12(2) of the RTE Act provides for reimbursement and in the Circular dated 10.3.2010 the State Government has categorically provided that :-

"निजी शालाओं में –

धारा 12(1)(सी) के अनुसार प्रत्येक निजी विद्यालय को न्यूनतम 25 प्रतिशत वंचित वर्ग के एवं आर्थिक रूप से कमजोर परिवारों के बच्चों को शिक्षा देना अनिवार्य होगा। यह प्रवेश कक्षा 1 में देना होगा ऐसी शालाएं जहां प्री स्कूल एजुकेशन है वहां यह एडमिशन नर्सरी में कराना अनिवार्य होगा। इस हेतु शासन द्वारा धारा 12(2) के तहत राशि की प्रतिपूर्ति की जाएगी। प्रतिपूर्ति हेतु शासन द्वारा प्रति छात्र किए गए व्यय अथवा स्कूल द्वारा निर्धारित फीस, में से जो भी कम हो को मान्य किया जाएगा।"

37. Before this Court also counsel for the State has not disputed that expenditure incurred by the petitioner schools in admission to children of weaker and underprivileged class in pre school class is to be reimbursed in accordance with Section 12(2) and above circular.

38. In respect of grievance of the counsel for the petitioners that no reimbursement of expenditure incurred by them in the previous years on admission to the extent of 25% to the children of under privileged and weaker section of society in pre-school classes, has been made by the State till now, Counsel for the State has fairly stated before this Court that the amount will be reimbursed in accordance with law within a time bound period. Hence the petitioners are permitted to file an appropriate application for reimbursement giving all the necessary particulars before the competent authority of the respondent and if such an application is filed by the petitioners, the same will be decided and reimbursement will be made in accordance with law by the respondents, within a period of 3 months from the date of receipt of the application.

39. No other issue has been raised by the petitioners.

40. Writ petitions are accordingly disposed of.

41. Signed order be kept in the file of W.P. No.10546/2013 and a copy thereof be placed in the connected matters.

Petition disposed of.

I.L.R. [2015] M.P., 2402
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 11734/2004 (Jabalpur) decided on 6 January, 2015

C.B. TIWARI ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Service Law - Promotion - No Work No pay **- Promotion was given to the petitioner after his exoneration in the departmental enquiry from the date, his juniors were promoted but was denied monetary benefit on the principle of no work no pay - Held - Principle of No Work No pay would apply only when an employee is found guilty of any misconduct and his promotion is delayed - If the promotion is granted with retrospective effect and if monetary benefit is denied, it would amount to a penalty of withholding of monetary benefit under Rule 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 - Denial of such a benefit is illegal - Petitioner is entitled to the salary of promotional post from the date the said benefit was extended to his immediate junior - Petition allowed. (Paras 4 to 8)**

सेवा विधि – पदोन्नति – कार्य नहीं तो वेतन नहीं – याची को विभागीय जांच में विमुक्त किये जाने के पश्चात् उसे उससे कनिष्ठों को पदोन्नत किये जाने की तिथि से पदोन्नति दी गई, परंतु कार्य नहीं तो वेतन नहीं के सिद्धांत पर उसे आर्थिक लाभ देने से इंकार किया गया – अभिनिर्धारित – कार्य नहीं तो वेतन नहीं का सिद्धांत केवल तब लागू होगा जब किसी कर्मचारी को अवचार का दोषी पाया जाता है और उसकी पदोन्नति विलंबित हो जाती है – यदि भूतलक्षी प्रभाव से पदोन्नति प्रदान की गई है और यदि आर्थिक लाभ अस्वीकार किया गया है, यह म. प्र. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम 1966 के नियम 10 के अंतर्गत आर्थिक लाभ रोके जाने की शास्ति की कोटि में आयेगा – उक्त लाभ से इंकार करना अवैध है – याची पदोन्नति के पद के वेतन का हकदार उस तिथि से है जिस तिथि से उक्त लाभ उससे ठीक कनिष्ठ को दिया गया था – याचिका मंजूर।

Cases referred :

AIR 1991 SC 2010, 2011 MPLSR 18, (2007) 6 SCC 524, (2008) 5 MPHT 291, 2009 (4) MPLJ 523.

R.C. Tiwari, for the petitioner.

Rajesh Tiwari, G.A. for the respondents.

ORDER

K.K. TRIVEDI, J. :- By this writ petition under Article 226 of the Constitution of India, the petitioner has called in question the validity of orders dated 14.8.1996 and 4.9.2004 (Annx.P/3 and P/6) respectively, by which though the promotion was granted to the petitioner with retrospective effect after his exoneration in the departmental enquiry from the date the juniors to him were promoted, but the monetary benefit of promotion was denied to him on the principle of no work no pay and by subsequent order, the representation submitted by the petitioner has been rejected. It is contended that the petitioner while was working on the post of Forest Ranger became due for promotion on the post of Assistant Conservator of Forest. However, since a departmental enquiry was pending against him, the recommendations made in respect of the petitioner were kept in the sealed cover. Ultimately, the said departmental enquiry was completed and the petitioner was exonerated as no misconduct was found proved against him. Similar was the situation with one Shri R.L. Medha, who too was working as Forest Ranger, but was superseded because of pending departmental enquiry. After the closure of the departmental enquiry, the recommendations made in respect of promotion of the petitioner by the Departmental Promotion Committee (hereinafter referred to as the DPC for brevity) were looked into. Since the petitioner was found fit for such promotion, the order was issued on 14.8.1996 promoting the petitioner on the post of Assistant Conservator of Forest in the junior pay scale. The seniority was conferred on the petitioner from the date juniors to him were promoted i.e. from 6.9.1995, but the monetary benefit of such promotion was denied to the petitioner on the application of principle of no work no pay.

2. The petitioner immediately represented that since he was not responsible for the departmental enquiry or delayed promotion, therefore, he should have been given the benefit of promotion with all the monetary benefits and that in terms of the circular issued by the State Government, the petitioner was entitled to grant of monetary benefit of promotion as well. Such a representation of the petitioner was said to be rejected, therefore, the writ petition was required to be filed.

3. Upon issuance of the notice of this writ petition, the respondents have

filed their return contending *inter alia* that there was no question of application of Fundamental Rule 54(2)(4), as it was not a case of removal of petitioner from service and reinstatement under the orders of the Court or by the appellate authority. In fact, the charge sheet was issued to the petitioner and the departmental enquiry was pending when certain vacancies became available to consider the case of eligible persons for promotion on the post of Assistant Conservator of Forest. The petitioner was also to be considered for such promotion, but since the departmental enquiry was pending against him and during pendency of the departmental enquiry he was placed under suspension, the promotion order was not required to be issued in case of the petitioner. Since after the departmental enquiry was completed and it was found that the charges levelled against the petitioner were not proved, he was exonerated, the case of the petitioner was reviewed and by the order of the competent authority, the petitioner was promoted on the post of Assistant Conservator of Forest, which post the petitioner has joined on 22.8.1996 and, therefore, rightly he has been granted the benefit of salary from the date he joined on the promotional post. According to the respondents, no illegality is committed in the matter of grant of such benefit to the petitioner and as such, no relief as claimed in the writ petition can be granted.

4. After hearing learned counsel for the parties at length and perusing the record, the writ petition is bound to be allowed in view of the fact that principle of no work no pay would be applicable only in such cases where an employee is found guilty of any misconduct and his promotion is delayed. Otherwise, if the benefit of promotion though is granted with retrospective effect, but monetary benefit is denied, it would amount to a penalty of withholding of monetary benefit, as contemplated under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. This aspect has been considered by this Court on various occasions and in number of cases, this Court has held that in view of the law laid down by the Apex Court in the case of *Union of India Vs. K.V. Jankiraman* (AIR 1991 SC 2010), denial of such a benefit would be illegal. The law appreciated by this Court in various cases on the basis of law laid down by the Apex Court would leave no grounds to hold that the denial of such monetary benefit would be justified.

5. As has been rightly pointed out by learned counsel for the petitioner in the case of *Maniram Nagotiya Vs. State of Madhya Pradesh and others*

(2011 M.P. L.S.R-18), this Court has again looked into various aspects, the law laid down by the Apex Court and specially in the case of *State of Kerala and others Vs. E.K. Bhaskaran Pillai* [(2007) 6 SCC 524] and has held thus:-

> "7. In the case of *E.K. Bhaskaran Pillai* (supra), relied upon by Shri Anand Nayak, the question has been considered in Para 4 and it has been held by the Supreme Court that when promotion is denied to a person due to no fault of his and because of some mistakes by the Competent Authority, benefit of salary and allowances cannot be denied. The matter has been dealt with in Para 4 as under :-
>
> "So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of Departmental Enquiry or in a criminal case it depends upon the authorities to grant full back wages or 50% of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle of "No Work No Pay" cannot be accepted as a rule of thumb. There are exceptions where Courts have granted monetary benefits also."

8. A learned Single Judge of this Court has also considered the question in the case of *Brij Mohan Dwivedi*

Vs. State of Madhya Pradesh, 2005(2) MPJR Page 307, and after taking note of the principles laid down by the Supreme Court in the case of *Union of IndiaVs. K.V Jankiraman,* AIR 1991 SC Page 2010, *Virendra Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others,* (1990) 3 SCC Page 472, and again in the case of *State of Haryana and others vs. O.P Gupta,* (1996) 7 SCC Page 533, has laid down the principle in Para 6 in the following manner :-

"If the ratio of the aforesaid case is understood in proper perspective it is clear that Their Lordships were of the view that the quota and rota rule only became effective from the year 1954 and hence, there was neither equity nor justice in favour of the respondents to award emoluments of the higher posts with retrospective effect. In the case of *O.P. Gupta* (supra), the higher pay was denied as there was cavil over the factum of seniority and notional promotion was given. In the aforesaid case, the law laid down in the case of *Jankiraman* (supra) was distinguished on the backdrop that the ratio has no application to the case where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made in pursuant thereof. The law laid down in the case of *O.P Gupta* (supra), is distinguishable as there were certain aspects were taken note of and Rule 9 of the rules as that was a condition precedent but in the case at hand the factual scenario is differently depicted and the junior was considered and the case of the senior was deferred solely on the ground that the ACR was not available. In the counter affidavit nothing is perceivable against the petitioner that it was his fault. In view of the aforesaid the concept of "No Work No Pay" would not be attracted. It is definite that the petitioner was deprived to work in the promotional post due to laxity on the part of the respondents and hence, no blame can be put on him. Accordingly, it is directed that the petitioner shall be paid the differential amount from the date of receipt of the order passed today. Keeping in view the financial crunch which has been assiduously put forth by the learned Government Advocate, no

interest is granted."

6. This has remained constant view of this Court as the Division Bench of this Court in the case of *RB Guhe Vs. State of MP* [(2008(5) M.P.H.T. 291] and in the case of *Anand Mohan Saxena Vs. State of M.P. and another* [2009(4) MPLJ 523], has categorically held that if no justifiable reason is forthcoming from the Government for denying the promotion to a person, then the principle of no work no pay cannot be made applicale. Though here in the case in hand, there is no denial of promotion to the petitioner with retrospective effect, but the monetary benefit is denied and for that no justifiable reason is shown by the respondents except that a departmental enquiry was pending against the petitioner while his case was considered for promotion. Pendency of the departmental enquiry alone specially when the petitioner was exonerated in the said departmental enquiry would not be justifiable reason to withhold the monetary benefit of promotion to the petitioner, which according to respondents was granted with retrospective effect.

7. In view of the aforesaid discussions, the writ petition is allowed. The order dated 14.8.1996 to the extent it prescribes that the monetary benefit would not be available to the petitioner from the date of promotion stand quashed. The petitioner would be entitled to the salary of the promotional post from the date the said benefit was extended to his immediate junior i.e. from 6.9.1995. The order of rejection of such a claim of the petitioner dated 4.9.2004 also stand quashed.

8. By now the petitioner would have retired from service. If that is so, let his pay on such promotion with retrospective effect be revised in terms of the aforesaid decision from the date of promotion and all the arrears of salary be paid to the petitioner. Further, revision of pay be done till the date of superannuation of the petitioner in the appropriate pay scale and in case any promotion had taken place in between, on such pay scale applicable to the promotional post. Dues of the petitioner be calculated accordingly and be paid to him within a period of four months from the date of receipt of certified copy of the order passed today.

9. The writ petition stands allowed and disposed of. However, there shall be no order as to costs.

Petition allowed.

I.L.R. [2015] M.P., 2408
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 17665/2012 (Jabalpur) decided on 6 April, 2015

NITYA RANJAN DAS (DR.) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

(Alongwith W.P. Nos. 18433/2012, 19838/2012, 19891/2012, 21641/2012, 21659/2012, 21745/2012, 21747/2012, 900/2013, 3116/2013, 3143/2013, 3674/2013, 3752/2013, 5505/2013, 8575/2013, 8922/2013, 11006/2013, 11213/2013, 11793/2013, 14540/2013, 20262/2013, 22225/2013, 22376/2013, 22410/2013, 1223/2014, 1643/2014, 1796/2014, 2084/2014, 2412/2014, 3578/2014, 3580/2014, 3582/2014, 3587/2014, 3642/2014, 3873/2014, 3878/2014, 5009/2014, 5143/2014, 5183/2014, 5263/2014, 5294/2014, 5637/2014, 6527/2014, 6535/2014, 6551/2014, 6552/2014, 6557/2014, 6559/2014, 6995/2014, 7322/2014, 7327/2014, 7328/2014, 7738/2014, 8184/2014, 8353/2014, 8356/2014, 8358/2014, 8362/2014, 8364/2014, 8365/2014, 8529/2014, 10367/2014, 10574/2014, 10579/2014, 10586/2014, 10752/2014, 10816/2014, 11204/2014, 11206/2014, 11210/2014, 11212/2014, 11213/2014, 11420/2014, 11422/2014, 11425/2014, 11950/2014, 12101/2014, 12104/2014, 12967/2014, 13014/2014, 14926/2014, 15182/2014, 15703/2014, 15707/2014, 15708/2014, 15712/2014, 15713/2014, 17472/2014, 468/2015, 472/2015, 473/2015, 2478/2015, 2479/2015, 2480/2015, 2775/2015, 469/2015, 469/2015, 1735/2015, 1750/2015, 2780/2015)

A. Service Law - Recovery of Excess Payment - **Even if by mistake of employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers the excess payment has been made by mistake or negligence, the excess amount so made could be recovered. (Para 7)**

क. सेवा विधि – अधिक भुगतान की वसूली – यदि नियोक्ता की गलती से, कर्मचारी को राशि का भुगतान हुआ है और यदि बाद की तिथि में उचित निर्धारण के पश्चात् नियोक्ता को पता चलता है कि गलती या लापरवाही से अधिक भुगतान हुआ है, इस तरह किये गये अधिक भुगतान को वसूला जा सकता है।

B. ***Service Law - Recovery of Excess Payment - Principles of Natural Justice*** **- By impugned order the entitlement for grant of selection grade pay scale has been modified from 27-7-1998 to 4-3-2000 - The order was passed unilaterally without giving any opportunity of hearing to the petitioner - The modification would result in adverse consequences i.e., recovery of amount from the petitioner - Prejudice would be caused to the petitioners if the amount is recovered from them without affording an opportunity of hearing - Respondents would be at liberty to issue notice to petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons. (Paras 11 to 13)**

ख. सेवा विधि – अधिक भुगतान की वसूली – नैसर्गिक न्याय के सिद्धांत – आक्षेपित आदेश द्वारा प्रवरण श्रेणी वेतनमान प्रदान किये जाने हेतु पात्रता को 27–7–1998 से परिवर्तित कर 4–3–2000 किया गया है – याची को सुनवाई का अवसर दिये बिना एकपक्षीय रूप से आदेश पारित किया गया – परिवर्तन के प्रतिकूल परिणाम होंगे अर्थात् याची से रकम की वसूली – याचीगण को प्रतिकूल प्रभाव कारित होगा यदि सुनवाई का अवसर दिये बिना उनसे रकम को वसूला जाता है – प्रत्यर्थीगण , उन आधारों को दर्शाते हुए जिस पर प्रवरण श्रेणी/ग्रेड–पे प्रदान किये जाने हेतु पात्रता की तिथि में परिवर्तन चाहा गया है, याचीगण को नोटिस जारी करने के लिये और नये सिरे से कारण सहित आदेश पारित करने के लिये स्वतंत्र होंगें।

Cases referred :

(2005) 5 SCC 337, (1997) 1 SCC 444, (2012) 8 SCC 417, (1994) 2 SCC 521, 1995 Supp (1) 18, (2014) 8 SCC 883, 1995 Suppl. (3) SCC 722, (2002) 3 SCC 302.

A.K. Pathak, Praveen Verma, Sanjay K. Agrawal, V.K. Shukla, Vikram Singh, C.V. Rao, Sidharth Seth, Pratyush Tripathi & B.C. Dubey, for the petitioners

Naman Nagrath, Girish Kekre & Lalit Joglekar, G.A. for the respondents.

ORDER

ALOK ARADHE, J. :- In this bunch of the writ petitions, the petitioners have challenged the validity of the impugned orders by which the respondents

have modified the date of entitlement of the petitioners for grant of Senior Grade/ Selection Grade/ Grade Pay. For the facility of reference, the facts from Writ Petition No.17665/2012 are being referred to.

2. The petitioner was appointed as an Assistant Professor in Commerce on ad hoc basis vide order dated 1.12.1984. Thereafter his services were regularized by an order dated 4.3.1987. The University Grants Commission (in short "the Commissiona") issued an order dated 27.7.1998 which deals with the revision of pay scales of teachers in the university and colleges in the light of revision of pay-scales of the Central Government Employees in view of the recommendations of 5th Pay Commission. The criteria for grant of selection grade pay-scale was provided in the said order i.e. "minimum length of service for grade of lecturer (Senior Scale)". is four years in case the candidates having P.Hd. degree, five years in case the candidates having M.Phil. degree and six years in case the candidates holding the post of Lecturer (Selection Grade).

3. Thereafter the Commission issued another notification dated 24.12.1998 with regard to revision of pay-scale and minimum qualification for appointment of teachers in the university. The Higher Education Department of State of Madhya Pradesh vide an order dated 11.10.1999 implemented the provisions of the notification dated 24.12.1998 issued by the Commission. Paragraph 8 A of the aforesaid order provides for relaxation of five year working experience for senior selection grade pay scale for the cases stated therein as the same would amount to anomaly and their eligibility would be determined on the basis of total length of service. Paragraph 8 A reads as under:

> "वरिष्ठ श्रेणी वेतनमान में स्थानन हेतु 6 वर्ष के न्यूनतम सेवाकाल की अर्हता होगी। पी.एच.डी. तथा एम.फिल उपाधि धारकों के लिए यह सेवाकाल कमशः 4 एवं 5 वर्ष होगा। प्रवर श्रेणी वेतनमान में स्थानन हेतु वरिष्ठ श्रेणी वेतनमान में समान रूप से 5 वर्ष का सेवाकाल अनिवार्य होगा। विद्यमान योजना वर्ष 1986 से लागू में स्थानन हेतु पुनरीक्षित योजना 'वर्ष 1996 से लागू' की तुलना में अधिक सेवा वर्षो की आवश्यकता होती थी। अतः उन शिक्षको के मामले में जिनका स्थानन 1986 की योजना के आधार पर हो चुका है। पुनरीक्षित योजना के प्रवर श्रेणी वेतनमान में स्थानन हेतु विसंगति उत्पन्न करेगें। ऐसे प्रकरणों में वरिष्ठ श्रेणी वेतनमान में 5 वर्ष की सेवा की अनिवार्यता हेतु विसंगति उत्पन्न करेंगे। ऐसे प्रकरणों में वरिष्ठ श्रेणी वेतनमान में 5 वर्ष की सेवा की अनिवार्यता

से छूट रहेगी। उनका स्थानन कुल सेवा वर्षो की गणना के आधार पर होगा अर्थात पी.एच.डी. धारक 9 वर्षो की सेवा एवं एम.फिल धारक 10 वर्षो की सेवाकाल होने पर प्रवर श्रेणी वेतनमान के लिए पात्र होगें।"

4. The petitioner was given the senior pay-scale vide order dated 21.4.1999 with effect from 4.3.1995. Thereafter by an order dated 2.7.2002 the benefit of selection grade pay-scale was accorded to the petitioner with effect from 2.7.2002. By an order passed in the month of January, 2012 the petitioner was held entitled to the benefit of Selection Grade Pay-Scale with effect from 27.7.1998. However, by the impugned order dated 4.8.2012 the entitlement of the petitioner to the benefit of Selection Grade Pay Scale has been modified from 27.7.1998 to 4.3.2000 on the ground that the mistake crept in the order passed by the Higher Education Department of Government of M.P. with regard to the relaxation granted in respect of five years experience in senior pay-scale has been rectified. Accordingly, by identical orders in all the writ petitions, the date of entitlement of the petitioners for grant of selection/ senior grade pay-scale has been modified unilaterally. In the aforesaid factual backdrop, the petitioners have approached this Court.

5. Learned counsel for the petitioners submitted that the impugned order is arbitrary and is violative of Articles 14 and 16 of the Constitution of India. It is further submitted that the respondents have not taken into account the order dated 11.10.1999 passed by them which has neither been diluted nor rescinded. It is also submitted that the order dated 29.1.2008 providing for clarification in the order dated 11.10.1999 is prospective in nature. It is also submitted that the Commission while framing directions has relaxed the embargo by inserting clause 7.8 in the Scheme and the impugned order has been passed in flagrant violation of principles of natural justice inasmuch as neither any notice nor any opportunity of hearing was afforded to the petitioner.

6. Mr. Naman Nagrath, learned senior counsel submitted that in the facts and circumstances of the case the compliance with the principles of natural justice would amount to exercise in futility as the petitioners have nothing to say before the authority. In support of his submission, learned senior counsel has placed reliance on the decision in the case of *Vivek Nand Sethi v. Chairman, J & K Bank Ltd. and Others,* (2005) 5 SCC 337. It is further submitted that object of compliance with principles of natural justice has two facets, namely, to enable the employee to know the nature of allegations made

against him; and to afford an opportunity of hearing to him. In the instant case, the bona fide mistake is sought to be rectified. It is further submitted that in any case the employees can be given post-decisional hearing. It is further submitted that since the amount is paid in excess, the petitioners, therefore, are not entitled to retain the same. In support of the aforesaid submission, learned senior counsel has placed reliance on the decision in the case of *Shiv Sagar Tiwari v. Union of India and Others*, (1997) 1 SCC 444 and *Chandi Prasad Uniyal and Others v. State of Uttarakhhand and Others*, (2012) 8 SCC 417.

7. I have considered the respective submissions made by learned counsel for the parties. In *Chandi Prasad Uniyal* (supra) the Supreme Court after taking into consideration various decisions rendered by it held that the even if by mistake of the employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers the excess payment has been made by mistake or negligence, the excess amount so made could be recovered. The decision in *Chandi Prasad Uniyal* (supra) was referred to a three-Judge Bench of the Supreme Court in view of the conflict expressed in the decisions rendered in the cases of *Shyam Babu Verma and Others v. Union of India and Others*, (1994) 2 SCC 521 and *Sahib Ram v. State of Haryana and Others*, 1995 Supp (1) SCC 18. The three-Judge Bench of the Supreme Court in the case of *State of Panjab and Others v. Rafiq Masih*, (2014) 8 SCC 883, held that the law laid down in *Chandi Prasad Uniyal* (supra) in no way is in conflict with the observations made by the Supreme Court in *Shyam Babu Verma* (supra) and *Sahib Ram* (supra) and it was held that an employee cannot retain the amount received by him on account of irregular/wrong fixation of pay even in the absence of any misrepresentation or fraud on his part. Thus, there cannot be any dispute that the amount so paid to the employee can be recovered by the employer.

8. However, the moot question which arises for consideration in the case at hand is whether excess amount that has been paid to the employee even in the absence of fraud or misrepresentation on the part of such employee can be recovered without compliance with the principles of natural justice. The principles of natural justice are regarded as important procedural safeguard

against undue exercise of power by an authority. The chances of an administrative authority taking decision in ignorance of other factors are reduced as if the hearing is given to the person concerned who will bring all the issues involved in the situation. In such a case the decision making authority shall take into account all the relevant facts and issues involved in the decision and would come to a right decision. Thus, the principles of natural justice is considered as an effective method to protect the interest of individual as he can participate in administrative process affecting him.

9. In the case of *Nand Kishore Sharma and Others v. State of Bihar and Others*, 1995 Suppl. (3) SCC 722 the Supreme Court held that having paid the arrears to the employees, the State Government could not have recovered the same without compliance with the Rules of Natural Justice. In the case of *State of Karnataka and Another v. Mangalore University Non-teaching Employees". Association and Others,* (2002) 3 SCC 302 it was held by the Supreme Court that in all cases of violation of principles of natural justice, the Court exercising jurisdiction under Article 226 of the Constitution of India need not necessarily interfere and set at naught the action taken by an authority. The Court has to consider the genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice while considering the effect of violation of the principles of natural justice.

10. In the cases at hand, the petitioner was granted the benefit of senior pay-scale with effect from 4.3.1995 by an order dated 21.4.1999. Thereafter vide an order dated 2.7.2002 the benefit of selection grade was extended to him. Thereafter in January, 2012, the petitioner was held entitled to the benefit of selection grade with effect from 27.7.1998. It is pertinent to mention here that the notification dated 24.12.1998 issued by the Commission was adopted by the State Government vide order dated 11.10.1999 which contained clause 8A which deals with exemption with regard to requirement of minimum period of service. Thereafter the State Government issued an order dated 29.1.2008 by which the clause 8 contained in the order dated 11.10.1999 was clarified and it was provided that there shall be no exemption with regard to minimum service of five years in senior pay scale. Thereafter by an order passed in the month of January, 2012, the petitioner was entitled to the benefit of Senior Grade with effect from 27.7.1998.

11. By the impugned order the entitlement of the petitioner for grant of

selection grade pay-scale has been modified from 27.7.1998 to 4.3.2000, admittedly, without compliance of principles of natural justice. The aforesaid order has been modified unilaterally with regard to date of entitlement of the petitioners which would result in adverse consequences i.e. recovery of the amount from the petitioner. Thus, the benefit which was accorded to the petitioners is sought to be taken away without following the principles of natural justice. It is possible for the petitioners to contend that the order dated 29.1.2008 is prospective in nature and does not apply to the case of the petitioner as the benefit has already been granted to him and the said order does not provide for reopening of the cases where the benefit of Senior Grade/ Selection Grade/ Grade Pay has already been extended. In other words, the petitioners have not admitted that any excess amount is paid to them. The petitioners assert their entitlement to the amount in question.

12. The genesis of action contemplated against the petitioner i.e. issuance of the impugned order by which the date of entitlement of the petitioner has been unilaterally modified appears to be 29.1.2008. The said order was issued to clarify clause 8A contained in the order dated 11.10.1999. Undoubtedly the prejudice would be caused to the petitioners if the amount is recovered from them without affording an opportunity of hearing to them. The petitioners may have plausible defence to put forth before the authority. However, the same is required to be considered and dealt with by the competent authority.

13. In the considered opinion of this Court, the action of the respondents in passing the impugned orders are in breach of principles of natural justice therefore, the same cannot be sustained in the eye of law. Accordingly, the same are quashed However, the respondents would be at liberty to issue notice to the petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Selection Grade/ Grade Pay are sought to be modified and to pass a fresh order containing reasons in accordance with law after affording an opportunity of submitting reply to the petitioners. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioners and the competent authority would be at liberty to examine the case of the individual petitioner on its own merit.

14. With the aforesaid directions, the writ petitions are disposed of.

Petition disposed of.

I.L.R. [2015] M.P., 2415
WRIT PETITION
Before Mrs. Justice S.R. Waghmare
W.P. No. 1837/2002 (Indore) decided on 6 April, 2015

SATYA NARAYAN KAUSHAL ...Petitioner
Vs.
STATE LEVEL COMMITTEE & ors. ...Respondents

Caste Certificate - Cancellation **- State Level Committee granted opportunities to the petitioner - In evidence petitioner has stated that he belongs to Bhadbhunjia caste which is a OBC - Petitioner has fraudulently obtained caste certificate that he belongs to Bhunjia Caste - No malafides alleged against Committee - Caste Certificate rightly cancelled - Petition dismissed. (Paras 13 to 15)**

जाति प्रमाण पत्र – निरस्तीकरण – राज्य स्तरीय समिति ने याची को अवसर प्रदान किये – साक्ष्य में याची ने कहा कि वह भड़भूंजिया जाति का है जो कि एक अन्य पिछड़ा वर्ग है – याची ने कपटपूर्वक जाति प्रमाणपत्र प्राप्त किया कि वह भूंजिया जाति का है – समिति के विरूद्ध कदाशय अभिकथित नहीं – जाति प्रमाणपत्र उचित रूप से निरस्त – याचिका खारिज।

Cases referred :

(1994) 6 SCC 241, (2012) 1 SCC 333.

Vivek Dalal, for the petitioner.
Pramod Meetha, G.A. for the respondents/State.

(Supplied: Paragraph numbers)

ORDER

SMT. S. R. WAGHMARE, J. :- This petition has been filed challenging the order dated 01.06.2002 passed by respondent No.1 the State Level Committee for Scheduled Caste and Scheduled Tribes and the order dated 09.08.2002 issued by respondent No.4 Sub Divisional Officer of Revenue.

2. Counsel for the petitioner has vehemently urged that the petitioner belongs to Scheduled Tribe as per Certificate Annexure P/1. However by order Annexure P/13 passed by the State Level Committee the respondent No.1 for SC/ST cancelled the Caste Certificate of the petitioner and further

terminated him from the service. This Court had initially decided the matter on 03.12.2002 however the petitioner filed the Civil Appeal No.2251/06, whereby the Apex Court has remanded the matter by setting aside the order dated 03.12.2002 and directing that a fresh decision be taken by consideration of ratio laid down in the matter of *Kumari Madhuri Patil And another vs. Addl. Commissioner, Tribal Development And Others* 1994 6 SCC 241 and it is in this background that the case has come for hearing before this Court today.

3. Counsel for the petitioner has vehemently urged the fact that the petitioner attended the hearing on 14.02.2002 before the respondent No.1/ Committee and had also taken with him several witnesses but their evidence was not recorded by the respondent No.1 nor were the documents properly scrutinized. Counsel submitted that the hearing was done in a casual manner and in gross violation of the principles of natural justice.

4. Counsel also urged that there was an affidavit of Pramnarayan Pujari, who was the Pujari of Maa Chamunda Tekri, Dewas, who deposed that his family was known to the family of Satyanarayam (sic:Satyanarayan) Kaushal, the present petitioner and his generation and he had personal knowledge that Satyanarayan belongs to Caste Bhunjia and he had gone to Bhopal to appear before the respondent No.1/Committee. However the Officials at Bhopal had turned him away stating that his testimony is not required. And Counsel urged that it is in this light the impugned order of the State Level Committee dated 01.06.2002 was being challenged that proper opportunity of hearing was not given to the petitioner before cancellation of his caste certificate.

5. Counsel vehemently urged that according to Annexure P/1, the petitioner belongs to the Bhunjia Caste, which is included serial No.9 in the M.P. State List under the Constitution (Scheduled Tribes) order, 1950. The State Government had also issued the order dated 17.09.1993 by the which status of Bhunjia Tribe was registered and it is recognized as Scheduled Tribes in the whole State of Madhya Pradesh.

6. Counsel submitted that the Sarpanch of Gram Panchayat, Nevri has also certified that he belongs to Bhunjia Tribe and his certificate is dated 23.10.2002 and that Bhunjia Tribe is Scheduled Tribe. Similarly it is directed that the District Educational Officer, Dewas has also stated that the Bhunjia

Tribe is a Scheduled Tribe, it was unfair of the respondents to notice the petitioner calling upon him for adducing evidence in support of his belonging to Scheduled Tribe, despite which he had gone to Bhopal when Shri Premnath Pujari, Shri Bhagwan Pujari and others in support but their evidence was not recorded and they had returned empty handed. Counsel submitted that in an arbitrary and illegal manner, without affording full opportunity to the petitioner the impugned orders have been passed and the same were without taking into consideration the provisions of law.

7. Counsel prayed that in the ratio laid down in the matter of *Kumari Madhuri Patil* (supra), the matter pertains to case of *Madhuri Patil,* who had secured admission to the course by relying on permission granted provisionally by Principal of the college to her sister Suchita Patil to appear in the examination as a special case, since the sister did not have the Caste Certificate at the time appearing for the final examination. This was challenged and it was stated that the younger sister Madhurai (sic:Madhuri) Patil had secured the admission on the basis of order issued by the High Court in favour of her elder sister Suchita Patil and is in midway of her study in BDS. The Apex Court held that the petitioner Madhuri Patil cannot be allowed to take advantage of Scheduled Tribes status and her further continuance must be determined as a general candidate and the Apex Court held thus:

> **That the caste certificate was Social status certificate and findings of Verification Committee based on evidence Court's interference with was not open unless findings vitiated by error of law or non-application of mind to relevant facts or material. The High Court under Article 226 is not a Court of appeal to appreciate evidence.**

The Apex Court further held thus:

> **15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the**

educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

14. "Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/ Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.

15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

16. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential

Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine Tribess or castes. Courts would be circumspect and vary in considering such cases."

Further:

19. "In the case of Madhuri Laxman Patil, she did not approach the competent officer. She appears to have wrongly gone to an officer who had no jurisdiction, obviously she has shown the order issued by the High Court in favour of her sister Suchita and secured the certificate and got the admission. Though she is in midway of her study in BDS in the end of second year, she cannot continue her studies with her social status as Mahadeo Koli, a Scheduled Tribes and the concessions which she might have got on that account. If she was eligible for obtaining admission as a general candidate she may continue her studies. Therefore, we uphold the cancellation and confiscation of her and of Suchita of social status as Mahadeo Koli ordered by Scrutiny Committee and affirmed by the order of Appellate Authority and that of the High Court in that behalf. Subject to the above modifications, the appeal is dismissed but without costs."

8. Counsel for the petitioner has further urged that since the witness testimony is not recorded, the State Level Committee failed to discharge its duty properly and the petitioner is being discriminated because Scheduled Tribes Certificate in the same circumstances have been issued to others and the petitioner is of Bhunjia Caste by birth. The police investigation in the matter is also faulty. Counsel prayed that the impugned order be set aside and the respondents be directed to declare that the petitioner belongs to Scheduled

Tribe and petitioner's services be restored to him by quashing Annexure P/13.

9. **Per contra,** Counsel for the respondent/State has vehemently urged the fact that earlier also the reply has been filed by the State Government respondent No.3 Collector, Dewas and respondent No.4 S.D.O. Revenue, Dewas,. It was categorically stated that the State Level Committed was constituted by State of Madhya Pradesh in pursuance with directions from the Hon'ble Supreme Court in the matter of *Kumari Madhuri Patil* (supra) and it is contended that the High Level Officers, who had verified the truth about the petitioner and whether he belongs to said Tribe of Bhunjia had considered the case in detail according to the provisions of law. The certificate submitted by the petitioner was also considered by State Level Committee and by Additional Superintendent of Police and complete investigation was done in the matter. The show cause notices were issued by the Commissioner, Tribal Development Department and Member Secretary SC/ST, State Certificate Enquiry Committee to the petitioner on several occasions i.e. 25.05.2000, 29.07.2000 & 05.01.2002 and the personal hearing was dated 14.02.2002. The hearing was also recorded and the petitioner himself admitted that his family did not have agricultural land and his father was Halwai (sweet -meat keeper) and various surnames such as Gupta, Kaushal, Bhunjia, Kanjoi etc. were used. He produced a school certificate whereby the father of the petitioner was recorded as Babulal Bhunjia and scrutinizing all the record, the respondent Committee came to the conclusion that the caste certificate of the petitioner was false and that petitioner belongs to the **Bhadbhunjia** Caste, which was not equivalent to **Bhunjia** Tribe.

10. Counsel for the respondent has vehemently urged the fact that it was falsely stated before the Apex Court by the petitioner that the opportunity of hearing was not given to the petitioner whereas the decision by the State Level Committee was in keeping with the ratio laid down in the matter of *Kumari Madhuri Patil* (supra). He urged that the State Level Scrutiny Committee has cancelled the certificate after carrying out all the formalities. And the petitioner himself has categorically stated that he belongs to Bhadbhunjia Caste, which is not included in the Bhunjia Tribe. Counsel submitted that the Bhunjia Caste is included in the Scheduled Tribe as per notification Annexure P/5 filed by the petitioner himself and the Scheduled Tribe Bhunjia is included at serial No.9 in the M.P. State List and hence Annexure P/13 his caste certificate had been cancelled. And in this sense the certificate was fraudulent.

11. Counsel for the respondent further relied on *Dayaram vs. Sudhir Batham and Others* (2012) SCC 333, whereby the Apex Court held that the Scheme laid down in *Madhuri Patil* case was to continue in force till replaced by suitable legislation. The Court also further held thus:

> **However, second sentence of Direction 13 of *Madhuri Patil* case providing that where writ petition against orders of Caste Scrutiny Committee is disposed of by Single Judge of High Court, no further appeal would lie against order (even when there existed a vested right to file such intra-court appeal or letters patent appeal) and will only be subject to a special leave petition under Art.136 is unsustainable to that extent.**

12. In this light also, Counsel stated that the ratio laid down in the matter of *Dayaram* (supra) would apply full force the Writ Appeal has not been filed and the petition on this ground also deserves to be dismissed.

13. On considering the above submissions and the directions of the Apex Court that the ratio laid down first in the case of *Madhuri Patil* (supra) is considered, it is found that it has been wrongly been stated before the Apex Court that the opportunity of hearing was not given to the petitioner. The order was passed by the Scrutiny Committee after affording the opportunities by petitioner the dates have already mentioned, whereby the petitioner was given notices to appear before the Scrutiny Committee and the Committee has rightly come to the conclusion that caste certificate dated 01.06.2002 issued to the petitioner was fraudulent; primarily because Bhunjia Tribe does not admit of Bhadbhunjia Caste. Moreover it is also found that Bhunjia is the Scheduled Tribe whereas Bhadbhunjia's belong to the other backward class (OBC), whereas Annexure P/13 has certified that the petitioner Satyanarayan belongs to Bhunjia Tribe whereas according to his deposition he belongs to Bhadbhunjia Caste as already stated above, Bhadbhunjia Caste is nowhere indicated as belonging to Bhunjia Tribe. And in this light also petition deserves to be dismissed. It has been categorically found that there has been suppression of the facts, that the Scrutiny Committee has investigated the entire record and has granted several opportunities of hearing to the petitioner and come to conscious decision that Bhadbhunjia Caste does not belong to Bhunjia Tribe also on the basis of the documents filed by the petitioner and everything has been properly considered in accordance with the provisions

of law. There are no mala fides impugned in the order and merely because some of the witnesses were not examined by the Scrutiny Committee; it cannot be said that opportunities of hearing were lost or not given to the petitioner. It was also admitted by the petitioner before the respondent/State that the petitioner has been living at Dewas since his birth and belongs to the Bhadbhunjia Caste.

14. In this light also the petition must fail since there is clear admission by the petitioner and his family members that they belong to Bhadbhunjia Caste, which cannot be included in the 'Scheduled Tribes' Bhunjia, as per notification vide Annexure P/1 Constitution (Scheduled Tribes) Order, 1950.

15. In this view of the matter, the petition is, therefore, **dismissed** as being without merit.

Cc. as per rules.

Petition dismissed.

I.L.R. [2015] M.P., 2422
WRIT PETITION
Before Mrs. Justice S.R. Waghmare
W.P. No. 13975/2013 (Indore) decided on 6 April, 2015

TUKARAM ...Petitioner
Vs.
FULSINGH & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 8 Rule 10 - Closure of right to file written statement **- Petitioner pleads that court should have pronounced the judgment after closing the right to file written statement - Trial Court directed the plaintiff to lead evidence as it would be appropriate to grant opportunity to defendant to cross-examine the witnesses - Held - Undoubtedly right has accrued in favour of plaintiff but defendant should not be left remedy less - Petition dismissed.** **(Para 5)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 10 – लिखित कथन प्रस्तुत करने के अधिकार को समाप्त किया जाना – याची का अभिवाक् कि न्यायालय को लिखित कथन प्रस्तुत करने के अधिकार को बंद करने के पश्चात् निर्णय उद्घोषित करना चाहिए था – विचारण न्यायालय ने वादी को साक्ष्य पेश करने के लिए निदेशित किया उसी तरह प्रतिवादी को साक्षियों के प्रतिपरीक्षण का अवसर प्रदान करना उचित होगा – अभिनिर्धारित – निःसंदेह, वादी के पक्ष में अधिकार

प्रोद्भूत हुआ है परंतु प्रतिवादी को उपचार विहीन नहीं छोड़ा जाना चाहिए – याचिका खारिज।

Cases referred :

AIR 2000 SC 3585, AIR 1999 SC 3381.

O.P. Sharma, for the petitioner.
Kamlesh Mandloi, for the respondents No. 1 to 9.

ORDER

MRS. S. R. WAGHMARE, J. :-By this petition under article 227 of Constitution of India, the petitioner Tukaram Barela and others were aggrieved by the order dated 08/10/2013 passed by Civil Judge Class II, Ketiaya, District Badwani, M.P, closing the right of the defendant to lead evidence yet the Court did not finally decide the matter in terms of Order 8 Rule 10 of the C.P.C.

2. Briefly stated the facts of the case are that the petitioner had filed a Civil Suit for declaration and permanent injunction and the defendant had failed to file Written Statement and the Court taking action under Order 8 Rule 10 of the C.P.C closed the right of the defendant to lead evidence and listed the matter for passing of final decision. However, the plaintiff had also filed an application under Order 39 rule (1)(2) of C.P.C to which the defendants filed reply and in the reply it was also stated by the respondent that the closure of right to defend and listing the matter under Order 8 Rule 10 of C.P.C was contrary to the provisions of law since the Court had failed to pass the order treating the matter to the ex-parte and even in the matter of injunction, and right of cross examination could not be closed. And considering the application the learned Judge of the lower Court has passed the impugned order dated 08/10/2013 and held that even if the Written Statement had not been taken on record in the reply to the application under Order 39 Rule (1)(2) of the C.P.C., the pleadings of the plaintiff had been controverted and hence it would be appropriate to grant opportunity of cross examination of the witnesses to the defendant and passed the order granting further date for hearing. Being aggrieved by the said order the petitioner has filed the present petition under rule 227 of Constitution of India.

3. Counsel for the petitioner vehemently urged the fact that under Order

8 Rule 10 of the C.P.C, clearly mandates that:

> **"when the Written Statement has not been presented within the time permitted or fixed by the Court, as the cause may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up".**

Counsel stated that under the circumstances when the Court had closed the right of the defendant/respondent then merely granting him the right of cross examination was not the right course under the provisions of law. The Court should have proceeded to pass the judgment since the available rights had to be given to the plaintiff because his plaint averments had remained un-controverted and placing reliance on *Om Prakash Gupta Vs Union of India* AIR 2000 SC 3585, Counsel stated that the Apex Court had clearly allowed that when the defendant was granted time to file Written Statement and it had not been filed for more than two years, order granting further time to the party was injustice and the application under Order 8 Rule 10 mandates that Court had to pronounce the judgment against the defendants and the suit had to be allowed. Counsel for the plaintiff petitioner urged vehemently that similar application had been moved by the plaintiff in the present case also which has not been considered and right to cross examination had been granted to the defendant which is contrary to the spirit of Order 8 Rule 10 C.P.C. and the provisions of law. Counsel prayed that the impugned order be set aside.

4. Per Contra, Counsel for the respondents has vehemently urged the fact that merely because the right to defendant had been closed because the Written Statement had not been filed the plaintiff had right to resist/traverse the facts averred in the plaint and especially when there are disputed facts the court should not be in a hurry to pass judgment under Order 8 rule 10 of C.P.C. Counsel for the respondent placed the reliance on *Balraj Taneja and another Vs. Sunil Madan and another* AIR 1999 SC 3381, whereby the Apex Court held thus:

> **"Having regard to the provisions of O.12, R.6; O.5, R.8, specially proviso thereto; as also S.58 of the Evidence Act, the Court has not to act blindly upon the admission**

of a fact made by the defendant in his Written Statement nor the Court should proceed to pass judgment blindly merely because a Written Statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a Written Statement has not been filed by the defendant, the Court should be a little cautious in proceeding under O.8, R.10, C.P.C. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the Written Statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the facual controversy. Such a case would be covered by the expression *"the Court may, in its discretion, require any such fact to be proved"* used in subrule(2) of Rule 5 of Order 8, or the expression *"may make such order in relation to the suit as it thinks fit"* used in Rule 10 of Order 8."

Counsel for the respondent fully supported order of the Court below and stated that the petition was without merit and the same be dismissed.

5. On considering the above, I find that although the argument of the Counsel for the petitioner is attractive on the first blush, it cannot be acceded to primarily because substantive justice must be done between the parties and in the present case for some reasons or other the defendant was delayed in filing the Written Statement, which is also available on record. However the

Court has already denied him the right to defend by closing his right to file written statement but the actual evidence against the defendant could have not been taken by the Court ex-parte.Besides placing reliance on *Balraj Taneja* (supra); I find that Apex Court has also held that it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy and the same is covered by the expression "the Court may, in its discretion, require any such fact to be proved as used in sub-rule (2) of Rule 5 of Order 8 of C.P.C." And in this light I find that the petition could not be allowed; besides such a stand would also be against the principles of natural justice; and principles of *audi alterm parterm;* undoubtedly, the right has accrued to the plaintiff but the defendants also should not be left remedy less. In view of the above, I find that the petition deserves to be dismissed on this ground alone.

6. Therefore, with the aforesaid observations, the petition is dismissed as being without merit.

Petition dismissed.

I.L.R. [2015] M.P., 2426
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice K.K. Trivedi
W.P. No. 19710/2014 (Jabalpur) decided on 15 July, 2015

SHYAMLAL SAMARWAR ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

***Minor Mineral Rules, M.P. 1996, Rule 7(2) - Quarry Lease of Flagstone - Renewal* - Petitioner applied for renewal of quarry lease of flagstone - Application was rejected on the ground that in view of amendment in Rule 7, the quarry lease can only be granted by way of auction - Held - Right of Petitioner is only one of consideration of his application, which must be done in conformity with Rules prevalent at the relevant time when the decision is taken by appropriate Authority - After the amendment of Rule 7, quarry lease of flagstone can be granted only by way of auction for a period of five years and not otherwise - Application for renewal rightly rejected. (Paras 5 to 13)**

गौण खनिज नियम, म.प्र. 1996, नियम 7(2) – प्रस्तर खंड का खदान पट्टा – नवीनीकरण – याची ने प्रस्तर खंड के खदान पट्टे के नवीनीकरण हेतु आवेदन किया – आवेदन को इस आधार पर अस्वीकार किया गया कि नियम 7 में संशोधन को दृष्टिगत रखते हुए खदान पट्टा केवल नीलामी द्वारा प्रदान किया जा सकता है – अभिनिर्धारित – याची का अधिकार केवल उसके आवेदन का विचार किये जाने के लिये है, जिसे समुचित प्राधिकारी द्वारा निर्णय लेने के सुसंगत समय पर प्रचलित नियमों के अनुरूप किया जाना चाहिए – नियम 7 में संशोधन के पश्चात् प्रस्तर खंड के खदान पट्टे को केवल नीलामी द्वारा पांच वर्षों की अवधि के लिए प्रदान किया जा सकता है और अन्यथा नहीं – नवीनीकरण हेतु आवेदन उचित रूप से अस्वीकृत।

Cases referred :

(2012) 3 SCC 1, W.P. No. 4682/2010 decided on 30.08.2011.

Praveen Dubey, for the petitioner.
Samdarshi Tiwari, Dy. A.G. for the respondent/State.

ORDER

The Order of the Court was delivered by :
A.M.KHANWILKAR,C. J. :- Heard counsel for the parties.

1. By this writ petition under Article 226 of the Constitution of India, the petitioner takes exception to the orders passed by the appropriate Authorities dated 02.08.2013, 31.05.2014 and 08.12.2014 (Annexure-P/1, P/2 and P/3 respectively).

2. Briefly stated, the petitioner was granted quarry lease of flagstone for area admeasuring 1.417 hectare khasra No.2 at village Kanpora. The lease period commenced from 05.04.2009 upto 5 years i.e. 14.04.2014. By an application dated 06.12.2012, the petitioner requested the respondent No.3 to consider his application for renewal of the said quarry lease. That application was, however, rejected by respondent No.3 vide order dated 02.08.2013, principally on the ground that after the amendment to Rule 7(2) of the M.P. Minor Mineral Rules, 1996 (in short "Rules of 1996"), the Government can grant quarry lease of flagstone only by way of auction. The petitioner preferred appeal against the said decision under Rule 57(2) of the Rules of 1996. That appeal was also rejected on 31.05.2014, whilst reiterating the reasons stated by the Collector for rejecting the application for renewal of lease. The petitioner then carried the matter before the respondent No.2/Director, who in turn

rejected the appeal vide order dated 08.12.2014 for the same reason. These orders are subject matter of challenge in the present petition.

3. According to the petitioner, the amended provisions of Rule 7 of the Rules of 1996 cannot be invoked in the fact situation of the present case as the application for renewal of quarry lease was filed by him on 06.12.2012; whereas the amendment was brought into force after issuance of public notification published in the Official Gazette on 23.03 .2013. Further, the amended provisions, in no way, preclude the Authorities from granting renewal of lease keeping in mind the power vested under Rule 17 and 18 of the Rules of 1996. It is then submitted that the question posed by the petitioner has been answered in favour of the petitioner by the Single Judge of this Court in W.P.No.4682/2010 decided on 30.08.2011. It is, therefore, prayed that the impugned orders be set aside and instead the respondents be directed to grant renewal of quarry lease for further period as is permissible in terms of Rules 17 and 18 of the Rules of 1996.

4. The respondents, on the other hand, contend that the application for renewal of quarry lease, though submitted on 06.12.2012 was required to be decided as per the prevalent Rules when the same was considered by the Authorities. Further, since Rule 7 has been amended on 23.03.2013, no fault can be found with the approach of the Collector of having decided the application on the basis of said provisions vide order dated 02.08.2013 and for the same reason rejection of the appeals preferred by the petitioner before the superior Authorities.

5. Before we consider the scope of amendment to Rule 7, it is necessary to bear in mind that the factum of application for renewal of quarry lease made by the petitioner on 06.12.2012 will be of no avail. For, it is the well settled legal position that the right of the petitioner is only one of consideration of his application, and which, indeed, must be done in conformity with the Rules prevalent at the relevant time when the decision is taken by the appropriate Authority on such application. Thus, the fact that the petitioner had made application for renewal of quarry lease on 06.12.2012 does not take the matter any further. We will have to examine the claim of the petitioner in the context of the provisions in vogue when the decision was taken by the Collector on 02.08.2013; and moreso because quarry lease granted in favour of the petitioner was in force and subsisting till 14.04.2014.

6. Reverting to Rule 7, which is the fulcrum of the decision of the Collector, it is a provision defining the power to grant trade quarry situated in Government land. The Rule 7, as was in force, when the application was moved by the petitioner, on 6.12.2012, reads thus:

> 7. **Power to grant trade quarry-** (1) The quarries of Minerals specified in serial number 5 of Schedule I and serial numbers 1, 3 and 4 of Schedule II; situated in government land, shall be allotted only by auction:
>
> Provided that quarry lease of mineral specified in serial number I of Schedule II may be granted in favour of the Madhya Pradesh State Mining Corporation Limited (Government of Madhya Pradesh Undertaking).
>
> (2) The quarry of minerals specified in serial number 5 of Schedule 1 shall be auctioned for five years and quarry of minerals specified in serial numbers 1, 3 and 4 of Schedule II shall be auctioned for two years:
>
> Provided that if contractor establishes cutting and polishing industry, for minerals specified in serial no.5 of Schedule I, within one year, then period of contract shall be exceeded to ten years at the place of five years and in such condition contract money shall be increased by 10% every year excluding first year.
>
> (3) The auction of quarries mentioned in sub-rule (1) shall be conducted in a transparent manner by the Collector/ Additional Collector (Senior IAS Scale).
>
> [Omitted]
>
> (4) The power to sanction and control the quarries mentioned in sub-rule (1) shall vest with the Collector/ Additional Collector Senior IAS Scale:
>
> Provided that where the bid is an auction is less than the upset price filed by the Government, the Collector/ Additional Collector, shall submit a proposal to the Government. The decision of the Government thereon shall

be final and binding on the bidder.

Since this Rule refers to Schedule I and Schedule II appended to the Rule of 1996, we deem it apposite to reproduce the same, which reads thus :-

"SCHEDULE-I

(See Rule 6)

SPECIFIED MINERALS

1. Dimensional stone-granite, dolerite, and other igneous and metamorphic rocks which are used for cutting & polishing purpose for making blocks, slabs, tiles of specific dimension.

2. Marble which is used for cutting and polishing purpose of making blocks, slabs, tiles of specific dimension.

3. Mable stone for other purposes.

4. Limestone when used in kilns for manufacture of lime used as building material.

5. Flagstone-Natural sedimentary rock which is used for flooring, roof top etc. and used in cutting and polishing industry.

6. Stone for making gitti by mechanical crushing (i.e. use of crusher).

7. Bentonite/Fuller's earth".

(emphasis supplied)

SCHEDULE-II

(See Rules 6 & 7)

OTHER MINERALS

1. Ordinary Sand, Bajri.

2. Ordinary clay for making bricks, pots, tiles etc.

3. Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips.

4. Murrum.

5. Lime Kankar when used in kilns for manufacture of lime used as building material.

6. Gravel.

7. Lime shell when used in kilns for manufacture of lime used as building material.

8. Reh Mitti.

9. Slate when used for building material.

10. Shale when used for building material.

11. Quartzite and quartzitic sand when used for purposes of building or for making road metal or house-hold utensils.

12. Salt petre.

7. The amendment to Rule 7 came into force after the publication of notification in the Official Gazette in that behalf on 23.03.2013. The Rule was amended on the following terms:-

8. In rule 7;-

(1) in sub-rule (1), for the words and figures "serial numbers 1, 3 and 4 of Schedule II" the words and figures "serial numbers 1 and 3 of Schedule II" shall be substituted.

(2) for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The quarry of minerals specified in serial 5 of schedule I and mineral specified in serial number 1 and 3 of Schedule II shall be auctioned for five years:

Provided that if contractor establishes cutting and polishing industry or crusher for making gitti by mechanical means, within a period of 01 year, for mineral specified in serial number 5 of Schedule I and serial number 3 of Schedule II respectively, then period of contract shall be extended upto 10 years instead of 5 years and in such condition annual contract money shall be increased by ten percent every year, excluding first year.

For extended period contractor shall submit approved mining plan/approved environment management plan or environment permission as the condition may be. The contractor shall maintain separate account of gitti and mineral while establishing crusher.

(3) for proviso to sub-rule (4) the following proviso shall be substituted, namely:-

"Provided that where the bid in continuously two auction is less than the upset price fixed by the Collector, then Collector/ Additional Collector after making inquiry of the area, shall revise the upset price. The revised upset price shall not be less than the maximum dead rent specified for that mineral in Schedule-IV:

"Provided further that if any declared trade quarry is not auctioned in any period then quarry permit from that quarry for government work may be granted under sub-rule (1) of rule 68".

8. Considering the fact that the lease granted in favour of the petitioner was a quarry lease of flagstone, the same after the amendment of Rule 7 in 2013 could be granted only by way of auction for a period of five years and not otherwise. This amendment is in line with the dictum of the Supreme Court in the case of *Centre for Public Interest Litigation and others Vs. Union of India and others* - Writ Petition (Civil) No.423/2010 and *Dr. Subramaniam Swamy Vs Union of India and others* - Writ Petition (Civil) No. 10/2011 decided on 2.2.2012 reported in (2012) 3 SCC 1.

9. On a bare reading of the amended provision, it is noticed that quarry ascribable to serial No.4 of Schedule II which was earlier part of Rule 7(1) and 7(2) has been dropped. That means that quarry lease for mineral Murrum, is made as an excepted category to be granted without auction. Whereas, the quarry of ordinary Sand, Bajri and for Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips has been retained in Rule 7 to be allotted only by way of auction. Similarly, the quarry referable to flagstone and Natural sedimentary rock which is used for flooring, roof top etc. and used in cutting and polishing industry (specified minerals) also could be allotted only by way of auction. Further, the amended proviso below sub-rule (4) of

Rule 7 would govern the auction process to be adopted in respect of minerals referred to in serial No.5 of Schedule I and serial no. 3 of Schedule II.

10. This being the position, no fault can be found with the view taken by the Authorities in rejecting the application for renewal of quarry lease preferred by the petitioner. The Collector in his order dated 02.08.2013 has specifically dealt with this aspect and has observed thus:

"//आदेश//

क्रमांक/589/खनिज/2012 श्री श्याम लाल समरवार आ0 श्री मूलचंद्र समरवार निवासी ग्राम कानपोहरा तहसील व जिला रायसेन के पक्ष में ग्राम कानपोहरा खसरा नंबर 2 रकबा अवाच्य 041 हेक्टेयर क्षेत्र पर फर्सी पत्थर खदान उत्खनि पट्टा अवधि दिनांक 2009 से 14–2014 तक स्वीकृत है।

उत्खनि पट्टाधारी द्वारा दिनांक 6.12.2012 को उत्खनि पट्टा नवकरण हेतु आवेदन पत्र प्रस्तुत किया गया है।

म0प्र0 शासन खनिज साधन विभाग मंत्रालय के निदेश दिनांक 23.03.2012 अनुसार गौण खनिज नियम 1998 के नियम 7 (2) के तहत पत्थर की खदानें (शासकीय) अवाच्य द्वारा ही आबंटित की जा सकती है। उक्त संबंध में आवेदक को पत्र जारी कर दिनांक 17.7.2009 द्वारा सूचित किया यगा था। जिसके संबंध में आवेदक द्वारा दिनांक 27.7.2013 को अपना पक्ष लिखित में प्रस्तुत किया गया है जो समाधानकारक नहीं है।

अतः ग्राम कानपोहरा खसरा नंबर 2 रकबा 1.417 हेक्टेयर पर प्रस्तुत उक्त खनिपट्टा पत्थर नवकरण आवेदन पत्र निरस्त किया जाता है। कलेक्टर महोदय द्वारा आदेशित।"

(emphasis supplied)

11. The Appellate Authority has reiterated this reason in its order dated 31.05.2014 in the following words :-

".....

मेरे द्वारा प्रस्तुत अभिलेखों का नियमों के प्रकाश में अवलोकन किया गया। इसके पश्चात् स्थिति स्पष्ट होती है कि मध्यप्रदेश गौण खनिज नियम, 1966 के नियम 7 में यह प्रावधान है कि शासकीय भूमि में स्थित फर्शीपत्थर खदान का आवंटन नीलामी के माध्यम से किया जाये। जिस खदान का आवंटन नीलाम के माध्यम से किया जाना हो, उसका उत्खनिपट्टा स्वीकृत नहीं किया जा सकता। उत्खनिपट्टा नवीनीकरण में स्वीकृति उपरांत नवीन अनुबंध का निष्पादन किया

जाता है। इस आधार पर उत्खनिपट्टा नवीनीकरण, नवीन उत्खनिपट्टा मान्य हो जाता है। नियम 17 उत्खनिपट्टा के नवकरण हेतु आवेदन प्रस्तुत करने के संबंध में है। मध्यप्रदेश गौण खनिज नियम, 1966 में रेत, पत्थर, फर्शीपत्थर खनिज को छोड़कर अनुसूची एक एवं दो में दर्शित शेष खनिजों के उत्खनिपट्टा दिये जाने का नियम में प्रावधान है। नियम 17 इन शेष खनिजों पर प्रभावी होता है। मध्यप्रदेश गौण खनिज नियम, 1966 का नियम 6 में उत्खनिपट्टा को प्रदान करने तथा नवीनीकरण करने हेतु शक्तियां प्रत्यायोजित की गई है, इसके संबंध में अधिवक्ता द्वारा दिनांक 23.03.2013 को किये गये संशोधन के अनुसार इसमें फर्शीपत्थर के संबंध में कोई प्रतिबंध न होने का लेख किया गया है। मध्यप्रदेश गौण खनिज नियम, 1966 में दिनांक 23.07.2011 को किये गये संशोधन में निजी भूमि पर स्थित फर्शीपत्थर खनिज के उत्खनिपट्टा स्वीकृति तथा नवीनीकरण हेतु शक्तियां प्रत्यायोजित की गई है। इस संशोधन में शासकीय भूमि पर फर्शीपत्थर उत्खनिपट्टा स्वीकृति अथवा नवीनीकरण की शक्तियां प्रत्यायोजित नहीं की गई हैं। इसका आशय भी यही है कि शासकीय भूमि पर फर्शीपत्थर का उत्खनिपट्टा स्वीकृत अथवा नवीनीकृत नहीं किया जा सकेगा। इस विवेचना के आधार पर कलेक्टर रायसेन द्वारा पारित आदेश दिनांक 02.08.2013 नियमानुसार होने के कारण प्रस्तुत अपील एतद्द्वारा अमान्य की जाती है।"

(emphasis supplied)

12. While considering the appeal preferred by the petitioner, the Under Secretary, Mineral Resources Department, Government of M.P. vide order dated 08.12.2014, observed thus:

"....

म.प्र. गौण खनिज नियम, 1966 में दिनांक 23.03.2013 में हुए संशोधन से यह स्पष्ट है कि शासकीय भूमि पर फर्शी पत्थर का उत्खनन पट्टा स्वीकृत अथवा नवीनीकृत नहीं किया जा सकेगा। संचालक, भौमिकी तथा खनिकर्म मध्यप्रदेश, भोपाल द्वारा अपने पारित आदेश दिनांक 31.05.2014 में समस्त तथ्यों एवं प्रावधानों को स्पष्ट करते हुए आदेश पारित किया है। कलेक्टर रायसेन द्वारा पारित आदेश दिनांक 02.08.2013 नियमानुसार होने के कारण उनकी अपील अपने आदेश दिनांक 31.05.2014 से अमान्य की है।

अतः विचारोपरांत यह पाया गया कि संचालक, भौमिकी तथा खनिकर्म मध्यप्रदेश, भोपाल द्वारा पारित आदेश दिनांक 31.05.2014 में किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है। अतः उनके द्वारा पारित आदेश दिनांक 31.05.2014 यथावत रखा जाता है एवं अपीलार्थी श्री श्यामलाल समरवार द्वारा प्रस्तुत उक्त अपील राज्य शासन द्वारा पूर्ण विचारोपरान्त अमान्य की जाती है।"

(emphasis supplied)

13. The moot question is : whether the reason stated by the Authorities is in conformity with the amended provisions of the Rules of 1996. We have no hesitation in upholding the consistent conclusion reached by the three Authorities that the application for renewal could be considered only in the light of amended provisions which have come into force from 23.03.2013. Going by the said provisions, the quarry lease of flagstone in Government land, as was granted to the petitioner, could be allotted only by way of auction after the said amendment.

14. Counsel for the petitioner, however, relies on the provisions of Rules 17 and 18 of the Rules of 1996. The said Rules read thus:

> **17. Renewal of quarry lease-** Every application for the renewal of a quarry lease shall be made at least one year before the date of which the lease is due to expire.
>
> Provided that if an application for renewal of quarry lease made within prescribed period, the period of that lease, shall be deemed to have been extended up to six months, for renewal.
>
> **18. Disposal of applications for the grant or renewal of quarry lease;-** (1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Sabha concerned of the district and collectorate of the district concerned.
>
> (1-A) In addition to sub-rule (1), the details of quarry lease application received for any area shall be published in leading daily Hindi newspaper in the form of notice for general information within fifteen days from the receipt of application.
>
> (2) The Sanctioning Authority after making such enquiries as he deems fit, may sanction the grant or renewal of a quarry lease or refuse to sanction it before the expiry of quarry lease already sanctioned:
>
> Provided that no quarry lease for new area shall be sanctioned without obtaining opinion of the respective Gram Sabha:

Provided further that if the application is not disposed of by sanctioning authority within six months, then application shall be disposed of by senior authority, as mentioned in Rule 6.

(3) Notwithstanding anything contained in sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh application in this behalf may be made according to the procedure laid down under these rules.

(4) Where an applicant for grant or renewal of a quarry lease, dies before the sanction order is passed it will be deemed to have been filed by his heir and if the applicant dies after the sanction order of grant or renewal but before execution of lease deed it will be deemed to have been granted or renewed to be legal heir of the applicant.

(5) Mineral concession to Minerals specified at Sr. No.1, 2 and 3 of Schedule I may be granted as per the provisions of Granite Conservation and Development Rules, 1999 and Marble Conservation and Development Rules, 2002.

15. According to the petitioner, since power is invested in the Authority to consider the application for renewal of quarry lease, it is coupled with the duty to consider the same and decide the application favourably in absence of any objection received for renewal of the quarry lease. It is not possible to countenance this submission, considering the mandate of amended Rule 7, which necessitates allotment of trade quarry of the stated minerals ascribable to serial No.5 of Schedule I and serial Nos. 1 and 3 of Schedule II by auction. The power to consider the request for renewal of quarry lease as envisaged under Rules 17 and 18 of the Rules of 1996 by the concerned Authority is ascribable to the other minerals (other than at serial No.5 of Schedule I and serial Nos.1 and 3 of Schedule II). Notably, it is not the argument of the petitioner that the petitioner's case falls in the excepted category or for that matter the proviso under sub-rule (2) of Rule 7 as amended. Hence, we need not dilate on the scope of the said proviso.

16. To get over this position, learned counsel for the petitioner placed

reliance on the decision of the learned Single Judge of this Court in W.P.No.4682/2010 in *Devendra Singh Dangi Vs. State of M.P.* and connected cases, decided on 30.08.2011. In the first place, this decision does not and could not have dealt with the amended provisions of Rule 7 which have come into force much later on 23.03.2013. Moreover, the learned Single Judge in the said case found as of fact, that the Authority had misdirected itself in considering the application for renewal of lease as one for grant of quarry lease and for which reason the conclusion reached by the Authorities in that case was found fault with. The learned Single Judge, therefore, relegated the petitioner before the concerned Authority for reconsideration of his application for renewal of quarry lease. Moreover, the learned Single Judge has not noticed any distinction between the mandate of Rule 7 to grant trade quarry only by way of auction in respect of minerals specified in serial No.5 of Schedule I and serial No.1 and 3 of Schedule II. Suffice it to observe that this Authority cannot be cited as precedent or for that matter can have any persuasive value for answering the matter in issue in the present case.

17. Taking over all view of the matter, therefore, no interference is warranted in the fact situation of the present case. Accordingly, we have no hesitation in **dismissing this petition** being devoid of merits.

Ordered accordingly.

Petition dismissed.

I.L.R. [2015] M.P., 2437
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice K.K. Trivedi
W.P. No. 88/2015 (Jabalpur) decided on 11 August, 2015

BHARAT BHUSHAN ...Petitioner
Vs.
HIGH COURT OF M.P. & anr. ...Respondents

(Alongwith W.P. No. 1372/2015, W.P. No. 1373/2015, W.P. No. 1374/2015, W.P. No. 1376/2015, W.P. No. 1377/2015, W.P. No. 1381/2015 & W.P. No. 2531/2015)

A. Higher Judicial Service (Recruitment and Conditions

of Service) Rules, M.P. 1994 - Rule 5 & 7 - Cutoff marks for viva voce - **Scheme of selection as made in Rules nowhere contemplates prescription of minimum cutoff marks for viva voce, such a prescription in advertisement was not permissible. (Para 15)**

क. उच्चतर न्यायिक सेवा (भर्ती और सेवा शर्तें) नियम, म.प्र. 1994 – नियम 5 व 7 – मौखिक परीक्षा के अर्हक अंक – चयन प्रणाली जैसा कि नियमों में बनाई गई है, कहीं भी मौखिक परीक्षा के लिए न्यूनतम अर्हक अंक निर्धारित करना अनुध्यात नहीं करती, विज्ञापन में उक्त को निर्धारित करना अनुज्ञेय नहीं।

B. Service Law - Vacant Posts - Carried forward - **Vacant posts were carried forward and were included in the vacancies of next year and exams were conducted - As the posts were not kept vacant and since unfilled vacancies were notified in subsequent advertisement for selection and selection process proceeded on that basis, the Petitioners cannot be granted any relief as the unfilled vacancies got subsumed by operation of law. (Para 19)**

ख. सेवा विधि – रिक्त पद – अग्रनीत करना – रिक्त पदों को अग्रनीत किया गया और अगले वर्ष की रिक्तियों में शामिल किया गया और परीक्षाऐं आयोजित की गई – जैसा कि पदों को रिक्त नहीं रखा गया और चूंकि चयन हेतु पश्चात्वर्ती विज्ञापन में न भरी गई रिक्तियों को अधिसूचित किया गया था और उसके आधार पर चयन प्रक्रिया की आगे कार्यवाही की गई थी, याचीगण को कोई अनुतोष प्रदान नहीं किया जा सकता क्योंकि विधि के प्रवर्तन द्वारा न भरी गई रिक्तियां सम्मिलित हो गई थी।

C. Service Law - Advertisement - Locus Standi - **Petitioners participated in the selection process without any demur - They cannot challenge the condition incorporated in advertisement after having taken part in selection process. (Para 25)**

ग. सेवा विधि – विज्ञापन – सुने जाने का अधिकार – याचीगण ने चयन प्रक्रिया में बिना किसी आपत्ति के भाग लिया – वे चयन प्रक्रिया में भाग लेने के पश्चात् विज्ञापन में सम्मिलित शर्त को चुनौती नहीं दे सकते।

Cases referred :

(2002) 4 SCC 247, (2008) 3 SCC 512, (2006) 6 SCC 395, (2010) 3 SCC 104, (2013) 11 SCC 87, AIR 1976 SC 49, (2009) 3 SCC 227.

Petitioner in person in W.P. No. 88/2015.

Manoj Sharma, for the petitioners in W.P. No. 1373/2015, W.P. No. 1376/2015 & W.P. No. 1381/2015.

Akshat Agrawal, for the petitioner in W.P. No. 2531/2015.

Uday Raj Mishra, for the petitioner in W.P. No. 1374/2015.

None for the petitioners in W.P. No. 1372/2005 & W.P. No. 1377/2015.

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

Ashish Shroti, for the respondent-High Court.

JUDGMENT

The Judgment of the Court was delivered by : **K.K. TRIVEDI, J. :-** This judgment will govern the disposal of all the writ petitions as common questions are involved in all the aforesaid writ petitions. For the sake of convenience, facts are taken from W.P. No.1373/2015.

2. In brief, the claim made by the petitioners in all the aforesaid writ petitions is for issuance of a writ in appropriate nature for setting aside the final results of the Madhya Pradesh Higher Judicial Service Examinations, held in the year 2007, 2008 and 2010. A further direction is claimed against respondent No.1 for preparation of the fresh merit list by aggregating the marks of written examination and interview. A writ is further claimed for quashing the condition of securing minimum 20 marks out of 50 marks in interview for being qualified, to be included in the select list, as enumerated in the scheme of selection by the respondent No.1, with a further direction to include the names of the petitioners in the final select list for appointment on the post in Madhya Pradesh Higher Judicial Service with all the consequential benefits.

3. To appreciate the claim made in the aforesaid writ petitions, it would be proper to describe certain facts. By making the Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (herein after referred to as 'Rules of 1994), a scheme of recruitment on the post of District & Sessions Judge in the State of Madhya Pradesh was made. The method of appointment was prescribed under Rule 5 of the Rules of 1994, which prescribes that 50% posts were to be filled in by promotion of the Civil Judges (Senior Division) on the basis of merit-cum- seniority and passing of suitability test. 25% posts were to be filled in by promotion strictly

on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than 5 years qualifying service and remaining 25% posts to be filled in by direct recruitment from amongst the eligible advocates on the basis of written test and viva voce conducted by the High Court.

4. The qualification for direct recruitment is prescribed under Rule 7 of the Rules of 1994, which contemplates the upper age limit, experience in the field and further specifically prescribes that the procedure of selection for direct recruitment and promotion shall be such **as may be specified by the High Court from time to time.**

5. Certain amendments were made in the year 2005 in the aforesaid Rules, on account of accepting Justice Shetty Commission Report by the Apex Court and making it a law. However, the mode of selection, the procedure to be prescribed for the said selection, prescription of marks etc. for such selection were not changed. It is the case of the petitioners that since Justice Shetty Commission has recommended that cutoff marks in the *viva voce* or interview is impermissible and the same is accepted by the Supreme Court, it was not open to prescribe that condition thereafter. It is asserted by the petitioners that each of them qualified the written examination and were called for interview but since they could not secure the minimum marks fixed for *viva voce* or interview, though they have secured more marks in the written test than some of the selected candidates, yet they were not selected. That action of the respondent High Court is untenable. The emphasis is on the prescription of cut off marks for the viva voce or interview and as such it is claimed that the result of selection declared by the High Court, runs contrary to the law laid-down by the Apex Court and is, thus, liable to be struck down.

6. The respondents have filed their return and the High Court while relying on the provisions of the Rules of 1994, has contended that the cutoff marks for *viva voce* or interview were rightly prescribed. It is the submission of the respondents that the suitability of any candidate has to be tested by conducting *viva voce* and for that purpose, cutoff marks can be assigned. It is the further submission of the respondents that the decision by the Apex Court in the case of *All India Judges' Association and others vs. Union of India and others*[1], nowhere restricts the prescription of cutoff marks for *viva voce*, if minimum

1. (2002) 4 SCC 247

marks for the interview are prescribed in the scheme of selection made by the High Court and is in public domain before the selection process is commenced, it cannot be said to be contrary to the law laid-down by the Apex Court. On the other hand, the Apex Court in the case of *All India Judges' Association* (supra), in paragraph 27 has observed that there has to be certain minimum standards, objectively adjudged, for officers who are to enter Higher Judicial Service as District Judges. It is further observed by the Apex Court that the High Courts of respective States should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their efficiency with adequate knowledge of case-law for being appointed directly as District Judges. It is the stand of the respondents that the Apex Court has not accepted Justice Shetty Commission recommendations in toto. The non-fixation of minimum marks for interview, as suggested by Justice Shetty Commission recommendations, were not accepted by the Apex Court as is evinced from the subsequent law laid-down by the Apex Court in the case of *K. Manjusree vs. State of Andhra Pradesh and another*[2], and *K.H. Siraj vs. High Court of Kerala and others*[3], the selections made by the High Courts in such cases were not held as bad in law on that count.

7. It is the further contended by the respondents that petitioners have come belatedly before the Court. The selection of the year 2007 was never called in question within time. Same was the situation for the selection of the year 2008. When the selection was again held in the year 2010, writ petitions were directly filed before the Apex Court under Article 32 of the Constitution of India. Since the Supreme Court has relegated the parties to the High Court, these writ petitions have been filed before this Court. However, after such a long lapse, the selection, as was done in the year 2007, 2008 and 2010, cannot be reopened. Moreover, the petitioners having participated in the selection process with full knowledge of the impugned provision, cannot be allowed to complain after the said process is concluded. Further, the selected candidates and all others, who had taken part in the selection process and qualified written test and were interviewed, have not been impleaded as parties in the present proceedings. Therefore, no effective relief can be granted to the petitioners. If it is held that there cannot be any minimum benchmark for *viva voce* or interview, the selections already made on the basis of such

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2. (2008) 3 SCC 512 3. 2006) 6 SCC 395

provision will become topsy-turvy and those, who are selected and appointed or those who were candidates in such selection, must be heard before passing any order in such proceedings. They are necessary parties in the context of the wider relief claimed in these petitions. It is the further submission of the respondent High Court that the posts and the remaining vacancies have subsumed in the next selection process - as unfilled vacancies of 2007 were merged in the vacancies of 2008 and likewise unfilled vacancies were again merged in the selections held in the year 2010 and 2011. Since the notification of the vacancies has also been issued in the year 2014 and selection process is going on, the petitioners who are not the candidates in the present selection process, cannot be granted any relief. The Apex Court has granted limited interim relief to the extent that any appointment made would be subject to the final outcome of the writ petitions. Since the appointments already made have not been called in question, the petitioners are not entitled for any relief against such appointment and the writ petitions are liable to be dismissed.

8. On the aforesaid grounds, we have heard learned Counsel for the parties at length and perused the record. To appreciate the controversy involved in the present writ petitions, we are required to test the rules governing the services as also the law laid-down by the Apex Court in that behalf.

9. The Rules governing the recruitment in the Higher Judicial Service were initially made by the State Government as Madhya Pradesh Uchchtar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994. These Rules prescribe constitution of service in four categories, namely :

(a) (i) District Judge in Senior Time Scale;

(ii) District Judge in Junior Administrative Grade nonfunctional;

(b) District Judges in Selection Grade;

(c) District Judges in Super Time Scale; and

(d) District Judges in Above Super Time Scale.

The method of recruitment on the said post was by direct recruitment from Bar and by promotion by selection on the basis of merit-cum-seniority from amongst the officers belonging to Madhya Pradesh Lower Judicial Service. The quota for direct recruitment was not specifically prescribed but it was

provided that the posts to be filled in by direct recruitment shall be determined by the High Court from time to time but shall not exceed 10% of the total strength. The direct recruitment was to be made as far as possible annually. A specific restriction was put that the posts for direct recruitment where suitable persons are not available for appointment, **shall not be carried forward.** This prescription specifically made in the Rules provided that there was no rule to carry forward the unfilled posts, in a given selection process, meaning thereby that the direct recruitment posts were to be earmarked selection on year to year basis.

10. Indeed, recommendations of Justice Shetty Commission were accepted by the Apex Court and the State Governments were called upon to amend the rules relating to the recruitment in the Higher Judicial Service to bring it in conformity with the recommendations. For that purpose, amendment was carried out in the Rules of 1994; making prescription for District Judges in Rule 3 of Rules of 1994, namely; (a) District Judges (Entry level); (b) District Judges (Selection Grade); and (c) District Judges (Super time scale). While making change in the method of appointment in Rule 5 of the Rules of 1994, the earlier rule was completely substituted by the new rule in the following manner:

> "**5. Method of Appointment.**- (1) Appointment to the posts in category (a) of sub-rule (1) of rule 3 shall be made as follows :-
>
> (a) 50 percent by promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing suitability test;
>
> (b) 25 percent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than 5 years qualifying service :
>
> Provided that notwithstanding that a person has passed such competitive examination, his suitability for promotion shall be considered by the High Court of the basis of his part performance and reputation:

Provided further that recruitment to the posts shall be made on the basis of the vacancies available till the attainment of the required percentage;

(c) 25 percent of the posts shall be filled by the direct recruitment from amongst the eligible advocates on the basis of the written test and viva voice conducted by the High Court.

(2) Appointment to the categories (b) and (c) of sub-rule (1) of rule 3 shall be made by the High Court by selection of members of the service from categories (a) and (b) respectively on merit-cum- seniority basis:

Provided that no member of the service shall be appointed in the category (b) and (c) of sub-rule (1) of rule 3 unless he has completed five years and three years continuous Service in the category (a) and (b) respectively."

The bar for keeping the posts earmarked as was earlier prescribed in the Rules, has been done away in the amended provisions. Meaning thereby, if the vacancies advertised in a particular year remained unfilled, the same can be carried forward to the next year of recruitment. In view of the aforesaid change in the Rules, now we are required to test the provisions of law, which have been pressed by the petitioners and the respondents.

11. A decision, after Justice Shetty Commission recommendations have been adopted, in the case of *All India Judges' Association* (supra), was rendered by the Apex Court in the year 2010 in the case of *Ramesh Kumar vs. High Court of Delhi and another*[4], which is strongly relied by the petitioners. According to the petitioners, the Apex Court has categorically held that there cannot be prescription of cut off marks for viva voce, and moreso where it is not so provided in the Rules. Learned Counsel for the petitioners has heavily placed reliance in particular on paragraphs 18 and 19 of the report, which read thus :

"18. These cases are squarely covered by the judgment of this Court in Hemani Malhotra v. High Court of Delhi,

4. (2010) 3 SCC 104

wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in All India Judges' Assn. (3) case had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact situation, the question of acquiescence would not arise.

19. In view of the above, as it remains admitted position that petitioner Ramesh Kumar had secured 46.25% marks in aggregate and as he was required only to have 45% marks for appointment, Writ Petition (C) No.57 of 2008 stands allowed. The connected writ petition filed by Desh Raj Chalia as he failed to secure the required marks in aggregate, stands dismissed. The respondents are requested to offer appointment to petitioner Ramesh Kumar, at the earliest, preferably within a period of two months from the date of submitting the certified copy of this order before the Delhi High Court. It is, however, clarified that he shall not be entitled to get any seniority or any other perquisite on the basis of his notional entitlement. Service benefits shall be given to him from the date of his appointment. No costs."

(emphasis supplied)

We are conscious that once the law is laid-down in that respect, the same has to be adhered to.

12. As against the aforesaid, learned Counsel for the respondent High Court has relied on paragraph 15 of the decision rendered in the case of *Ramesh Kumar* (supra) and has contended that it is also held by the Apex Court that if no procedure is prescribed by the Rules and there is no other impediment in law, the competent authority while laying down the norms for selection, may prescribe for the test and further specify the minimum benchmarks for written test as well as for viva voce. It is the contention of learned Counsel for the respondents in the case of *Mahinder Kumar and others vs. High Court of Madhya Pradesh, through Registrar General & others*[5], and in the case of *K. Manjusree and K.H. Siraj* (supra), since the selection made by the High Courts was not found fault with by the Apex Court, the decision rendered by the Apex Court would mean that for viva voce minimum benchmark can be prescribed.

13. While amending the Rules of 1994, proviso in Rule 7, where qualification for direct recruitment was prescribed, was added by amendment made on 08.06.2005. For the purposes of appreciation, Rule 7 of Rules of 1994 is quoted herein below :

> *"7. **Qualification for direct recruitment.**- No person shall be eligible for appointment by direct recruitment unless :-*
>
> *(a) he is a citizen of India;*
>
> *(b) he has attained the age of 35 years and has not attained the age of 48 years on the first of January of the year in which applications for appointments are invited;*
>
> *(c) he has been for not less than seven years an Advocate or a Pleader;*
>
> *(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.*

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5. (2013) 11 SCC 87

The procedure of selection for direct recruitment and promotion shall be such, as may be specified by the High Court from time to time."

This particular aspect was considered by the Apex Court in the Case of *Ramesh Kumar* (supra). In paragraph 15 of the decision, the Apex Court has categorically held that Justice Shetty Commission's recommendations suggest prescription of marks for selection of candidates. However, recommendations, as have been pointed out herein above, were not accepted in toto. It was left open to the selecting authority to prescribe its own procedure, if the same was permissible under the relevant rules.

14. Having referred to the rival pleas, we must now see - what was the claim made by the petitioner - before the Apex Court in the case of *Mahinder Kumar and others* (supra) and what was the issue for consideration before the Apex Court. Undoubtedly, though eligibility conditions for selection were already prescribed in the Rules after the amendment but the procedure was not prescribed and in the light of the proviso added to the amended Rule 7 of the Rules, procedure for selection for direct recruitment was prescribed by the High Court. Since the evaluation of the answer-sheets was in fact part of the procedure to be prescribed, such a prescription of evaluation of answer-sheets was made the subject matter before the Apex Court in the case of *Mahinder Kumar and others* (supra). The Court was not required to consider the "eligibility conditions" nor the same have been considered in the said case. There is marked distinction between the "eligibility conditions" and "procedure for selection". The eligibility conditions are essentially to be provided in the rules itself and non-fulfillment of those eligibility conditions become a disqualification to take part in the selection by any candidate. This aspect cannot be left open to the authorities to be prescribed on every occasion whenever the selection is to be done. Therefore, the law laid-down by the Apex Court in the case of *Mahinder Kumar and others* (supra), as has been relied by the learned Counsel for the respondents would be of no avail in the present case.

15. In view of the aforesaid, we have no doubt in our mind that since the scheme of selection, as made in the rules nowhere contemplates prescription of the minimum cutoff marks for viva voce/interview, in the light of the law laiddown by the Apex Court in *Ramesh Kumar* (supra), such a prescription

in the advertisement was not permissible.

16. Reverting to the decision of the Supreme Court in *Ramesh Kumar* (supra), which, in our opinion, is directly on the point. The High Court of Delhi in the advertisement issued for the selection process, as in the present case, had prescribed minimum of 50% marks for General category and 45% marks for Reserved category in the *viva voce* test. That prescription has been found to be norms for selection and not a procedural matter. On that finding, the Supreme court opined that the selection process must be carried forward on the basis of the norms for selection prescribed in the statutory rules in force. In absence of statutory rule on that subject/issue, the appointment process must be in conformity with the decisions of the Supreme Court (including in *All India Judges' Association (3) Vs. Union of India*). In para 18, the Court concluded that in absence of any statutory requirement of securing minimum marks in interview, the Delhi High Court ought to have followed the same principles as envisaged in *All India Judges' Association (3)* case and the argument of acquiescence can be of no avail. Notably, in that case the Court granted relief to the writ petitioners before it because, the selection to the post involved had not been completed in any subsequent years to the selection process under challenge. This is amply clear from the dictum in paragraph 18 of the said decision which is extracted in its entirety in paragraph 11 above.

17. Accordingly, even if the present set of writ petitioners before this Court would succeed on the argument that minimum cut off marks for viva voce/ interview cannot be prescribed by way of advertisement inviting applications, the question is whether any relief can be granted to the petitioners. As has been pointed out earlier, the Rules before amendment expressly provided that unfilled vacancies during the concerned selection process shall not be carried forward. Indeed, after the amendment, unfilled vacancies in the given selection process can be carried forward. However, as per the Rules, those vacancies get subsumed in the following selection process. In other words, the unfilled vacancies of the selection process of the year 2007 got merged and subsumed in the vacancies notified in the year 2008. As a result, 20 vacancies were notified in the year 2008. In the selection process for the year 2008 only 9 candidates were selected and the unfilled vacancies were merged and subsumed in the vacancies notified in the year 2010. As a result, in 2010, 20 vacancies

were advertised as against which only 3 candidates were selected. Indeed, the writ petitioners participated in the said selection process but the unfilled vacancies as per the Rules got subsumed in the vacancies notified for selection process of the subsequent year(s). The High Court has already notified all the vacancies in the advertisement issued in 2014. Considering the fact that the advertisement issued on 28.11.2014 for examination of Entry Level 2015, 83 vacancies/posts have been notified which include the unfilled vacancies in the examination conducted in 2010, no relief can be granted to these writ petitioners unlike in the case of *Ramesh Kumar* (supra), wherein the selection process to the post against which relief was claimed by the writ petitioner had not been completed in any subsequent year to the selection process under challenge. Notably, there is no challenge to the rule providing for merging or subsuming of vacant posts in relation to examination conducted in 2010 in the subsequent advertisement(s) issued for that purpose, for which reason also the petitioners cannot succeed in getting any relief.

18. To get over this position, two fold argument was canvassed before us, on behalf of the petitioners. Firstly, relying on the decision of the Supreme Court in the case of *Rameshwar and others Vs. Jot Ram*[6], it was argued that the relief claimed by the petitioner must be determined as on the date of institution of proceedings and since they had approached the Apex Court within time, only on the ground of delay or laches or because of subsequent event they cannot be denied the relief. This argument at best, in our opinion, will be available to writ petitioners in Writ Petition Nos.88/2015, 1373/2015, 1376/2015, 1381/2015 and 2531/2015 who had filed writ petition before the Supreme Court challenging the results declared by the High Court in relation to selection process held in 2010. They had filed writ petitions immediately thereafter. That contention may also be available to the writ petitioner in Writ Petition No.No.1372/2015 who had immediately filed writ petition before the Supreme Court challenging the selection process of 2008, culminated with the declaration of results. As regards, other writ petitioners having filed writ petition, after the subsequent selection process had commenced cannot get any relief whatsoever. With regard to the writ petitions filed immediately after the culmination of selection process with declaration of results of the concerned year, the interim relief granted by the Court was of limited nature - to the extent of appointments made pursuant to the concerned selection

6. AIR 1976 SC 49

process subject to the final outcome of the writ petitions. Notably, none of the petitioners have challenged the appointments already made pursuant to the said selection process as such. Their claim is that their names should also have found place in the select list, having secured requisite aggregate marks. However, since there is no interim direction to set apart commensurate post(s) of the concerned selection process (examination), their claim cannot be considered against the vacancies notified in the advertisement dated 28.11.2014. None of the petitioners have participated in the said selection process. Indeed, the said advertisement bears a note that the selection of candidates against the 83 posts will be subject to the decision in Writ Petition No.101/2010 and Writ Petition No.236/2011 filed before the Supreme Court by Baldev Singh and Gopal Krishna Sharma. As regards Baldev Singh, he filed writ petition in 2010 questioning the validity of examination results declared in 2008 which as found earlier suffers from delay and laches and more so because the selection process for 2010 had commenced.

19. It is not possible to overlook the vested rights of candidates who have been declared to have been selected and also appointed against the concerned vacancies for the year 2007, 2008 and 2010 respectively. The claim of the writ petitioners could be taken forward if the vacancies of the concerned year in which he (they) had appeared for examination was kept vacant and not notified in the subsequent advertisement for selection of candidates. It is, however, clear from the record that the unfilled vacancies were notified in the subsequent advertisement for selection and the selection process proceeded on that basis. None of the petitioners participated in the subsequent selection process. As the unfilled vacancies got subsumed by operation of law and also because it was notified in the subsequent selection process advertisement, no relief can be granted to these petitioners. For, no relief or challenge in that regard is found in the writ petitions though amended. Therefore, it is not possible to accommodate the writ petitioners by setting aside the selection of candidates who have already been appointed in the vacancies of the concerned year and more so when no relief in that behalf has been claimed by the petitioners. In other words, the unfilled vacancies for the examinations held in 2007, 2008 and 2010 are no more existing, having been notified in the subsequent selection process advertised for that purpose. Similarly, no direction can be issued to unseat the already appointed candidates merely because he (they) may have secured lesser aggregate marks than the aggregate marks of the writ petitioners in the concerned selection process. The candidates appointed against the vacancies of 2007, 2008 and for that matter 2010 have

completed substantial service and unseating them would result in causing serious miscarriage of justice to them, as they could have otherwise been appointed against the unfilled vacancies.

20. Yet another reason as to why entire exercise cannot be reopened is that some of the candidates, who have taken part in the impugned selection process and secured better aggregate marks than that of the petitioners, have not chosen to challenge such action nor are before the Court; and in case the entire select list is required to be reviewed and fresh select list is required to be made, those candidates will also have to be offered the post in terms of their placement in the select list. It is not known whether such persons would be eager to join the services or not. In view of this, it would be endless exercise which is not required to be undertaken, in the larger interest of the institution.

21. Having said so, now we have to examine the aspect whether the petitioners have any locus to challenge the entire selection in the garb of challenge to prescription of cutoff marks in interview/viva voce as mentioned in paragraph 8 of the advertisement, after taking part in the selection process unsuccessfully.

22. For the sake of convenience, entire paragraph 8 of the advertisement placed on record in W.P. No.1377/2015 as Annexure P-2, said to be issued in the year 2007, is reproduced below :

> *"8. (i) For the purpose of shortlisting of candidates a preliminary examination comprising, an objective test shall be conducted and the candidates who qualify in the said preliminary examination at the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court, will be permitted to appear in the main examination. The questions in the Preliminary Examination will be on Law (same subjects as specified in Para 8(iii)), English and General Knowledge.*
>
> *(ii) Candidates, who qualify in the preliminary examination, will be required to appear in main written examination at their own expenses at the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court.*

(iii) The Written Examination shall consist of two papers, each of 3 hours duration arid of maximum 100 marks. The object of the written test is to assess the Knowledge of a candidates in Law and latest pronouncements. 1 st paper shall relate to Constitution of India, Civil Procedure Code, Cr.P.C., I.P.C., Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act, Transfer of Property Act, Contract Act, Specific Relief Act, M.P. Accommodation Control Act, Limitation Act, Evidence Act and M.P. Land Revenue Code, N.D.P.S. Act, Schedule Caste Schedule Tribes (Prevention of Atrocities) Act, Prevention of Corruption Act, Negotiable Instrument Act and Electricity Act.*

Second Paper will be in two parts, The First part will contain factual data of a Civil Case and a Criminal Case on the Basis of which the candidate shall prepare judgment in the Civil Case and Criminal Case. The Second Part will contain a passage in Hindi to be translated into English and a passage in English to be translated into Hindi.

(iv) Only such candidates, who secure minimum marks in each of papers in the written examination as, decided by the High Court will be called for interview.

(v) The interview shall carry 50 marks and minimum 20 marks have to be secured by the candidates.

(vi) Candidates shall be selected on the basis of marks obtained by them in each paper of the main written examination and interview separately, subject to obtaining minimum marks as fixed by the High Court in the written examination as well as in the interview.

(vii) On completion of the selection process, the result of examination (list of selected candidates) shall be published in M.P. Rajpatra. The result of all the candidates both successful and unsuccessful shall be declared on the

website of the M.P. High Court."

23. Similar was the condition mentioned in paragraph 8 of the advertisement issued in the year 2008, as is clear from the document placed on record of W.P. No.1372/2015 as Annexure P-2. Same was the condition prescribed in the advertisement issued in the year 2010, as is placed on record in W.P. No.88/2015 as Annexure P-4.

24. Learned counsel for the petitioners have heavily placed their reliance on the case of *Rameshwar and others Vs. Jot Ram and others*[7] and would contend that the right to relief claimed by the petitioners is to be determined as on the date of institution of proceedings and since they had approached the Apex Court within time, only on the ground of delay and laches or that subsequent events have taken place, they cannot be denied the relief. For the abovesaid reason we have examined the contentions of the petitioners. To challenge the selection of the year 2007, for the first time the writ petition ws filed in the Supreme Court being W.P.(C) No.416/2010. There is no reference whether petitioners had approached any Court of law before filing of the said writ petition or not. The selection of the year 2008 was sought to be challenged in the year 2009 and 2010 by the petitioners by filing W.P. (C) No.471/2009 and W.P.(C) No.101/2010. The selection of the year 2010 was called in question by filing W.P.No.221/2011, W.P. No.214/2011, W.P.No.225/2011 W.P.(C) No.230/2011, W.P.(C) No.236/2011 and W.P.No.179/2011. The reliefs claimed were that prescription of such a condition in the advertisement regarding obtaining minimum marks in the interview be declared illegal. To that extent no interim relief was granted by the Apex Court but only this much was said that the appointment, if any, made would be subject to final outcome of the writ petitions.

25. Now, it has to be examined whether the petitioners can be allowed to challenge such a condition after having taken part in the selection process. The Apex Court in the case of *Amlan Jyoti Borooah vs. State of Assam and others*[8], has categorically held that the candidates, if have taken part in the selection without any *demur* have no right to challenge such conditions as they are estopped and precluded from doing so. The relevant part in paragraphs 29 to 32 of the report reads thus :

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7. AIR 1976 SC 49 8. (2009) 3 SCC 227

"29. The question which, however, arises for consideration is as to whether despite the same, we, in exercise of our jurisdiction under Article 136 of the Constitution of India, should interfere with the impugned judgment.

30. The appellant concededly did not question the appointment of 169 candidates. It is idle to contend that he was not aware thereof. If he was to challenge the validity and/or legality of the entire select list in its entirety, he should have also questioned the recruitment of 169 candidates which took place as far back as on 4-7-2000.

31. Appellant was aware of his position in the select list. He was also aware of the change in the procedure adopted by the Selection Committee. He appeared at the interview without any demur whatsoever although was not called to appear for the physical ability test prior thereto. Appellant chose to question the appointment of 77 candidates not only on the premise that the procedure adopted by the Selection Committee was illegal but also on the premise that no new vacancy could have been filled up from the select list.

32. The appellant, in our opinion, having accepted the change in the selection procedure sub silentio, by not questioning the appointment of 169 candidates, in our considered opinion, cannot now be permitted to turn round and contend that the procedure adopted was illegal. He is estopped and precluded from doing so."

26. Keeping in mind the observations in the aforesaid decision and also the observations in paragraph 18 of *Ramesh Kumar's case* (supra), we hold that the petitioners cannot be granted any relief in the present writ petitions. They have taken part in the selection as was held in the year 2007, 2008 and 2010 respectively without any demur and even without raising objection in that respect. Only when they failed to get selected on account of not obtaining the minimum marks in the interview, they resorted to writ remedy. On the

other hand, when ultimately they failed in the final selection, they straightway rushed to the Supreme Court and filed the petitions only against few persons. If the entire selection process was said to be vitiated because of applying the condition of obtaining minimum marks in the interview, all those who have qualified for interview were required to be added as party to the petitions, as ultimately those candidates will be directly affected.

27. Lastly, as the advertisements were only with respect to the vacancies on the posts as is specifically mentioned in Rule 5 of the Rules of 1994, where it is categorically prescribed that the recruitment to the posts shall be made **on the basis of the vacancies available**. This makes it clear that vacancies are to be carried forward and get subsumed in the next selection, which is to commence. Therefore, no vacancies of the years 2007, 2008 or 2010, in which years the petitioners were candidates for selection, are presently available. As a result, the claim of the petitioners cannot be considered for grant of appointment against the vacancy with reference to advertisement of 2007, 2008 or 2010, as the case may be. For this reason also, the selection said to be made by the respondents cannot be set aside to accommodate the petitioners nor against the vacancies already subsumed and merged in the subsequent advertisements, in which process, the petitioners have not participated. Since the selection for appointment is to be made from the candidates, who have participated in selection at present, the candidature of petitioners cannot be taken forward. Even otherwise, since the unfilled posts have not been kept vacant for the petitioners as there was no interim order to this effect, the claim of candidates who are presently participating, cannot be jeopardised.

28. While parting, we may reiterate the legal position stated in *Ramesh Kumar* (supra) that in absence of statutory rule permitting cutoff marks for *viva voce*, all appointment processes hereafter must be in conformity with the qualification norm specified in the decisions of the Supreme Court including in *All India Judges' Association (3)*'s case (supra).

29. As a result, the writ petitions fail and are hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Petition dismissed.

I.L.R. [2015] M.P., 2456
REVIEW PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice Alok Aradhe
Review Pet. No. 230/2015 (Jabalpur) decided on 29 April, 2015

SATYA PAL ANAND ...Petitioner
Vs.
BAL NEKETAN NYAS & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Review **- In the guise of review, rehearing is not permissible - In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record - The Court while deciding review application cannot sit on appeal over the judgment or decree passed by it - Application rejected.** **(Para 8)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – पुनर्विलोकन – पुनर्विलोकन की आड़ में पुनः सुनवाई अनुज्ञेय नहीं – पुनर्विलोकन चाहने के लिए यह दर्शाना होगा कि आदेश, अभिलेख पर प्रकट त्रुटि से ग्रसित है – न्यायालय, पुनर्विलोकन का आवेदन निर्णीत करते समय उसके द्वारा पारित निर्णय या डिक्री को अपील के तौर पर नहीं ले सकता – आवेदन अस्वीकार किया गया।

Cases referred :

(2009) 2 SCC 630, (2009) 10 SCC 464, (2008) 8 SCC 612, (2013) 8 SCC 320.

Petitioner in person.

ORDER

The Order of the Court was delivered by :
ALOK ARADHE, J. :- This interlocutory application filed by the petitioner in Writ Petition No.4638/2015 which was dismissed by this Court on 6.4.2015, has been registered as review petition by the Office. In this review petition, the petitioner has prayed for following reliefs:

> "In view of the submissions urged above, the order of dismissal in limine passed on 6.4.2015 be kindly recalled, granting exemplary costs to the petitioner who has to travel to Jabalpur,

in the absence of any Bench of this Hon'ble Court, at Bhopal, being perhaps the only capital of a State having no Bench of the Hon'ble High Court tehre only because the power coupled with duty stood not exercised in violations of the Constitutional mandates & guarantees to provide cheap & speedy justice to the citizenry in India, & it be, therefore, kindly provide because providing justice is the paramount duty of the State & till then cases of petitioner & others coming from outside Jabalpur, be directed to be listed on top priority on the top of the lists in each & every Court & the Registry be directed to list the cases both for hearing on merits & admission, grant of ex-parte and ad-interim reliefs soon upon filing of the writ petitions or other applications as herein filed, recalling the orders given to the contrary & allowing all the Hon'ble Judges to exercise the Judicial Powers vested in them as was being done since for long many years because the lawful decentralization of judicial powers is the constitutional command.

And the facts recorded & observations recorded in para 1,2,3,4,5,6, etc. be kindly deleted as the subject matter is sub judice & recording of said facts & orders has already caused great prejudice to the petitioner when matter is awaiting hearing as per law of the MCC No.495/2015. And such other reliefs or further reliefs as deemed deserved in law be kindly granted to meet the ends of justice.

And contempt proceedings as prayed above against Mrs. Shobha Menon & other contemnors be kindly initiated as per law after notice suo motu & monthly rend payable be kindly declared to be payable at Rs.75/- per month & excess collected be kindly directed to be refunded to the petitioner in directed time. And, Anand Trust be kindly allowed to join the petitioner in hearing of this writ petition following the law declared in (1987) 1 SCC 227.

2. In Writ Petition No.4638/2015 which was filed under Article 227 of the Constitution of India, the petitioner had prayed for the following reliefs:

"7. (a) In view of the submissions made above, the operation of the order directing the deposit of Rs. 10,13,078/- before 23.03.2015 be kindly stayed till the decision of this writ petition, & the cheque dated 20.03.2015, presented before the ld. Court below drawn in its favour, as was directed by it, be directed to be returned, to the petitioner, which had been presented, as a law abiding citizen, but, it was directed not to be en-cashed then, on 20.03.2015 & case is fixed for hearing on 30.03.2015, as the stay order prayed in Writ Petition No.2804.2008 had not been then granted & liberty was granted to file this writ petition by the order e-mailed to the petitioner dated 24.03.2015. Therefore, stay order be kindly e-mailed to the learned Execution Court below adopting innovative approach to do justice or by Fax or Telephone directing the Learned Principal Registrar Judicial to communicate the order as soon as it is passed, directed a CC also to be provided to the petitioner, soon upon passing of the prayed order ex-parte;

(b) And, the hearing of the MJC No.40/2013 be kindly directed to be made by such other Hon'ble Court, i.e. other than the one presided by the learned Judge Mr.B.B.Shukla and Mr.B.S.Bhadhoria to ensure impartial and fair hearing thereof as per laws of this land, as constitutionally guaranteed;

(c) And, the hearing of the Execution case No.18/2013 be also similarly directed to be done by another learned Judge of the Court below, to provide justice as per law & constitutionally guaranteed, to provide impartial and unbiased hearing, as per submissions made in para (b) above;

(d) And, in view of the submissions made supported with judgments of Hon'ble Supreme Court, :the payment of monthly rent be kindly reduced to Rs. 75/- per month being the agreed rent as the petitioner is not a trespassed

but statutory tenant not liable to pay any damages or mense profit as per laws of this land, but only the admittedly agreed rent @ Rs. 75/- per month, directing refund of excessive amount deposited till 31.06.2015;

(e) And, the learned Court below be kindly directed to take steps as per law to collect the amount of the Bank Draft cited hereinabove from the State Bank of India, Bhopal, because having paid the amount in its favour, in the manner it was demanded, the petitioner has no more any authority to deal with it, & to fix the judicial responsibility for its not in time collection and for not issuing its receipt in time, the deserved directions be kindly given, & granting other deserved reliefs;

(f) And, contempt proceedings criminal be kindly initiated suo motu against the learned Senior Advocate Mrs.Shobha Menon and administrative action against her be also kindly initiated suo motu to withdraw her status of a learned Senior Advocate as per law;

(g) And, such exemplary & conpensatory (sic:compensatory) costs as deemed just be kindly awarded considering the high costs being suffered by the petitioner, as per law, who resides at Indore;

(h) And, that the Bal Niketan Nyas & its Pradhan Kailash Agrawal and the State of MP be kindly directed to pay a compensation of Rs. 15 Lakhs by each of them in all not less than Rs.30,00,000/- because of unlawful entry made in the premises on 23.04.2014 & causing great injury to the commercial reputation, dignity & self respect of the petition & for the losses caused because of breaking the fixtures, showcases, stands racks, etc. & throwing on the public road various highly valued goods & loss caused by breakage & otherwise thereby & a compensatory cost of not lesser than Rs. 2 Lakhs be kindly directed to be paid to the petitioner by the two concerned presiding officer of the executing court who had issued knowingly without

jurisdiction the warrant for the delivery of the physical possession knowingly exceeding the lawful jurisdiction, and, who had passed acting contemptuously the order of dismissal dated 16.12.2014 of MJC No.40/2013 & other unlawful orders knowingly acting without jurisdiction & the order of the dismissal of MJC 561/2012 knowingly without jurisdiction. And granting such other & further reliefs as deemed deserved in law."

3. We have heard the petitioner at length. The petitioner has submitted that the writ of certiorari does lie to quash order of inferior courts which have acted without jurisdiction and the English Common Law view is not applicable to the countries having written Constitution with fundamental rights and judicial review which is the basic feature of the Constitution of India. It is further submitted that if a judicial order which violates a fundamental right, is a void order. No one should suffer because of the mistake committed by Court. It is also urged that the doctrine of alternative remedy would not be applicable in case an order has been passed by Authority without jurisdiction and in violation of principles of natural justice or in a case where vires of an Act has been challenged. In support of his submission, the petitioner has placed reliance in the decision in *Committee of Management and Another v. Vice-Chancellor and Others,* (2009) 2 SCC 630.

4. We have considered the submissions made by the petitioner. From perusal of reliefs claimed in the interlocutory application filed by the petitioner which has been registered by the Office as review petition in juxtaposition with the reliefs claimed in the writ petition which have been reproduced supra, it is evident that relief No.1 claimed in this interlocutory application is a substantive part of the relief which was not even claimed in the writ petition. Therefore, the same cannot be entertained by means of this interlocutory application.

5. So far as the second relief in this application is concerned, from close scrutiny of the order dated 6.4.2015 passed in Writ Petition No.4638/2015, it is apparent that this Court has merely referred to the facts and has not made any observation therefore, the question of deleting the same does not arise.

6. As far as the relief pertaining to initiation of proceeding for contempt

against learned senior counsel is concerned, the same has already been turned down for the reasons recorded in paragraph 18 of the order dated 6.4.2015 passed in Writ Petition No.4638/2015 which reads as under:

> "18. The relief claimed by the petitioner in paragraph 7 (f) is with regard to initiation of *suo motu* proceeding against senior counsel. In our considered opinion, such a relief, is misconceived as in the proceeding under Article 227 of the Constitution of India, the contempt proceeding cannot be initiated, more so without making concerned person as respondent in the proceeding. As a result, even that relief need not detain us in disposing of this petition."

7. As far as the petitioner's prayer for a direction that rent of Rs.75 per month is payable and excess rent be refunded to the petitioner is concerned, the same is also sans substance as the aforesaid aspect of the matter has been dealt with in paragraph 11 of the order dated 6.4.2015 passed in Writ Petition No.4638/2015 which reads as under:

> "11. In order to appreciate the scope of challenge to the aforesaid order it is pertinent to note that against judgment and decree of eviction dated 10.10.2012 passed by the trial Court, the petitioner has filed First Appeal No.1037/2012 which was admitted by a Bench of this Court vide order dated 21.12.2012 and execution of the decree was stayed subject to fulfillment of conditions mentioned therein. The order passed by the Bench of this Court has already been reproduced in paragraph 5 of this order. That order has been allowed to attain finality. From perusal of paragraph 5 of this order it is evident that the Bench of this Court has directed the appellant therein to deposit the rent at the rate of Rs.5692/- per month strictly in terms of section 13 of M.P. Accommodation Control Act, 1961. In view of order dated 21.12.2012 passed by a Bench of this Court in aforesaid First Appeal, the respondent No.1 filed an application under section 151 of the Code of Civil Procedure in which prayer was made that since the petitioner has not complied with the terms and conditions of order dated 21.12.2012, therefore, warrant of possession be

issued."

8. It is well settled in law that in the guise of review, rehearing is not permissible. In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The Court while deciding the application for review cannot sit on appeal over the judgment or decree passed by it. [See: *S. Bagirathi Ammal v. Palani Roman Catholic Mission,* (2009) 10 SCC 464, *State of West Bengal and Others v. Kamal Sengupta and Another,* (2008) 8 SCC 612 and *Kamlesh Verma v. Mayawati,* (2013) 8 SCC 320] Even otherwise, the impugned order neither suffers from any error apparent on the face of record nor any jurisdictional infirmity warranting interference of this Court in review jurisdiction. From perusal of the application, we find no ground for recall of the order dated 6.4.2015 passed in Writ Petition No.4638/2015, is made out.

9. In the result, we do not find any merit in this review petition. The same fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2015] M.P., 2462
REVIEW PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice Alok Aradhe
Review Pet. No. 231/2015 (Jabalpur) decided on 29 April, 2015

SATYA PAL ANAND ...Petitioner
Vs.
BAL NEKETAN NYAS & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Review **- Decree for eviction was passed against applicant - In First Appeal, while granting interim order, applicant was directed to pay the monthly rent @ Rs. 5692 per month as directed by Trial Court - Held - Applicant is required to pay the monthly rent strictly in accordance with the provisions of Section 13 of M.P. Accommodation Control Act, 1961 - Impugned order does not suffer from any error apparent on the face of record nor any jurisdictional infirmity - Review application dismissed. (Para 4& 5)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 — पुनर्विलोकन

– आवेदक के विरूद्ध बेदखली की डिक्री पारित की गई – प्रथम अपील में, अंतरिम आदेश प्रदान करते समय आवेदक को रू. 5692 प्रतिमाह मासिक भाड़े का भुगतान करने के लिये निदेशित किया गया जैसा कि विचारण न्यायालय द्वारा निदेशित किया गया था – अभिनिर्धारित – म.प्र. स्थान नियंत्रण अधिनियम 1961 की धारा 13 के उपबंधों का कड़ाई से पालन कर मासिक भाड़े का भुगतान करना आवेदक से अपेक्षित है – आक्षेपित आदेश अभिलेख की किसी प्रकट त्रुटि से ग्रसित नहीं और न ही किसी अधिकारिता की कमी से – पुनर्विलोकन आवेदन खारिज।

Cases referred :

2015 SCC Online SC 170, (1988) 2 SCC 602.

Petitioner in person.

ORDER

The Order of the Court was delivered by :

ALOK ARADHE, J. :- This interlocutory application has been filed by the petitioner in Writ Petition No.2804/2015 which was filed under Article 226 of the Constitution of India and was dismissed by this Court on 24.3.2015 in view of the law laid down by a three-Judge Bench of the Supreme Court in *Radheshyam and another Vs. Chhabinath and others*, 2015 SCC Online SC 170 and in the case of *A.R. Antulay Vs. R.S. Nayak*, (1988) 2 SCC 602. This application has been registered as review petition by the Office in which the petitioner has prayed for following reliefs:

> "The impugned order dated 24.3.2015 be kindly recalled to do full & complete justice to the petitioner. And, by an ex-parte order, the compliance of order dated 25.2.2015 be kindly stayed & if the amount of Rs.10,13,078/= paid as law abiding citizen, by a Cheque dated 20-3-2015 drawn in favour of the ld. Court below as was directed by it, if stands collected by now, then directions be given ex-parte that the said amount be directed within seven days from the date of the order passed to meet the ends of justice. And, such other & further reliefs as deemed deserved by this victim of indisputable miscarriage of justice & travesty of justice be kindly granted to him in these public law proceedings recalling that a VOID order could be challenged at any time in any proceedings."

2. In Writ Petition No.2804/2015, the petitioner had prayed for the following reliefs:

> *"7.(a) In view of the submissions made above, the impugned order dated 16.12.2014 directing dismissal of the MJC No.40/2013 be kindly be quashed by a writ of Certiorari and granting such other reliefs as deemed deserved in law exercising constitutional powers vested in this Hon'ble Court under Article 226 of the Constitution of India and by a writ of Mandamus the respondent No.2 be directed not to re-issue any warrant of delivery of physical possession of the premises in the lawful possession of the petitioner in this own rights till the mandatory investigations are completed as per law, so that a running business of the petitioner is not disturbed abruptly in violation of his rights to have justice as per law of this land.*
>
> *(b) And the amount of the compensation claimed be kindly granted as prayed or such other amount as estimated to be just upon the facts herein in the public law proceedings and the respondents be directed to make payment of the directed amount of the compensation and exemplary costs in a just time and report compliance to this Hon 'ble Court within directed time.*
>
> *(c) And the respondent No.3 be kindly directed to investigate and submit his report under what circumstances such heavy Police force remained at the premises of the petitioner when it is said in the order dated 16.5.2014 that there was no judicial order passed directing the Police force to be present there during the far long time when the execution of the warrant for delivery of the physical possession was being carried out on 23.4.2014 till 2.00 p.m. and even thereafter without the authority of law and directing such action against the process servers who have made a false statement of fact that there was no police force when they had been executing the warrant under*

question on 23.4.2014.

(d) That the order passed in case of MJC No.563/12 on 16.12.2014 be kindly quashed and set aside passing such order thereupon as deemed just.

(e) That Judges (Protection) Act, 1985 be kindly read down as prayed herein.

(f) That such further or additional reliefs as deemed just be kindly granted together with costs deemed just".

3. We have heard the petitioner at length. The petitioner submitted that the order dated 24.3.2015 passed in Writ Petition No.2804/2015 deserves to be recalled in view of the law laid down in *A.R. Antulay* (supra). Paragraph 5 of the order passed in Writ Petition No.2804/2015 reads as under:

"**5.** The petitioner filed First Appeal No.1037/12, which was admitted by a Bench of this Court vide order dated 21.12.2012 and the execution of the decree for eviction was stayed subject to fulfillment of conditions mentioned therein. The relevant extract of the order reads as under:

"Several contentions have been raised by appellant including virus and provisions as envisaged under Section 3 of the M.P. Accommodation Control Act to be unconstitutional and further it has been submitted that appellant never agreed to pay rent @ Rs.15/- per square feet of the tenanted premises and therefore he is not bound to pay or deposit the rent as decided by learned trial Court in the impugned judgment. Appellant further submits that notice of enhancement of rent sent by respondents to appellant was never served upon him although it was served upon his Manager. Hence according to him, service on Manager of said notice cannot be said to be service upon appellant. It has also been submitted by him that he is ready to pay or deposit the contractual rent which is Rs. 75/- per month. Hence, it has been prayed that monetary part of the decree be also stayed alongwith the eviction

part of the decree till the decision of this appeal.

Having heard appellant and learned senior counsel for respondents, it is directed that eviction part of the decree shall remain stayed till the decision of this appeal. However, since there will be no irreparable loss to the appellant in depositing the decreetal (sic:decretal) amount and further he will not suffer any irreparable loss in case he deposits monthly rent @ Rs.5692/- as directed by learned trial Court that part of decree is not stayed.

The objection which appellant has raised during the course of argument shall be decided at the time of final adjudication of the appeal.

Thus, the execution of eviction part of decree shall remain stayed on the following conditions:-

(i) The appellant shall deposit decreetal (sic:decretal) amount of Rs. 1,13,840/- on or before 22.12.2012 in the trial Court/ Executing Court.

(ii) he shall also deposit the monthly rent @ Rs.5692/- strictly in terms to Section 13 of the M.P. Accommodation Control Act.

(iii) the appellant shall also deposit the cost of plaintiffs/ respondents on or before 22.12.2012 as directed by the learned trial Court and

(iv) the respondents No. 1. to 12 shall be free to withdraw the amount so deposited by appellant in the trial Court/Executing Court after furnishing security to the satisfaction of that Court.

It is however, made clear that if any of the aforesaid conditions is violated by the appellant, the respondents No.1 to12 shall be free to execute the decree".

4. Thus, it is evident that the petitioner is required to pay the monthly rent at the rate of Rs.5692/- strictly in terms of Section 13 of the M.P. Accommodation

Control Act, 1961 and is required to deposit the decretal amount of Rs.1,13,840/- on or before 22.12.2012 before the trial Court in view of the order dated 21.12.2012 passed in First Appeal No.1037/2012. Therefore, no such relief in this application, as prayed for by the petitioner, can be granted. Even otherwise, the impugned order neither suffers from any error apparent on the face of record nor any jurisdictional infirmity warranting interference of this Court in review jurisdiction. From perusal of the application, we find no ground for recall of the order dated 24.3.2015 passed in Writ Petition No.2804/2015, is made out.

5. In the result, the review petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2015] M.P., 2467
APPELLATE CIVIL
Before Mr. Justice R.S. Jha
M.A. No. 1544/2013 (Jabalpur) decided on 3 July, 2014

KISHANLAL & ors. ...Appellants
Vs.
HEMRAJ JAISWAL & ors. ...Respondents

A. Motor Vehicles Act (59 of 1988), Section 163 - Computation of notional income **- Deceased not skilled labour - Notional income assessed Rs. 100/- per day - Not faulted. (Para 3)**

क. मोटर यान अधिनियम, (1988 का 59), धारा 163 – काल्पनिक आय की संगणना – मृतक कुशल श्रमिक नहीं – काल्पनिक आय रू. 100/– प्रतिदिन निर्धारित की गई – गलत नहीं।

B. Notional income **- Uneducated and unskilled person - Rs. 100/- per day in the year 2008 - The same is applicable and binding on the Tribunal on the date of award i.e. 2011. (Para 2)**

ख. काल्पनिक आय – अशिक्षित और अकुशल व्यक्ति – वर्ष 2008 में रू. 100/– प्रतिदिन – यह अधिकरण को अवार्ड की तिथि अर्थात् 2011 पर प्रयोज्य और बाध्यकारी है।

Case referred :

2008 ACJ 1488 (SC).

Kapil Patwardhan, for the appellants.

(Supplied: Paragraph numbers)

ORDER

R HA, **J.:-**This appeal has been filed by the appellants being aggrieved by the award dated 17-4-2013 passed by Xth Additional Motor Accidents Claims Tribunal, Jabalpur in MVC No. 362/2011 wherein on account of death of Durgesh in an accident the tribunal has awarded a sum of ₹ 4,01,000/- to the claimants towards compensation.

2. The only ground on which the award is assailed by the learned counsel for the appellants is that the Tribunal should have assessed the notional income of the deceased as ₹ 4500/- instead of ₹ 3000/-, while computing the compensation. It is submitted that a sum of ₹ 100/- has been calculated on the basis of the decision rendered by the Supreme Court in the case of *Laxmi Devi v. Mohammad Tabbar & another*, reported in 2008 ACJ 1488 (SC) wherein it has been held that even for an uneducated or unskilled person a minimum income of ₹ 100/- per day should be assessed as notional income of the deceased and on that basis compensation has to be awarded. It is submitted that the aforesaid decision of the Supreme Court in the case of *Laxmi Devi* (supra) was rendered in the year 2008 while in the present case the accident had occurred in the year 2011. In the circumstances, the tribunal should have assessed the notional income of the deceased as ₹ 4500/- .

3. Having heard the learned counsel for the appellant and after perusing the impugned award it is observed that the tribunal has taken into consideration the fact that there is no evidence on record regarding income of the deceased and that the deceased was not a skilled labour and on that account has computed the notional income of the deceased as ₹ 100/- per day which cannot be found fault with in view of the decision rendered by the Supreme Court in the case of *Laxmi Devi* (supra) which was applicable and binding on the tribunal as on the date of the award.

4. In the circumstances, I do not find any illegality or perversity in the impugned award. The compensation of ₹ 4,01,000/- awarded towards the compensation for the death of the deceased appears to be proper. The appeal filed by the appellants, being meritless is accordingly dismissed.

Appeal dismissed.

I.L.R. [2015] M.P., 2469
APPELLATE CIVIL
Before Mr. Justice M.K. Mudgal
M.A. No. 2808/2010 (Jabalpur) decided on 11 August, 2015

SHAMEENA BANO (SMT.) & ors. ...Appellants
Vs.
RAM NARESH PATEL & ors. ...Respondents
(Alongwith M.A. No. 3089/2010)

A. Motor Vehicles Act (59 of 1988), Section 173 - Compensation - Dependency - **Deceased had six dependents at the time of his death - Personal expenses should have been 1/4th of his income and not 1/3rd - Award modified. (Paras 10 to 12)**

क. मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – आश्रितता – मृतक की मृत्यु के समय उस पर छः आश्रित थे – व्यक्तिगत खर्चे उसकी आय के 1/4 होने चाहिए न कि 1/3 – अवार्ड संशोधित।

B. Motor Vehicles Act (59 of 1988), Section 147 - Liability of Insurance Company - **Driver of the jeep was having L.M.V. license whereas he was driving Transport Vehicle - Insurance company is not liable - Insurance Company shall pay and recover from the owner. (Paras 14 to 17)**

ख. मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – जीप के ड्राइवर के पास एल.एम.वी. लाइसेंस था जबकि वह परिवहन वाहन चला रहा था – बीमा कंपनी दायी नहीं – बीमा कंपनी स्वामी से भुगतान और वसूली करेगी ;

Cases referred :

2009 (4) MPHT 99, (2008) 2 SCC 721, 2009(2) ACCD 1122 (SC), 2013(3) TAC 392 (SC), 2014(4) TAC 676 (SC).

Kapil Patwardhan, for the appellants in M.A. No. 2808/2010.

N.S. Ruprah, for the appellants in M.A. No. 3089/2010 & for the respondent No. 3 in M.A. No. 2808/2010.

Vinod Tiwari, for the respondent Nos. 1 & 2 in M.A. No. 2808/2010 & for the respondents No. 6 & 7 in M.A. No. 3089/2010.

Hakim Khan, for the respondent No.4 in M.A. No. 2808/2010 &

for the respondent No. 8 in M.A. No. 3089/2010.

JUDGMENT

M.K. MUDGAL, J. :- By this judgment both the miscellaneous appeals bearing MA No. 2808/10 and 3089/10 which have arisen from the award dated 14-05- 2010 passed by XIXth Motor Accident Claims Tribunal, Jabalpur in Claim Case No. 220/09. are being decided simultaneously.

2. In this appeal the appellants of MA No. 2808/10 are referred to as the Applicants, the respondent No. I Ram Naresh, who was the driver of the offending vehicle referred to as the non-applicant No. 1, the respondent No. 2 Upendra Gautam, who was the registered owner of the said vehicle referred to as the non-applicant No. 2, the respondent No. 3 Royal Sundram Allianze, which insured the said vehicle referred to as the non-applicant No. 3 and the respondent No. 4 Smt. Sundaria, who is the mother of the deceased referred to as the non-applicant No. 4.

3. The admitted facts of the case are that the non-applicant No. 2 Upendra Gautam was the registered owner of the offending vehicle Marshal Max bearing No. MP17-TA-0206, which was being driven at 5:30 am on 01-10-2008 by the non-applicant No. 1 Ram Naresh Patel, who was engaged as a driver. The said vehicle was insured by the non-applicant No. 3 Insurance Company for the period from 29-09-2008 to 28-09-2009 vide the Insurance Policy Ex.D/1. The non-applicant No. 1 was holding a Driving Licence to drive LMV vide Ex.D/2. The alleged incident took place at 5:30 am on 01-10-2008 when the said vehicle was being driven by the non-applicant No. 1 and it dashed an unknown truck. The deceased Shabbir Mohammed Khan, who was travelling in the said vehicle, sustained severe injuries and as a result of which he died. The applicant No. 1 to 5 and Nonapplicant No. 4 are the legal heirs of the deceased.

4. Facts in brief of the case are that the deceased Shabbir Mohammed Khan was going from Satna to his native village Sirmour at 5:30 am on 01-10-2008 by Marshal Max bearing No. MP17-TA-0206, which was being driven by the non-applicant No. 1 in a very negligent manner and dashed with an unknown truck near Satna-Rewa Batia turn. The deceased sustained severe injuries and as a result of which he died. The F.I.R. bearing Crime No. 589/08 (Ex.P/2) was lodged at the Police Station, Rampur Baghelan. The applicants

filed a claim petition before the learned Claims Tribunal for compensation of Rs.40,30,000/- alleging that monthly income of the deceases was 21,528/- and there were five persons dependents on the deceased and were deprived of the means of their livelihood. The applicants have claimed the damages as stated earlier.

5. Non-applicant No. 1 & 2 failed to appear before the Claims Tribunal and did not file any reply to deny the allegations made in the claim petition. Non-applicant No. 3 submitting its reply and denying the averments made in the claim petition has pleaded that the driver, the non-applicant No. 1, who was involved in the accident, was not having a valid driving licence to drive the transport vehicle owing to which the Insurance Company is not liable to pay the damages as claimed by the applicants in their petition.

6. Learned Claims Tribunal after framing the issues and recording the evidence of both the parties passed the impugned award granting compensation of Rs. 24,53,600/- and non-applicant No. 1 to 3 were held liable to pay the said compensation to the applicants along with the interest jointly or severely.

7. Being aggrieved by the impugned award, the applicants have filed MA No. 28-08-10 for enhancement of the award and the non-applicant No. 3 Insurance Company has filed the appeal challenging the legality and propriety of the award holding the Insurance Company liable for payment of the compensation by it.

8. On perusal of the pleadings of both the parties, the recorded evidence and the findings recorded by the learned Claims Tribunal it is not disputed that the deceased died in the alleged incident and the offending vehicle was being driven by the non-applicant No. 1. The age of the deceased was 47 years when the alleged incident took place. The monthly income of the deceased has been determined to be Rs.23,400/- per month, which has not been challenged by any party and the compensation was determined by multiplier of 13, which has also not been challenged by anyone of them.

9. The questions that arise that for consideration in these appeals are that:-

(i) Whether the Claims Tribunal has committed any error in assessing the compensation by deducting the personal expenses of the deceased as 1/3rd of his income whereas there were

six dependents of the deceased when he died ?

(ii) Whether the Insurance Company is liable to pay the compensation ?

Issue No. 1

10. Learned counsel for the applicants has submitted that there were six dependents of the deceased when he died because the applicant No. 1 to 5 are his wife and children and the non-applicant No. 4 is his mother. Where the number of dependents of the deceased was more than four, the deduction towards personal and living expenses of the deceased ought to have been assessed as 1/4th of his income but the learned Claims Tribunal having considered the evidence on record has deduced 1/3rd of his income towards for his personal expenses. The said findings are against the judgment of *Sarla Verma and other vs Delhi Transport Corporation and other* 2009 Vol. 4 MPHT Page 99.

11. On perusal of the record and the statements of the witnesses, it can be safely inferred that there were six persons dependents on the deceased when he died. In Para 21 of the impugned award, learned Claims Tribunal has deducted 1/3rd amount of the deceased income for his personal expenses. In the *Sarla Verma* judgment which has been referred towards the Hon'ble Apex Court has held in Para 13 and 14 of the said judgment that when the number of dependents family members are more than four, the deduction for personal expenses of the deceased should be 1/4th of his income, therefore it is concluded that the compensation ought to have been assessed on the basis of deduction of 1/4th income for the personal expenses of the deceased.

12. The income of the deceased has been determined in Para 20 of the impugned award as Rs.23,400/-. After deduction of 1/4th of the said amount, the dependency of the legal heirs of the deceased would be Rs.17,550/- per month and the multiplier by 12 is equal to Rs.2,10,600/- per annum. Considering the age of the deceased, the compensation is to be assessed by the multiplier 13 as per Para 21 of the impugned award on the basis of which the compensation on this count would work at Rs.27,37,800/-. The said multiplier is just and proper. As per Para 21 of the award only Rs.20,000/- has been allowed for funeral expenses, consortium etc. which is not only improper but also megre. No amount for loss of love and affection to the wife

and children has been awarded, therefore Rs.70,000/- is awarded for funeral expenses, consortium and love and affection etc. In this manner, the total amount of compensation is determined at Rs. 28,07,800/-. The learned Claims Tribunal has awarded Rs.24,53,600/- as the amount of compensation, therefore Rs.28,07,800- 24,53,600/- = the actual amount of Rs. 3,54,200/- is additionally awarded to the legal heirs of the deceased.

13. The issue No. 1 is decided accordingly.

Issue No. 2

14. Learned counsel for the non-applicant no.3 submits that the non-applicant no. 1, who was driving the offending vehicle, had a only valid licence to drive L.M.V., therefore, he was authorized to drive only L.M.V. on the basis of the driving licence Ex.D/2. But, there was no endorsement on the Ex.D/2 authorizing him to drive a transport vehicle because of that he was not authorized to drive the offending vehicle on the date of the alleged incident. In the said circumstances, the Insurance company is not liable to pay the compensation as awarded by the learned Claims Tribunal. Learned counsel further submits that the learned trial court placing reliance upon a judgment of *National Insurance Co. vs. Annappa Irappa Nesaria*, (2008) 2 SCC 721 held the insurance company responsible for payment of the compensation awarded in the impugned judgment. But the rational of the said judgment is not applicable in this case because in the said case the incident occurred on 23.05.1998 before the amendment in the Motor Vehicles Act. The said amendment in the Motor Vehicles Act came into force from 28.03.2001 wherein transport vehicle has been defined under Clause 47 of Section 2 of the Act. Section 3 thereof requires the driver to have an endorsement which would entitle him to ply such vehicle. Learned counsel placing reliance upon a judgment of *Oriental Insurance Co. Ltd. vs. Angad Kol and others*, 2009 (2) ACCD 1122 (SC) has contended that in the instant case, the alleged incident took place on 1.10.1998 after commencement of the amended provision. In the said circumstances it is inferred that the driving licence Ex.D/2 which non-applicant no.1 had carried no such endorsement to drive transport vehicle. The said licence was only valid to drive L.M.V., therefore, the Insurance company is not liable to pay the compensation.

15. Learned counsel for the applicants controverting the submissions made

on behalf of the non-applicant no. 3 and placing reliance upon the judgments of *S. Iyyapan vs. M/s. United India Insurance Company Ltd. and another*, 2013 (3) TAC 392 (S.C.) and *Kulwant Singh and others vs. Oriental Insurance Company Ltd.* 2014 (4) T.A.C. 676 (S.C.) has contended that the learned Claims Tribunal has not committed any error in holding the Insurance company liable to pay the compensation.

16. Heard the arguments of both the parties and perused the impugned award.

17. Indisputably, the alleged incident took place on 1.10.2008 after commencement of the amended provision wherein the transport vehicle is defined under Clause 47 of Section 2 of the Act. There is no dispute between both the parties about the offending vehicle being transport vehicle. The issue involved in this matter is squarely covered by the judgment of the *Angad Kol* (supra), on the basis of which, it is concluded that the non-applicant no.1 was having a L.M.V. driving licence on the basis of which he was not authorized to drive the transport vehicle i.e. offending vehicle. In the instant case, the offending vehicle was the transport vehicle. The judgments cited by the learned counsel for the applicants do not support the submissions made by him because the case of *S. Iyyapan* (supra) is related to the accident that occurred on 23.5.1998 before the amendment in the Act and the judgment of *Kulwant Singh* (supra) is based on the judgment of *S. Iyyapa n* (supra) whereas the date of incident in this case is 01-10-2008. Therefore, both the judgments do not help the applicants in this case. On the basis of the aforesaid discussion it is concluded that as the driver of the offending vehicle was not holding the valid driving licence to drive the transport vehicle and so the Insurance company cannot be held liable to pay for the compensation but the claimants are the third party of the policy, in the interest of justice it would be apt that the Insurance company be directed to pay the entire amount to the claimants as it is the liability of the insurer under Motor Vehicle Act to pay the compensation to the third party i.e. the claimants because the liability of the Insurance Company is a statutory one as held by the Hon'ble Apex Court in the case of *S. Iyyapan* (supra) wherein several other judgments of the same intent have been referred to but the Insurance Company shall be entitled to recover the said amount from the driver and owner of the offending vehicle because it was not the case of non-applicant No. 1 & 2 that there was endorsement in the

Ex.D/2 to drive the transport vehicle.

18. Keeping in view the aforesaid discussions, Miscellaneous appeal no. 2808/2010 is partly allowed and an amount of **Rs.3,54,200/-** is enhanced and the said amount shall be paid with interest @ 6% per annum from the date of application till its payment. The said amount shall be disbursed among the applicants and the non-applicant no. 4 according to the learned Claims Tribunal award.

19. Miscellaneous appeal no. 3089/2010 filed by the Insurance company is partly allowed holding that though the insurance company is not liable to pay the compensation in the instance case but the said company shall pay the entire amount to the claimants and the insurance company shall be entitled to recover the said amount from the non-applicants no. 1 and 2 i.e. the driver and owner.

20. Both the appeals are disposed of accordingly.

21. Cost of the appeals shall be borne by the respondent No. 1 & 2 i.e. drive and owner.

Appeal disposed of.

I.L.R. [2015] M.P., 2475
APPELLATE CRIMINAL
Before Mr. Justice N.K. Gupta
Cr.A. No. 884/1998 (Jabalpur) decided on 4 August, 2015

ASHOK & ors. ...Appellants
Vs.
STATE OF M.P. ... Respondents

A. Penal Code (45 of 1860), Section 326/149 - Grievous Injury - Unlawful Assembly **- Appellant No.1 caused injuries by means of Katarna - The remaining appellants came on the spot after the assault was concluded by the appellant No.1 and when the remaining appellants assaulted the injured by means of lathi, there is no overt act on the part of the appellant No.1 - It cannot be held that the appellants No. 2 to 4 had common object with appellant No.1 to cause grievous injury - All accused persons are responsible for their own act - Only appellant No.1 is guilty of causing grievous injuries by means of Katarna and**

remaining accused persons cannot be held guilty under Section 326/149 I.P.C.
(Para 6 to 10)

क. दण्ड संहिता (1860 का 45), धारा 326/149 – गंभीर चोट – विधिविरूद्ध जमाव – अपीलार्थी क्रमांक 1 ने कतरना के जरिये चोटें कारित की – शेष अपीलार्थीगण अपीलार्थी क्र.1 द्वारा हमला समाप्त करने के पश्चात् मौके पर आये और जब शेष अपीलार्थियों ने आहत पर लाठी के जरिये हमला किया, अपीलार्थी क्र. 1 की ओर से कोई प्रत्यक्ष कृत्य नहीं है – यह धारणा नहीं की जा सकती कि अपीलार्थी क्र. 2 से 4 का अपीलार्थी क्र. 1 के साथ गंभीर चोट कारित करने का समान उद्देश्य था – सभी अभियुक्त व्यक्ति अपने स्वयं के कृत्य के लिये उत्तरदायी हैं – केवल अपीलार्थी क्र. 1 कतरना के जरिये गंभीर चोटें कारित करने का दोषी है और शेष अभियुक्त व्यक्तियों को भा.दं.सं. की धारा 326/149 के अंतर्गत दोषी नहीं ठहराया जा सकता।

B. ***Penal Code (45 of 1860), Section 325 - Grievous Injuries*** **- Accused four in number reached on the spot after the assault was concluded by appellant No.1 - Remaining accused started assaulting injured by means of lathi - All the four were sharing common intention - They are held guilty for offence punishable under Section 325/149 of I.P.C.**
(Paras 10 to 12)

ख. दण्ड संहिता (1860 का 45), धारा 325 – गंभीर चोटें – अभियुक्तगण चार की संख्या में मौके पर अपीलार्थी क्र. 1 द्वारा हमला समाप्त करने के पश्चात् पहुंचे – शेष अभियुक्तों ने लाठी के जरिये आहत पर हमला शुरू किया – सभी चारों का समान आशय था – उन्हें भा.दं.सं. की धारा 325/149 के अंतर्गत दंडनीय अपराध के लिये दोषी ठहराया गया।

C. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) & 3(2)(v) **- No material to show that the injured was beaten because he belonged to S.C./S.T. - In fact the injured had encroached upon a Govt. land and the appellant wanted to grab that land - Mere utterance of Caste by itself would not be sufficient to make out a case under the Act, 1989 - Appellants acquitted.**
(Paras 13, 14)

ग. अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) व 3(2)(v) – यह दर्शाने के लिये कोई सामग्री नहीं कि आहत को इसलिए पीटा गया क्योंकि वह अनुसूचित जाति/अनुसूचित जनजाति का था – वास्तव में आहत ने सरकारी भूमि पर अतिक्रमण किया था और

अपीलार्थी उस भूमि को हथियाना चाहता था – मात्र जाति का उच्चारण किया जाना अपने आप मे अधिनियम 1989 के अंतर्गत प्रकरण बनने के लिए पर्याप्त नहीं होगा – अपीलार्थीगण दोषमुक्त।

D. Criminal Procedure Code, 1973 (2 of 1974), Section 320 - Compromise **- Complainant has filed compromise application during the pendency of appeal which was duly verified - Application for compromise accepted in respect of appellants No. 2 to 4 who have been convicted under Section 325/34 - Application in respect of appellant No.1 rejected - However, the sentence is reduced to the period already undergone and fine amount is enhanced to a sum of Rs. 10000 from Rs. 1000/-. (Para 16, 19)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौता – शिकायतकर्ता ने अपील के लंबित रहने के दौरान समझौते का आवेदन प्रस्तुत किया जो सम्यक् रूप से सत्यापित था – अपीलार्थी क्र. 2 से 4 जिन्हें धारा 325/34 के अंतर्गत दोषसिद्ध किया गया है, से संबंधित समझौते हेतु आवेदन स्वीकार किया गया – अपीलार्थी क्र. 1 से संबंधित आवेदन अस्वीकार किया गया – किंतु दण्डादेश को भुगताई जा चुकी अवधि तक घटाया गया और अर्थदंड की राशि को रू. 1,000/– से बढ़ाकर 10,000/– किया गया।

Cases referred :

AIR 1989 SC 1456, 2005(4) MPLJ 467, AIR 1999 SC 2181, AIR 1993 SC 1256, AIR 1973 SC 2418.

Sankalp Kochar, for the appellants.

Ajay Tamrakar, P.L. for the respondent/State.

JUDGMENT

N.K. GUPTA, J. :- The appellants have preferred the present appeal being aggrieved with the judgment dated 19/3/1998 passed by the Special Judge under SC/ST (Prevention of Atrocities) Act, Damoh in Special Case No.452/1996 whereby each of the appellant has been convicted of offence under Sections 148, 506-B of IPC and Sections 3(1)(x) and 3(2)(v) of SC/ ST (Prevention of Atrocities) Act (hereinafter referred to as **"Special Act"**) and sentenced to one year's RI, six months' RI, six months' RI and three years' RI respectively. The appellant No.1 has also been convicted of offence under Section 326 of IPC and sentenced to three years' RI with fine of Rs.1000/-, whereas the remaining appellants have been convicted of offence

under Sections 326/149 of IPC and the sentence similar to the appellant No.1 was passed against them.

2. The prosecution's story, in short, is that on 7.11.1996 the complainant Nanhe Bhai (PW-2) was going to the house of one Lakhan Singh to get some grains at Village Jhagri (Police Station Pathariya District Damoh). In front of the house of Gulab Singh, appellant No.1 Ashok Lodhi detained him and abused him with obscene words and words related to his caste and gave blow of katarna on his head. Thereafter he gave a second blow on his left wrist. In the meantime, the other appellants Chandan Singh, Deo Singh, Roop Singh and Devi Singh arrived with sticks. They also abused the complainant with obscene words and the words related to the caste of the complainant and assaulted him with sticks causing various grave injuries. Witnesses Gulab Singh (PW-5), Mulu (PW-1) and Badi Bahu (PW-3)-wife of the complainant had saved the complainant. Complainant Nanhe Bhai went to the Police Station Pathariya with the help of others and lodged an FIR Ex.P-2. He was sent for his medico legal examination to the Primary Health Centre, Pathariya. Dr.E. Minj (PW-10) examined the complainant Nanhe Bhai and gave his report Ex.P-15A. He found two incised wounds to the complainant, out of them one was on his head and second was on his left wrist. Three blunt wounds were found upon the complainant on his right wrist, left thigh and right knee. Complainant Nanhe Bhai was referred for his X-ray examination. Dr.O.P.Dubey (PW-6) examined the victim Nanhe Bhai radio-logically and gave his report Ex.P-13.He found a fracture of ulna bone in his left hand as well as right hand. There was a fracture in femur bone. After due investigation, a charge sheet was filed before the Special Judge, Damoh.

3. The appellants-accused abjured their guilt. They did not take a specific plea, however they have stated that they were falsely implicated in the matter and no defence evidence was adduced.

4. After considering the evidence adduced by the prosecution, the Special Judge, Damoh convicted and sentenced the appellants as mentioned above.

5. During the pendency of this appeal, appellant No.5 Devi Singh had expired, and therefore his appeal was dismissed being abated. Also IA No.12854/2015 was filed under Section 320 of Cr.P.C. The complainant Nanhe Bhai appeared before the Court and as per the direction of this Court,

he appeared before the Registrar (J-1), and as per the report of Registrar (J-1), the dispute between the parties was resolved and the application was moved by complainant Nanhe Bhai with free consent and he voluntarily agreed to do compromise. Therefore, the said application is also to be decided by the present judgment.

6. As argued by the learned counsel for the appellants, the role of each of the appellant should be examined first and thereafter conclusion may be drawn about the offences done by them. Mulu (PW-1), Nanhe Bhai (PW-2), Badi Bahu (PW-3) and Gulab Singh (PW-5) were examined as eye-witnesses. Mulu (PW-1) and Gulab Singh (PW-5) have turned hostile. They have stated that complainant Nanhe Bhai assaulted the appellant No.1 Ashok, and therefore Ashok ran away from the spot. He jumped over a wall in following the appellant No.1 Ashok, complainant Nanhe Bhai also tried to jump the wall, but in doing so he fell down on the earth and sustained injuries, whereas Nanhe Bhai and Badi Bahu have stated that initially appellant No.1 Ashok caused two blows with katarna and injured the complainant Nanhe Bhai on his head and left hand. Some confusion was recorded in the statement of Badi Bahu and thereafter she was re-cross examined and in para 11 of her statement, she has stated that the injury of *katarna* was caused on the left hand of victim Nanhe Bhai. These two witnesses have categorically stated that of the appellants, Chandan Singh gave blow of a stick causing injury on the right hand of complainant Nanhe Bhai. Appellant Roop Singh gave a blow of stick causing injury on the right thigh of the victim and appellant Devi Singh gave a blow causing injury on his knee. It is true that Badi Bahu is the wife of complainant Nanhe Bhai and no independent witness is available in support of complainant Nanhe Bhai. However, the testimony of witnesses Mulu and Gulab Singh appears to be dis-believable, because their version could not be corroborated by the medical evidence. According to Dr.Minj (PW-10) victim Nanhe Bhai sustained two incised wounds, one was on the head and second was on the left wrist. Those injuries could not be caused due to fall on the ground. It appears that the witnesses Mulu and Gulab Singh have turned hostile and they are taking the side of the appellants.

7. The testimony of victim Nanhe Bhai is duly corroborated by the timely lodged FIR Ex.P-2. The incident took place at 5:30 PM and looking to the injuries of victim Nand Kishore, some time must have been consumed while

reaching to the police station, and therefore looking to the time in lodging the FIR, the FIR Ex.P-2 was lodged within time. The testimony of complainant Nanhe Bhai is duly confirmed by Dr.Minj (PW-10), who found incised wounds on the head and left hand of the complainant, and contused wounds on the right hand, left thigh and right knee. Dr. Minj has stated about the places of injuries and the places of injuries were same as stated by the complainant and eye-witness Badi Bahu. Further the testimony of the complainant is duly corroborated by Dr. O.P.Dubey (PW-6), who proved his radio-logical report Ex.P-13 and found that there were three fractures upon complainant Nanhe Bhai, one was on the left hand, second was on the right hand and third was on the left femur bone.

8. After considering the evidence given by the complainant, eye-witness Badi Bahu, timely lodged FIR; the medical evidence of Dr. Minj as well as Dr. Dubey, it is proved beyond doubt that appellant No.1 Ashok caused two incised wounds with sharp cutting weapon to complainant Nanhe Bhai, whereas the remaining appellants caused three injuries with sticks causing two fractures to complainant Nanhe Bhai. The learned counsel for the appellants has submitted that no fracture was found below wound caused by the appellant No.1 in the left hand of complainant Nanhe Bhai, and therefore offence of the appellant No.1 may fall within the purview of Section 324 of IPC. If in connection of this contention, the MLC reports as well as radio-logical report are examined, then complainant Nanhe Bhai did not say that except of appellant No.1, any other appellant assaulted in his left hand. In the FIR Ex.P-2, it is specifically mentioned that the injury caused on the left wrist of complainant Nanhe Bhai was caused by appellant No.1 Ashok and none else had caused any injury on his left hand, and therefore Dr. Minj (PW-10) found one incised wound on the mid of left arm. The word "middle" is not mentioned in the deposition of Dr.Minj but, it is mentioned in his report Ex.P-15A. Also Dr. Dubey (PW-6) found fracture in ulna bone of his left hand at middle portion, and therefore fracture is corresponding to the incised wound caused in left hand of complainant Nanhe Bhai, and therefore the offence of appellant No.1 shall fall within the purview of Section 326 of IPC.

9. It would be apparent that at the time of incident, complainant Nanhe Bhai was on his way and the incident was caused in front of house of Gulab Singh and at that time Nanhe Bhai did not do any act so that any right of

private defence or sudden or grave provocation would have accrued to the appellants. Each of the appellant gave powerful blow with the weapon kept by them. When a person keeps a weapon and assaults with a weapon, then he should know the result of his overt-act, and therefore according to the provisions of Section 39 of IPC where all the appellants knew the result of their overtact and assault was done without any sudden or grave provocation or any right of private defence, then voluntarily they caused grievous hurt to complainant Nanhe Bhai, out of them appellant Ashok No.1 had caused a grave injury with the help of sharp cutting weapon, whereas other appellants had caused grave injuries with the help of sticks, and therefore independently the appellant No.1 is guilty of offence under Section 326 of IPC, whereas the remaining appellants are guilty of offence under Section 325 of IPC.

10. The trial Court has convicted the remaining appellants of offence under Section 326 read with Section 149 of IPC on the ground that all the appellants had constituted unlawful assembly and in furtherance of their common object they committed the crime, however if the facts of the case are examined, then it would be apparent that initially when the appellant No.1 Ashok assaulted the complainant Nanhe Bhai, other appellants were not present and when they assaulted complainant Nanhe Bhai, then the appellant No.1 did not repeat the assault. When the crime of offence under Section 326 of IPC was committed by the appellant No.1 Ashok and at that time no other appellant was present at the spot. Hence, when offence committed by appellant No.1 Ashok, in absence of other accused, no unlawful assembly could be constituted. In this connection, the judgment of Hon'ble Apex Court in the case of " *Allauddin Mian and others Vs. State of Bihar*" (AIR 1989 SC 1456) may be referred and a little portion of that judgment is reproduced as under:-

> ".....There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of anyone or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section

149....."

In the light of the aforesaid judgment, if the factual position of this case is examined, then it would be apparent that there is no evidence against the appellants that they were pre-determined to cause grievous hurt to complainant Nanhe Bhai. For considering the common intention or common object and consequently constitution of unlawful assembly, there must be previous meeting of mind. While meeting of mind of the accused persons may take place prior to the incident and it may take place soon before the incident. In the present case, nobody knew that Nanhe Bhai would pass in front of house of Gulab Singh, and therefore there was no meeting of mind of the appellants prior to the incident. Secondly, when other appellants came to the spot, appellant No.1 Ashok had already concluded his overt-act, and thereafter he did nothing. Hence, it appears that there was no meeting of mind took place between all the appellants. Let it be discussed in detail. When Nanhe Bhai was found in front of house of Gulab Singh by the appellant No.1, and therefore he started assaulting in absence of remaining appellants, and therefore according to the provisions of Section 141 of IPC, no unlawful assembly was constituted when the appellant No.1 started assaulting complainant Nanhe Bhai. When other appellants assaulted complainant Nanhe Bhai, there is no overt-act of appellant No.1 Ashok to show that he had any common object with them. Other appellants were four in number, and therefore they could not constitute unlawful assembly in absence of common object of appellant No.1 Ashok. Under such circumstances, in the present case, no unlawful assembly was constituted, and therefore the trial Court has committed an error in convicting the appellants of offence under Section 148 of IPC. Similarly, the trial Court has committed an error in convicting the remaining appellants for the offence under Section 326 of IPC with the help of Section 149 of IPC. When unlawful assembly has not been constituted, then no one can be convicted for a particular offence done by one of the accused with the help of Section 149 of IPC.

11. When it is found that no unlawful assembly was constituted at the time of incident, then the overt-act of each of the appellant should be examined separately. As discussed above, it is proved beyond doubt that appellant No.1 Ashok had committed the offence under Section 326 of IPC and when other appellants assaulted the victim, he did not participate further, and therefore it cannot be said that he had any common intention with other accused persons.

Hence the appellant No.1 Ashok cannot be convicted of offence under Section 325 of IPC either directly or with the help of Section 34 of IPC.

12. Similarly, as discussed above, the remaining appellants reached to the spot when the appellant No.1 had already concluded his blows, and therefore it cannot be said that the remaining appellants had intended to assault the complainant Nanhe Bhai by sharp cutting weapon, and therefore they cannot be convicted of offence under Section 326 read with Section 34 of IPC. It would be apparent that the remaining appellants were four in number and they caused two grave injuries, one was on the right hand and another was on the thigh of the complainant, which indicates that out of these four appellants, only two appellants had caused grave injuries to the complainant. However, at that time each of the appellant had participated in the assault and if assault was caused with a stick, then each of them should know that a fracture could be caused to the victim. Hence the common intention of each of the appellant is proved with other appellants for the offence under Section 325 of IPC, and therefore the remaining appellants would have been convicted of offence under Section 325 read with Section 34 of IPC.

13. The trial Court has convicted the appellants of offence under Section 3(2)(v) of the Special Act. However, if the evidence of Nand Kishore and Badi Bahu is considered, then there is no evidence that the appellant No.1 Ashok assaulted the complainant Nanhe Bhai on the basis of his caste. In para 13 of evidence given by victim Nanhe Bhai, it would be apparent that Nanhe Bhai had encroached on a Government land and the appellant Ashok wanted to encroach that land by dispossessing Nanhe Bhai. Since the caste was not the reason for the quarrel that took place between the parties, then the appellant could not be convicted of offence under Section 3(2)(v) of the Special Act. The trial Court has committed an error in convicting the appellants for that offence.

14. Similarly, when it is not proved that the offence committed by the appellants was committed due to the caste of the complainant, therefore only uttering the word "chamra", it cannot be said that the appellants insulted the complainant on the basis of his caste. In this connection the judgment passed in the case of "*Anil Kumar Pandey Vs. Daulat Prasad*", [2005(4) MPLJ 467] may be referred, in which it is held that if someone has been called by

name of his caste without any intention to insult or humiliate a member of scheduled caste, then no offence under Section 3(1)(x) of the Special Act is made out. In the light of the aforesaid judgment, the trial Court has committed an error in convicting the appellants of offence under Section 3(1)(x) of the Special Act.

15. It is stated by Nanhe Bhai and Badi Bahu that after causing injuries to the victim, when the witnesses reached to the spot, the appellants ran away. Nanhe Bhai did not say in his statement before the trial Court that any threat was given by any of the appellant. Also Nanhe Bhai was examined before the Court in the month of June 1997, whereas the incident took place in November 1996. Nanhe Bhai did not state that the threat given by the appellants as mentioned in the FIR Ex.P-2 was executed by the appellants thereafter. Hence if it is presumed that the appellants gave any threat to complainant Nanhe Bhai, then it does not fall within the purview of "criminal intimidation". Hence, the appellants could not be convicted for any part of offence under Section 506 of IPC. The trial Court has committed an error in convicting the appellants for the offence under Section 506-B of IPC.

16. Before coming to the conclusion of sentence, an order should be passed on IA No.12854/15, an application for seeking permission to compromise. It is true that the victim has entered into a compromise with free consent. Out of the offences, proved against the appellants, offence under Section 325 of IPC is compoundable with permission of the Court. If the dispute between the parties is resolved and the complainant is ready to do compromise in the case with free consent, it would be proper to give permission to do compromise. However, the offence under Section 326 of IPC is not compoundable, and therefore the application cannot be accepted for the appellant No.1 Ashok, who is guilty of offence under Section 326 of IPC. Accordingly, IA No.12854/2015 is hereby disposed off with a direction that it is allowed for the appellants No.2 to 4 relating to offence under Section 325 of IPC and in the result the appellants No.2 to 4 shall be acquitted from the charge of Section 325 of IPC in the light of the compromise, whereas the application of compromise is not accepted for the applicant No.1 Ashok. However, looking to the voluntarilyness of complainant Nanhe Bhai, the effect of compromise will be considered at the time of order of sentence.

17. So far as the sentence is concerned, it is to be passed against the

appellant No.1 for the offence under Section 326 of IPC. In this connection, the learned counsel for the appellants has invited attention of this Court to the judgment of Hon'ble the Apex Court in the case of "*Surendra Nath Mohanty Vs. State of Orissa*" (AIR 1999 SC 2181), "*Pashora Singh Vs. State of Punjab*" (AIR 1993 SC 1256) *and "Ram Pujan Vs. State of UP"*, (AIR 1973 SC 2418). He further submitted that Hon'ble the Apex Court in the case of compromise, reduced the sentence of the accused for the period for which he remained in the custody, and therefore in the present case the sentence of the appellant No.1 be reduced to the period for which he remained in the custody. However, if the judgments of Hon'ble the Apex Court are examined, then in the case of *Surendra Nath Mohanty* (supra) the custody period of the appellant was 3 months, in the case of *Pashora Singh* (supra) the custody period of the appellant was 11 months and 22 days and in the case of *Ram Pujan* (supra) the custody period of the appellant was 4 months. In the present case, the trial Court did not prepare the certificate under Section 428 of Cr.P.C. Actually, when the judgment is passed and the file is handed over to the Criminal Reader, then control of the file does not remain with the Presiding Officer, though it is the duty of the Presiding Officer to pass a certificate under Section 428 of Cr.P.C. But if file is not produced before him by the Criminal Reader, then no certificate will be available in such case file. It is advisable that the custody period of each of the appellant-accused should be mentioned in the judgment itself so that in case lapses are caused by the Criminal Reader, even then the appellate Court can find out about the custody period of the accused, which can be adjusted towards the sentence.

18. After perusal of entire record, it appears that the appellant No.1 Ashok was arrested on 27.11.1996 and was released on bail on 29.11.1996. Thereafter he remained on bail during the trial and his sentence was already suspended by the trial Court at the time of passing of judgment and thereafter his execution of jail sentence was suspended by this Court vide order dated 17.4.1998, and therefore the appellant No.1 remained in the custody for three days only. However, the appellant has faced the trial and appeal since the year 1996 i.e. for last 19 years. Also the compromise took place between the complainant Nanhe Bhai and the appellant No.1 Ashok. The appellant No.1 Ashok was the first offender and after taking these facts into consideration, it would be proper to reduce the jail sentence of appellant No.1 Ashok to the

period for which he remained in the custody, but a heavy fine should be imposed upon him.

19. On the basis of the aforesaid discussion, the present appeal filed by the appellants is hereby partly allowed. Each of the appellant is acquitted from the charge of Sections 148, 506-B of IPC and Sections 3(1)(x) & 3(2)(v) of the SC/ST (Prevention of Atrocities) Act. The appellants No.2 to 4 are also acquitted from the charge of Section 326/ 149 of IPC. They cannot be convicted of offence under Section 325 of IPC in the light of the compromise. Hence the appellants No.2 to 4 are acquitted from all the charges. They would be entitled to get the fine amount back, if they have deposited the same before the trial Court. The appellant No.1 is acquitted from all the charges except the charge under Section 326 of IPC. However, in the light of the aforesaid discussion, his sentence is reduced to the period for which he remained in the custody by enhancing the fine amount from a sum of Rs.1000/- to a sum of Rs.10,000/-. The appellant No.1 is directed to deposit the remaining fine amount before the trial Court within two months from today, failing which he shall undergo for one year's RI. Though compromise took place between the parties, and therefore compensation is not required to be granted to the complainant, however as per the provisions of Section 357 of Cr.P.C. (Madhya Pradesh amendment) compensation is required to be granted, because the complainant of the present case belongs to a scheduled caste. Hence, it is directed that if fine is deposited, then a sum of Rs.2000/- be given to complainant Nanhe Bhai S/o Shri Kadorilal resident of Jhagri, Police Station Pathariya District Damoh by way of compensation.

19. At present all the appellants are on bail, therefore their presence is no more required before this Court, therefore it is directed that their bail bonds shall stand discharged.

20. A copy of this judgment be sent to the trial Court with its record for information and compliance with direction that if fine is not deposited in the given time period, same be recovered as per the provisions of Section 68 of IPC.

Order accordingly.

I.L.R. [2015] M.P., 2487
CIVIL REVISION
Before Ms. Justice Vandana Kasrekar
Civil Rev. No. 327/2012 (Jabalpur) decided on 19 August, 2015

SABDAL SINGH & anr. ...Applicants
Vs.
SHIVRAJ SINGH THAKUR & ors. ... Non-applicants

Civil Procedure Code (5 of 1908), Section 11 - Res-judicata **- In previous suit relief claimed was that of declaration and in subsequent suit relief claimed is partition although the parties are same and subject matter is same - As cause of action is different therefore subsequent suit is not hit by Principle of Res-judicata - Petition dismissed. (Paras 6 & 7)**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व निर्णय – पूर्ववर्ती वाद में किया गया दावा अनुतोष घोषणा का था और पश्चात्वर्ती वाद में विभाजन के अनुतोष का दावा किया गया है यद्यपि पक्षकार समान है और विषय वस्तु समान है – चूंकि वाद हेतुक भिन्न है इसलिए पश्चात्वर्ती वाद, पूर्व निर्णय के सिद्धांत से प्रभावित नहीं होता – याचिका खारिज।

Cases referred :

AIR 2003 SC 718, AIR 1996 SCC 378.

Imtiaz Husain, for the applicants.
R.S. Siddiqui, for the non-applicants No. 1 to 3.
K.L. Prajapati, for the non-applicants No. 1 to 14, 16 & 17.

ORDER

Ms. Vandana Kasrekar, J. :- The petitioners have filed this Civil Revision challenging the order dated 30.08.2012 passed by Civil Judge Class-I, Begamganj, District Raisen in Civil Suit No. 39-A/2010, thereby rejecting the application filed under Order 7 Rule 11 of the C.P.C.

2. Brief facts of the case are that the plaintiffs/respondents filed Civil Suit for partition, possession and declaration against the defendants/petitioners. The defendants/petitioners have filed an application under Order 7 Rule 11 of the C.P.C. for dismissal of the suit on the ground of res judicata stating that the suit is barred by principle of res judicata in view of the judgment and

decree passed in Civil Suit No. 82-A/2004 which was affirmed in Civil Appeal No. 8-A/2005 vide its judgment and decree dated 09.04.2007.

3. The Court below rejected the application filed by the petitioners. Against the said order the petitioners have filed Review Petition which was also dismissed. Being aggrieved by both the orders the petitioners have filed a Writ Petition No. 20066/2011 before this Court. The Writ Petition was disposed of vide order dated 27.01.2012 with a direction to the trial Court to frame preliminary issue whether the suit is barred by res judicata and to try the same in accordance with law without being influenced by order dated 14.09.2011 and 24.10.2011. In compliance of the order of this Court, the trial Court framed issue on the point of res judicata and permitted the parties to lead the evidence on the issue so framed. After recording the evidence the trial Court vide impugned order dated 30.08.2012 has held that the suit filed by the plaintiffs/respondents is not barred by the principle of res judicata. Being aggrieved by this order, the petitioners have filed the present revision.

4. Learned counsel for the petitioners argues that the trial Court has erred in holding that the suit is not barred by res judicata. He further argues that in earlier suit the parties as well as the subject matter of the suit is same as in the subsequent suit and, therefore, the trial Court has committed an error in not dismissing the suit on the principle of res judicata. He further argues that in the earlier suit the trial Court has found that the plaintiffs are not the owner of the suit lands and the said judgment has attained the finality in First Appeal as well as Second Appeal and, therefore, the plaintiffs cannot file a suit against for partition as the question of partition does not arise on the same dependent and consequential on the title of the property. He further argues that as in the previous suit the plaintiffs failed to prove their title, there is no question of decree of any partition in favour of the respondents/plaintiffs, therefore, he prays for dismissal of the suit on the ground of res judicata. He relies on the judgment passed by Apex Court in the case of *Abdul Rehman Vs. Prasony Bai and another*, AIR 2003 SC 718.

5. On the other hand, learned counsel appearing for the respondents submit that although the disputed land is the same as involved in the previous suit and the parties are same but issues and the cause of action in the subsequent suit is different. In the previous suit the plaintiff has claimed the relief for declaration while in the subsequent suit, he prays for relief of partition. Thus, the relief claimed in both the suits are different and, therefore, trial Court has

not committed any error in deciding the preliminary issue in favour of the respondents/plaintiffs. Learned counsel placed reliance on the judgment passed by Apex Court in the case of *Deva Ram and another Vs. Ishwar Chand and another,* AIR 1996 SCC 378.

6. I have heard learned counsel for the parties and perused the plaint filed by the petitioners of the previous suit as well as the subsequent suit. From perusal of the relief clause, it is apparent that the relief which is claimed in the previous suit is that of the declaration, while in the subsequent suit the relief claimed by the plaintiffs is regarding the partition although the parties and the subject matter of the suit is identical in both the cases, however, the relief which is claimed in both the cases are different. The Hon'ble Apex Court in *Deva Ram and Another* (supra) in paragraph 3 has held as under:-

> "3. In the previous suit, which was instituted by the respondents, an issue, namely, Issue No.5 was framed on the status of the appellant as to whether they were the tenants of the land in suit under the respondents but in the subsequent suit did not plead that they were the tenants under the respondents. What they pleaded was that they were in possession since a long time namely from Samvat 2005 and had, therefore, acquired title by adverse possession. Consequently, in the subsequent suits, the issue which was raised and tried in the previous suit was not raised, framed or tried and no finding, therefore, came to be recorded as to whether the defendants were tenants of the land in suit. It is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this suit, namely, the disputed land, is the same as was involved in the previous suit but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and, therefore, in the absence of pleadings, in the absence of issues and in the absence of any finding, it is not open to the learned counsel for the appellants to invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents."

7. In the said judgment, the Apex Court has held that it is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this suit, namely, the disputed land, is the same as was involved in the previous suit but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and, therefore, the Apex Court has held that the appellants cannot invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents. In the present case also the subject matter of the suit is same, parties are same, however, the cause of action in both the suits are different and, therefore, it cannot be said that the suit is hit by principle of res judicata. The judgment relied upon by learned counsel for the petitioners is not applicable in the present case as in the present case as it was already held that the cause of action is different in both the suits. So far as, question of confirmation of title and claiming the relief of partition in the previous suit is concerned, it is held that in the subsequent suit the plaintiffs have claimed the relief of partition and whether he can claim the partition when he has no title in the suit in question which is to be tried by the Courts below after the trial. Thus the trial Court has not committed any error much less material irregularity in deciding the preliminary issue in favour of the plaintiffs/respondents.

8 Thus, the revision fails and is hereby dismissed without any order as to costs.

Revision dismissed.

I.L.R. [2015] M.P., 2490
CRIMINAL REVISION
Before Mr. Justice Alok Verma
Cr. Rev. No. 162/2014 (Indore) decided on 14 January, 2015

UMESH SINGH & ors. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

(Alongwith Cr. Rev. No. 246/2014)

A. Penal Code (45 of 1860), Section 307 and Criminal Procedure Code, 1973 (2 of 1974), Section 227/228 - Framing of Charge **- Scuffle took place between complainant party and police personnel -**

No bony injury was found on the body of victim - Police personnel were having service revolver which was not used - Considering the nature of injuries, it is clear that the force with which the injuries were caused, was not intended to cause grievous injury - Charge u/s 307 not made out - Trial Court directed to reconsider the framing of charge considering the bar created by Section 197 of Cr.P.C. to whether police personnel were on duty. (Paras 7 to 9)

क. दण्ड संहिता (1860 का 45), धारा 307 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227/228 – आरोप विरचित किया जाना – शिकायतकर्ता पक्षकार और पुलिसकर्मियों के बीच हाथापाई हुई – पीड़ित के शरीर पर कोई अस्थि चोट नहीं पाई गई – पुलिसकर्मियों के पास सर्विस रिवाल्वर थी जिसका उपयोग नहीं किया गया – चोटों का स्वरूप विचार में लेने से यह स्पष्ट है कि जिस बल के साथ चोटें कारित की गई थीं उसका आशय गंभीर चोट कारित करना नहीं था – धारा 307 के अंतर्गत आरोप नहीं बनता – विचारण न्यायालय को दं.प्र.सं. की धारा 197 द्वारा सृजित वर्जन को विचार में लेकर आरोप विरचित करने पर पुर्नविचार करने हेतु निदेशित किया गया कि क्या पुलिसकर्मी कर्तव्यस्थ थे।

***B. Penal Code (45 of 1860), Sections 333 & 353* - Obstruction while performing official duty - Bike of the son of complainant collided with that of a police official - Other police personnel reached on spot to support police personnel - Trial court should consider framing of charge u/s 333, 353, as they were obstructed while performing official duties. (Paras 6 to 10)**

ख. दण्ड संहिता (1860 का 45), धाराऐं 333 व 353 – शासकीय कर्तव्य का निर्वहन करते समय अवरोध – शिकायतकर्ता के पुत्र की मोटर साइकिल पुलिसकर्मी की मोटर साइकिल से टकराई – पुलिसकर्मी का समर्थन करने के लिए अन्य पुलिसकर्मी मौके पर पहुंचे – विचारण न्यायालय को धाराऐं 333, 353 के अंतर्गत आरोप विरचित करने पर विचार करना चाहिए क्योंकि पदीय कर्तव्यों का निर्वहन करते समय उन्हें अवरूद्ध किया गया था।

Nilesh Dave, for the applicants
L.L. Sharma, Dy. G.A. for the non-applicant/State.
Gaurav Verma, for the non-applicant Nos. 2 to 6.

JUDGMENT

ALOK VERMA, J. :- This common order shall govern the disposal of CRR nos. 162/2014 and 246/2014 as they arise from the same incident resulting

into two separate cases counter to each other.

2. According to the prosecution story, the incident took place on 02/06/2012 at about 6.30 am. The genesis of the incident is stated to be minor collision of bike of son of the complainant Dashrathsingh with that of a police official. The dispute arose between the policeman and the son of complainant. At that movement, the present accused, who were six in number, reached the spot to support the police official. They also inflicted injuries on complainant Dashrath, his brother Chandrabhansingh, his son Umendra Singh and his uncle Nirbhaysingh. They also tried to drag them to Bolero vehicle, in which, they reached the village by showing them service revolver. On listening hue and cry of the incident, other villagers also came on the spot. It is alleged that with the help of them, the complainants overpowered the police party, snatched the revolver from accused Pradeep Chouhan, which was later handed over to Station In-charge, police station – Cant. On the basis of the complaint lodged by villagers, the police station – Bherugarh, Neemuch registered crime no. 130/2012 under sections 323, 506, 307/34 of IPC against the police personnel, who were six in number. After investigation, charge sheet was filed.

3. The police personnel also filed a complaint against the villagers stating therein that when they went to village for search of the person, against whom, warrant was issued, they were attacked by the villagers and they were wrongfully confined. On their complaint, crime no. 131/2012 under sections 147, 149, 323, 342, 506, 353 and 333 of IPC was registered. After investigation, two separate charge-sheets were filed before the concerning Magistrate, who committed the cases to the Court of Session. Being counter to each other, the cases were made over to First Additional Sessions Judge, Neemuch.

4. Learned 1st ASJ by impugned order dated 15/01/2014 in CRR no. 162/2014 heard both the parties on the question of framing of charges and found that *prima facie* offences under sections 147, 148, 307 in alternative 307/149, 323 in alternative 323/149 (five counts), 342 of IPC are made out. Accordingly, learned ASJ framed seven charges which are similar in nature against the six accused persons.

5. Aggrieved by the impugned order, CRR no. 162/2014 was filed on the ground that in x-ray report, no bony injury was found in the scull of injured Dashrathsingh and therefore, offence under section 307 of IPC is not made

out *inter-alia* and also that charge no. 5 which is common to all the accused was not based on the facts of the case as Akhatabai, Jinat and Shamina are not injured persons in the present case and similarly, Chand Mohd, Mohd Parvej and Kalu are not co-accused in the present case. It is also argued that at the time of the incident, the police personnel were on duty and therefore, cognizance cannot be taken against them as bar under section 197 of Cr.P.C is created.

6. In CRR no. 246/ 2014 is filed against the impugned order dated 15/01/2014, by which, learned ASJ found that prima facie offence under sections 147, 342, 323 in alternative 323 read with section 149, 506 of IPC are made out against the present applicant, This revision is filed on the ground *inter-alia* that offence under sections 353 and 333 of IPC was registered initially and however, the learned Additional Sessions Judge not framed the charge under these sections. The police personnel were on official duty and therefore, they were obstructed while performing their official duty, and as such, the charge under sections 353 and 333 of IPC should also be framed. It is also argued that in this case, the police personnel suffered grievous injury, which were dangers to life and therefore, the charge under section 307 of IPC should also be framed.

7. In CRR no. 162/2014, photocopies of the complaint and the charge-sheet are filed. On page 119, X-report is available which shows that there is no bony injury on the scull of Dashrathsingh. Apart from the injuries on his head, he suffered injury on his left arm and on his waist, Nirbhaysingh suffered a crush injury on his neck and Chandrabhansingh also suffered minor injury. Though one of the accused was carrying his service revolver during the incident, the same was not used as fire arm. It is alleged that butt was used to inflict injury on Darashrathsingh. Apart from the revolver, it is alleged that hockey stick was used to inflict injury on the complainant. Taking all the nature of injuries, it is clear that force with which the injuries were caused, was not intended to cause grievous injury. No bony injury was found and therefore, the charge under section 307 of IPC is not made out.

8. So far as the arguments in respect of charge no. 5 is concerned, after going through the copies of the charge-sheet, it is clear that these persons are not injured in the present case and those stated to be the accused, are also not the accused in the present case. It appears that due to some clerical /

typographical error, this lapse has taken place.

9. Accordingly, CRR no. 162/2014 is allowed. The impugned order dated 15/01/2014 and the charge framed in compliance thereof are set aside. The matter is remanded back to concerning Court with direction that it should re-consider the framing of charge in light of the observations made hereinabove in respect of section 307 of IPC and also take into consideration, whether police personnel were on duty and bar created by section 197 of Cr.P.C applies in this particular case.

10. Coming to CRR no. 246/2014, I find that the case was initially registered under sections 353 and 333 of IPC. Learned Additional Sessions Judge has not considered, whether the police personnel were on duty and therefore, CRR no. 246/2014 is also allowed. The impugned order dated 15/01/2014 and the charge framed in compliance thereof are also set aside. It is directed that learned Additional Sessions Judge to take into consideration, whether the police personnel were on official duty and charge under sections 333 and 353 of IPC are made out.

11. It is needless to say that in case, learned Judge found after due consideration that all the charges are triable by Judicial Magistrate First Class, he may take recourse as per the provision of section 228 of Cr.P.C.

12. With this directions and observations, CRR nos. 162/2014 and 246/2014 stand disposed of.

C c as per rules.

Revision disposed of.

I.L.R. [2015] M.P., 2494

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Alok Verma

M.Cr.C. No. 5863/2008 (Indore) decided on 19 November, 2014

SUBODH KUMAR GUPTA ...Applicant

Vs.

SMT. ALPANA GUPTA & anr. ...Non-applicants

(Alongwith M.Cr.C. No. 5317/2010)

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and

***Penal Code (45 of 1860), Sections 406, 420, 461, 471 & 120-B - Jurisdiction of Criminal Court* - There is a dispute regarding the lease of the dairy farm to the respondent no. 2 - It is purely a dispute of civil nature and for this purpose the jurisdiction vested in a criminal Court cannot be invoked to settle a dispute which is purely of civil nature - Proceedings quashed. (Para 16)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धाराऐं 406, 420, 461, 471 व 120–बी – दाण्डिक न्यायालय की अधिकारिता – प्रत्यर्थी क्रमांक 2 को डेरी फार्म का पट्टा दिये जाने के संबंध में विवाद है – यह शुद्ध रूप से सिविल प्रकृति का विवाद है और इस प्रयोजन हेतु दाण्डिक न्यायालय में निहित अधिकारिता का अवलंब ऐसा विवाद निपटाने के लिये नहीं लिया जा सकता जो शुद्ध रूप से सिविल प्रकृति का है – कार्यवाहियां अभिखंडित।

Cases referred :

(2009) 1 SCC (Cri) 801, (2010) 1 SCC (Cri) 1115, AIR 1971 SC 1389, AIR 1963 SC 1430.

S.C. Bagadia with *D.K. Chhabra,* for the applicant in M.Cr.C. No. 5863/2008 and for the non-applicant in M.Cr.C. No. 5317/2010.

Jai Singh with *M. Bachawat,* for the non-applicants in M.Cr.C. No. 5863/2008 and for the applicant in M.Cr.C. No. 5317/2010.

ORDER

ALOK VERMA, J. :- This common order shall govern the disposal of M.Cr.C. Nos.5863/2008 and 5317/2010.

2. The facts giving rise to these two applications under Section 482 of Cr.P.C. are that the applicant of M.Cr.C. No.5863/2008 Subodh Kumar Gupta who shall be referred to as applicant, for sake of convenience filed an criminal complaint against the respondents Smt. Alpana Gupta and Manakchand Agrawal, who shall be referred to as respondent Nos.1 and 2 respectively, for sake of convenience, before the Court of Chief Judicial Magistrate, Mandsaur. The complaint was filed under Sections 406, 420, 461, 471 and 120 B of IPC.

3. According to the averments made in the complaint, the applicant owned a modern Dairy Farm in which 200 cattle heads of hybrid hostenprison,

jersey cows, bulls and calves were kept. The total cost in the year 1980 was Rs.40,269/-. According to the applicant, he handed over possession of the farm along with 200 cattle heads to respondent No.2 on lease. The lease rent was Rs.12,000/- per year. Respondent No.2 paid lease rent upto the year 1992-1993 which was deposited in the personal account of the applicant on 08.12.1992. After the year 1992-1993, the respondent No.2 stopped paying lease rent. When the present applicant demanded the amount, he refused to pay him the amount and also refused to handover the cattle heads. Even after he stopped paying lease rent, as the respondent No.2 was his relative, he did not take any action in good faith. However, on 07.06.2002, he served a notice to respondent No.2 but respondent No.2 did not reply the notice. He also sent a complaint to Superintendent of Police, Mandsaur by a registered letter. Finally, he lodged the complaint before Police Station City Kotwali, Mandsaur on 23.07.2003. However, the police did not take any action. According to the applicant, the respondent No.2 had even shown payment of lease rent in his income tax return as he was an income tax payee. On 22.07.2003 when he again claimed the cattle heads, the respondent No.2 refused to handover the cattle heads and informed him that he handed over all the cattle to respondent No.1 Smt. Alpana Gupta.

4. According to the applicant, from the very beginning the intention of the respondent No.2 was to deceit him. He entered into a conspiracy with respondent No.1 and they both committed the offence of breach of trust in respect of the cattle heads. On this premises, the complaint was filed before the Court of Chief Judicial Magistrate, Mandsaur. It transpires from the record that the learned Chief Judicial Magistrate ordered investigation under Section 156(3) of Cr.P.C., on which the Crime No.138/2004 was registered at Police Station City Kotwali, Mandsaur under Sections 406, 420, 468, 471 and 120 B on 27.02.2004. After investigation, a final report (closure) was filed by the police station under Section 173 of Cr.P.C. as closure No.91/2004 on 31.07.2004. It was stated in the final report that no evidence was found for registering the crime under aforesaid sections. It is also stated in the report that no documents in respect of giving the farm on lease to respondent No.2 was submitted before the police. On receiving the closure report the learned Chief Judicial Magistrate proceeded to inquire under Section 200 and 202 of Cr.P.C. The statements of complainant Subodh Gupta and another witness Anil Kumar Gupta was recorded by the learned Chief Judicial Magistrate and

thereafter the learned Magistrate passed the order dated 13.01.2008 whereby the learned Magistrate taking into consideration the statements of the present applicant and the witness gave a finding that prima-facie no offence under Sections 406, 420, 461, 471 and 120 B appear to have been committed. Accordingly, he dismissed the complaint and also excepted the closure report submitted by the police in Crime No.138/2004.

5. Against this order, revision was filed before the Sessions Court, Mandsaur which was made over to 4th Additional Sessions Judge, Mandsaur, who, vide order dated 14.07.2008 dismissed the revision, so far as it relates to respondent No.1. However, the learned Additional Sessions Judge ordered to proceed against the respondent No.2 observing that : -

> "जैसा कि उपर की गयी चर्चा से प्रकट हुआ है कि प्रकरण में कम से कम प्रस्तावित अभियुक्त माणकचन्द अग्रवाल के सम्बन्ध में तो भारतीय दण्ड संहिता की धारा 406 के अन्तर्गत कार्यवाही किए जाने के प्राथमिक रूप से पर्याप्त आधार दिखाई दे रहे हैं, किंतु उसके बाद भी दोनों ही अभियुक्तों के संबंध में परिवाद को निरस्त कर दिये जाने का अधिनस्थ न्यायालय का उक्त आदेश युक्तियुक्त उचित और विधानसम्मत नहीं कहा जा सकता है और इस परिप्रेक्ष्य में ऐसा भी प्रकट हो रहा है कि अधिनस्थ न्यायालय के द्वारा स्वयं में व्याप्त क्षेत्राधिकार का समुचित उपयोग नहीं किया गया है।"

6. Aggrieved by the order passed by the 4th Additional Sessions Judge, Mandsaur in aforesaid criminal revision, the applicant filed this application under Section 482 of Cr.P.C. which is registered as M.Cr.C. No.5863/2008 praying therein to revert the finding given by the learned Additional Sessions Judge and the Chief Judicial Magistrate be ordered to proceed against the respondent No.1 as well. In M.Cr.C. No.5317/2010, the respondent No.2 filed an application under Section 482 of Cr.P.C., praying thereby that the order of learned 4th Additional Sessions Judge be set aside.

7. Before proceedings further it may be observed here that admittedly the applicant and the respondents are closely related to each other. As a result of family feud, several civil litigations are pending between the parties. In several rounds of litigation, the matter travelled upto this Court and on some occasion upto the Apex Court also. However, this being a criminal case, the disputes involved in civil litigation has no direct bearing on this case except that it conveys to us that the parties do not have cordial relation with each other.

8. The counsel for the respondents raised a preliminary issue at this stage placing reliance on the judgment of Hon'ble Apex Court in *Raghunath Raj Singh Rousha Vs. Shivam Sundaram Promoters* (P) Ltd. (2009) 1 SCC (Cri) 801 and in *Rameshan P.O. Vs. Rakesh Kumar Yadav* (2010) 1 SCC (Cri) 1115. In these cases, it was held that disposing revision under Section 397 r/w Section 401 of Cr.P.C., filed against the order passed under Section 156 (3) of Cr.P.C., without issuing notice to the party against whom the investigation is directed or sought to be directed, is bad in law. The Court observed by not giving notice to the person against whom the prejudice is caused the principles of natural justice is violated.

9. The learned counsel for the respondents prays that in this case also the learned Additional Sessions Judge did not issue any notice to the respondents and passed an adverse order against the respondent No.2 without giving him an opportunity of hearing. In such circumstances, he prays that the matter should be remanded back to the learned Additional Sessions Judge.

10. It is true that the principle as laid down by the Hon'ble Apex Court squarely applies on this case. It is also true that the learned Sessions Judge should have given notice to the present applicant. However, in my opinion, now both the parties are present before this Court. They have been given full opportunity of hearing by this Court and looking to the short question involved in the case, I do not find any benefit would arise by remanding the matter back to Additional Sessions Judge. This matter is pending since 2003 and have already travelled upto this Court, remanding back the matter to Additional Sessions Judge would further drag the matter which do not appear proper in the present situation, therefore, instead of remanding back, the matter is decided on merit.

11. The learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in *Balraj Khanna Vs. Moti Ram and Chandra Deo Singh Vs. Prokash Chandra Bose* reported in AIR 1971 SC 1389 and AIR 1963 SC 1430. The Court observed in para 11 that : -

> "..... In *Chandra Deo Singh v. Prokash Chandra Bose* (1964) 1 SCR 639 = (AIR 1963 SC 1430) it has been held by this Court that the object of the provisions of Section 202, Criminal P.C. is to enable the Magistrate to form an opinion as to whether process should be issued or not. At that stage

what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant a conviction. It has been further pointed out that the function of the Magistrate holding the preliminary inquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out, even though much can be said on both sides, the committing Magistrate is bound to commit the accused for trial and the accused does not come into the picture at all till the process is issued."

12. In the present case, the learned Judicial Magistrate, Mandsaur gave following grounds for not taking cognizance against the respondents : -

1. In the statements of the present applicant under Section 200 of Cr.P.C., he stated that he shifted to Chandigarh in the year 1974 till the year 1980. He ran a dairy farm at Mandsaur and thereafter he gave lease of the dairy farm to respondent No.2. The learned Magistrate observed that looking to the style of functioning and business he conducted, it was not believable that without execution of any lease deed he handed over the possession of the farm to respondent No.2.

2. No other document is filed by the applicant to show that he gave the dairy farm and the cattle heads on lease to respondent No.2 in the income tax return. There is mentioned on lease rent, however, to whom and when it was paid is not mentioned in the income tax return.

3. During the investigation by police on being asked to produce documents showing that he gave the dairy farm and the cattle on lease to respondent No.1. The present applicant failed to produce any such documents and thereafter the Court instead of accepting the closure report submitted by the police, proceeded to further inquire into the matter and gave opportunity to the present applicant, he never produce any such documents before the Court also and, therefore, there is no ground to take cognizance under Section 406 of IPC. For

the remaining Sections 420, 461, 471 and 120 B, the Court observed that no document is produce by the present applicant to show that respondent No.2 committed any deceit on him.

4. On these grounds, the learned Magistrate reached to the conclusion that no prima-facie case existed for taking cognizance under aforementioned sections and accordingly dismissed the complaint and accepted the closure report submitted by the police.

13. The observation of the Revisional Court have already been quoted earlier in this order and need not be quoted again.

14. Going through the whole record of the impugned order, I find that only document indicating that the respondent No.2 Manakchand was running a dairy farm for which he obtained shed on rent. In his income tax return pertaining to assessment year 1993-1994 in para 1 (q) it is mentioned that:-

> "(q) Dairy shed Rent – Rs.12,000/- Dairy Shed is on rent and a sum of Rs.12,000/- for the financial year 1992-93 has been debited under this head. The details have been enclosed alongwith the return."

15. It may be seen that a sum of Rs.12,000/- was debited for the financial year 1992-1993 under this head. It is further mentioned that details had been enclosed with the return, however, the record shows no such details. It may further be observed that if it is assumed that there is a dairy farm on Mhow Neemuch Road which belonged to the present applicant then it was the duty of the present applicant to produce the papers showing that he was the owner of the dairy farm. No such documents are filed by the present applicant. Apart from this, there is no other evidence available on record to substantiate the averments of the present applicant that he gave the farm on lease to present applicant. Thus, I find that the learned Judicial Magistrate did not commit any irregularity and illegality while passing the order. However, the learned Revisional Court committed an error while taking the cognizance against the respondent No.2.

16. This apart, it is clear that even if there is a dispute regarding the lease of the dairy farm to the respondent No.2, it is purely a dispute of civil nature and for this purpose the jurisdiction vested in a criminal court cannot be invoked

to settle a dispute which is purely of civil nature.

17. Accordingly, I find that application filed by applicant Subodh Kumar Gupta under Section 482 of Cr.P.C. in M.Cr.C. No.5863/2008 has no merit and accordingly the application is dismissed. The application filed by respondent No.2 under Section 482 of Cr.P.C. in M.Cr.C. No.5317/2010 which is against the order passed by the revisional court is allowed. The order passed by the revisional court so far as it relates to the direction to the Court of Chief Judicial Magistrate, Mandsaur to proceed in the case against the respondent No.2 Manakchand Agrawal is set aside. However, the order in relation to respondent No.1 is confirmed. The application filed by respondent No.2 which is registered as M.Cr.C. No.5317/2010 is disposed of accordingly.

Order accordingly.

I.L.R. [2015] M.P., 2501
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No. 1660/2014 (Indore) decided on 14 January, 2015

MOHAN SINGH ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Evidence Act (1 of 1872), Section 138 - Re-examination **- Public prosecutor was allowed by the Court to exhibit the Test Identification Parade memo as the same could not be exhibited during examination-in-chief - New matter can be introduced u/s 138 of Act, 1872 with a rider that opposite party shall be given opportunity to cross-examine - Test Identification Parade memo was already the part of charge sheet and defence was aware of that - As defence was allowed to further cross-examine the witness, no irregularity committed in permitting the Public Prosecutor to get the Test Identification Parade memo exhibited.**
(Paras 2 to 8)

साक्ष्य अधिनियम (1872 का 1), धारा 138 – पुनःपरीक्षण – न्यायालय द्वारा लोक अभियोजक को पहचान परेड ज्ञापन प्रदर्शित करने की अनुमति दी गई क्योंकि उक्त को मुख्य परीक्षण के दौरान प्रदर्शित नहीं किया जा सका था – अधिनियम, 1872 की धारा 138 के अंतर्गत नया तथ्य प्रविष्ट किया जा सकता है, इस नियम शर्त के साथ कि विरूद्ध पक्षकार को प्रतिपरीक्षण का अवसर दिया जायेगा – पहचान परेड

ज्ञापन पहले से आरोप पत्र का हिस्सा था और इस तथ्य से बचाव पक्ष अवगत था – चूंकि बचाव पक्ष को साक्षी का अतिरिक्त प्रतिपरीक्षण करने की अनुमति दी गयी, लोक अभियोजक को पहचान परेड ज्ञापन प्रदर्शित कराने के लिए अनुमति देने में कोई अनियमितता कारित नहीं हुई है।

Cases referred :

(2010) 2 SCC (Cri) 1480, (2009) 9 SCC 152.

Virendra Sharma, for the applicant.
L.L. Sharma, Dy. G.A. for the non-applicant.

ORDER

ALOK VERMA, J. :- This application under section 482 of Cr.P.C. is directed against order passed by the learned Additional Sessions Judge, Mahidpur, District Ujjain in Session Trial No.342/2010 dated 16.01.2014 whereby the learned Additional Sessions Judge allowed identification memo to be exhibited, after completion of cross-examination of prosecution witness Vallabh Gupta (PW-1).

2. Brief facts giving rise to this application are that the prosecution witness Vallabh Gupta was examined in Session Trial No.342/2010. His cross-examination was completed on 16.01.2014 and after completion of his cross-examination after para 37, a note was appended by the trial Judge, in which the learned Additional Sessions Judge allowed identification memo to be exhibited on the ground that it was inadvertently remained to be exhibited and it was prayed by the Additional Public Prosecutor that it remained to be exhibited during the examination-in-chief, as it was not properly placed in the record. On this ground, he sought permission of the Court to exhibit the document during the re-examination and then the learned Additional Sessions Judge opined that in the interest of justice, the fault on the part of the prosecution should not be allowed to result in failure of justice and, therefore, the permission was granted. After this, the prosecution in para 38 produced to exhibit the identification memo as Ex.P/8 and, thereafter, the learned counsel for the defence was allowed to cross-examine the witness on identification memo and from para 39 to 42 in detail, the witness was cross-examined. The note appended by the learned Additional Session Judge after para 37 in the deposition sheet may be reproduced hereunder for benefit of proper consideration.

"नोटः– ए.जी.पी. द्वारा पुनः परीक्षण में साक्षी से शिनाख्ती मेमो प्रमाणित कराये जाने का प्रयास किया जाने पर बचाव अधिवक्ता की आपत्ति है कि पुनः परीक्षण का क्षेत्र सीमित है और अभियोजन पुनः परीक्षण में अपनी त्रुटि सुधार नहीं कर सकता। अभियोजन को आवेदन देना चाहिए और इस पर अभियुक्तगण का पक्ष रखा जाना चाहिए। वहीं ए.पी.जी. का कहना है कि पूर्व में मुख्य परीक्षण के दौरान दस्तावेज आगे–पीछे लग जाने के कारण त्रुटिवश वे साक्षी से शिनाख्ती पंचनामा प्रमाणित नहीं करा सके थे, परन्तु उन्हें उक्त तथ्य का ज्ञान होने पर न्यायालय को इस संबंध में सूचित किया था। अतः शिनाख्ती मेमो प्रमाणित कराये जाने की अनुमति दी जावे। दोनों पक्षों को सुनने के बाद न्याय की मंशा को देखते हुए अभियोजन की त्रुटि के लिए न्याय निष्फल ना हो इस भावना के साथ साक्षी के पुनः परीक्षण में दस्तावेज के प्रमाणीकरण की अनुमति प्रदान की जाती है। बचाव पक्ष को पुनः प्रतिपरीक्षण का अधिकार रहेगा।"

3. The learned counsel for the defence relied on judgment of *Pannayar v. State of Tamil Nadu* (2010) 2 SCC (Cri) 1480; (2009) 9 SCC 152 in which the Hon'ble Supreme Court observed that purpose of re-examination is only to get clarification of some doubts created in cross-examination. One cannot supplement the examination-in-chief by way of re-examination and for the first time,start introducing totally new facts, which have no concern with the cross-examination. He particularly cites para 26 of the judgment which is as under:-

"25. .....

26. "We do not know what was the Public Prosecutor doing at the time of the examination-in-chief and why he did not confront the witness on these ornaments. We do not know as to how the trial court permitted these questions in re-examination. The purpose of the re- examination is only to get the clarifications of some doubts created in the cross examination. One cannot supplement the examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts, which have no concern with the cross examination. The trial court has obviously faulted in allowing such a re-examination. Be that as it may, even if we accept that the Trial Court was justified in allowing the re-examination, the evidentiary value of the contents of the re-examination, in our firm opinion, is nil.

27. ....."

4. In particular he placed emphasis on the last 3 lines of the para i.e. '..... Be that as it may, even if we accept that trial court was justified in allowing the re-examination, the evidentiary value of contents of re-examination, in our firm opinion, is nil'. To understand proper impact of this observation by Hon'ble Court earlier paragraphs of the judgment may be looked into. The fact of the case before the Hon'ble Apex Court was that wife of PW-1 Subbiah was alleged to have been murdered by the appellant Pannayar. According to the prosecution story in that case she went to answer the call of nature, when the appellant followed her. He murdered her and removed the ornaments from her body. He was arrested after 12 days of the incident and the ornaments were seized from his possession. The Supreme Court in earlier paragraphs, after examining the statements of all other prosecution witnesses observed that it was not proved that the ornaments belong to the deceased and she was wearing it at the time of her murder. In light of above observation if we read the last 3 lines of the para, we understand its real import that even if permission granted by the Court was taken to be correct, then those ornaments, as it was already held that they did not belong to the deceased had no evidentiary value.

5. Reverting back to the present case, it is to be seen whether the permission granted by the Court was proper or it requires any interference by this Court. Para 3 of section 138 of Evidence Act provides for direction of re-examination. The section may be reproduced here :-

> "138.Order of examinations.- .... Direction of re-examination:- The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

6. It may be seen that the third para of the section has two limbs:- first is directed when explanation is required for any matter referred to in cross-examination. In such cases, normally there is no right of cross-examination given to the defence. However, the second limb of section relates to new matter, in which permission may be granted by the Court. In such cases it is

incumbent on the trial court to give opportunity of cross-examination to the defence. As stated earlier, opportunity was granted to the defence in this case.

7. This apart under section 311 of Cr.P.C. the second limb of the section is mandatory when re-examination of a person is essential for just decision of the case. Also section 165 of the Evidence Act gives ample power to the trial Judge, to call any document and exhibit the same during the trial. In the present case, the identification memo was part of charge-sheet. The defence counsel was aware of the existence of the document which was already on record. Merely due to the lapse of the prosecutor, if such document is not allowed to be exhibited, it may result in failure of justice, which is not proper. Especially in a State like Madhya Pradesh where prosecution officers are a neglected lot and have no space to sit and prepare for their performance in Court. They appear unprepared and such lapses are very common before the subordinate courts.

8. In my opinion, no irregularity was committed by the trial Judge, while permitting the identification memo to be exhibited and the principles laid down by Hon'ble Supreme Court in case of *Pannayer* (supra) do not apply in the present case.

9. This revision, therefore, is devoid of any merits and liable to be dismissed and dismissed accordingly.

Revision dismissed.

I.L.R. [2015] M.P., 2505

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice N.K. Gupta

M.Cr.C. No. 3547/2010 (Jabalpur) decided on 14 August, 2015

MAHINDER SINGH BHASIN ...Applicant

Vs.

M/S SSANGYONG ENGINEERING & CONSTRUCTION CO. LTD. ...Non-applicant

Negotiable Instruments Act (26 of 1881), Section 138 - Debt or other liability **- Cheques given by the applicant were dishonored in view of the instructions given by applicant - Cheques in question were given for security against the mobilisation advance and those cheques could not be**

encashed unless the total account between the parties would have settled - The amount of such cheques cannot be considered as debt or other liability - As the cheques were presented in a premature stage, then, the entire pleadings of the complaint made by respondent does not disclose the commission of any offence - Complaint quashed. (Paras 6 to 9)

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – ऋण या अन्य दायित्व – आवेदक द्वारा दिये गये अनुदेशों को दृष्टिगत रखते हुए आवेदक द्वारा दिये गये चैक अनादृत किये गये – प्रश्नगत चैक मोबिलाइज़ेशन एडवांस की प्रतिभूति के रूप में दिये गये थे और वे चैक भुनाये नहीं जा सकते जब तक कि पक्षकारों के बीच संपूर्ण लेखे का निपटान नहीं हो जाता – ऐसे चैक की रकम को ऋण या अन्य दायित्व के रूप में नहीं माना जा सकता – चूंकि चैकों को समय पूर्व प्रक्रम पर प्रस्तुत किया गया, तब प्रत्यर्थी द्वारा की गई शिकायत के संपूर्ण अभिवचन किसी अपराध का कारित किया जाना प्रकट नहीं करते – शिकायत अभिखंडित।

Cases referred :

2006(4) MPLJ 97, 2001(1) MPHT 130, (2014) 12 SCC 539, AIR 1992 SC 604.

Bramhadatt Singh, for the applicant.

Anoop Nair, for the non-applicant.

ORDER

N.K. Gupta, J. :-This order shall govern the disposal of present matter as well as M.Cr.Cs.No.2234/2010, 2235/2010, 3827/2010,3828/2010, 3830/2010, 3842/2010, 3845/2010, 3853/2010, 3866/2010, 3870/2010, 3874/2010, 3876/2010, 3886/2010, 3995/2010, 6887/2010, 6888/2010, 6919/2010, 6920/2010, 6921/2010, 6922/2010, 12346/2010, 11785/2012, 11788/2012, 11789/2012, 11792/2012 and 11794/2012 because facts of such cases are same. However, in the present order facts of the present matter are mentioned.

2. The applicant has preferred the present petition under Section 482 of the Cr.P.C. to quash the proceedings of complaint case No.2382/2009 pending before JMFC, Narsinghpur for offence under Section 138 of Negotiable Instruments Act (in short *"NI Act"*).

3. The facts of the case, in short, are that, the applicant gave a cheque of Rs.5 Lacs to the respondent company. Cheque was presented before the

concerned bank on 15.6.2009 but, it was dishonuored because the applicant had given instructions to the concerned bank to stop the payment. A demand notice was given on 3.7.2009 and payment could not be received, thereafter, a criminal complaint was lodged before CJM, Narsinghpur, which was transferred to JMFC, Narsinghpur.

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

5. Learned counsel for the applicant submits that the amount of cheque was not recoverable because it was given for the purpose of security and therefore, no complaint under Section 138 of NI Act lies even if the applicant instructed the bank to stop the payment of the cheque. On the other hand, learned counsel for the respondent submits that the amount of cheque was due according to the terms of contract that took place between the parties.

6. If a work contract agreement executed by the parties is considered then, on its internal page No.3, in para 9, terms and conditions for issuance of the cheque is mentioned, which is reproduced herebelow for ready reference:-

> *"9. SSANGYONG will give Rupees 2 (Two) Crores as interest bearing Mobilisation Advance to the Sub Contractor for the costs of mobilization. The rate of interest being 10% per annum. Half of the amount shall be paid in advance and remaining half shall be paid directly to the suppliers on the behalf of the Sub Contractor, when sub Contractor has achieved 5% of financial progress. Sub Contractor have to submit post dated cheque/cheques of equivalent amount* ***as a security*** *against Mobilization Advance."*

According to such condition, the respondent has given a mobilisation advance to the applicant. However, 50% of that amount was directly to be given to various suppliers from whom the applicant took the material and 50% of that amount was to be retained by the applicant to meet out other expenses of contract. However, the applicant was directed to submit post dated cheques equivalent to the amount as security against the mobilisation advance and consequently, he gave 25-26 cheques of various denominations to the respondent.

7. Also, according to the Para 12 of the aforesaid document, recoveries

were to be made from monthly running bills of the applicant. It was also quoted in para 12 (C) that mobilisation advance recovery @ 12% from second R.A. bill onwards. Similarly, there was a termination clause of the contract also. In para 8 of that agreement, it was specifically mentioned that the post dated cheques given by the applicant were taken for equivalent amount against mobilisation advance as a security. Hence, such cheques could be encashed by the respondent if the contract is terminated and payment of various bills submitted by the applicant relating to work done by him should have been cleared. It is apparent that various proceedings for recovery of amount relating to work done in compliance to the aforesaid agreement are pending at various forums like Civil Court and Arbitration Tribunal. When various cheques were taken for security of the amount given as mobilisation advance then, the entire mobilisation advance cannot be recovered by lodging the entire cheques before the concerned bank. If the sub contractor had arranged for machinery, material and started work then, his expenditure was to be assessed and such amount was to be adjusted while recovering the mobilisation advance and therefore, by such cheques obtained as security amount for mobilisation advance could not be lodged for their payment without considering the account of the applicant and without clearing his running bills.

8. Provision of Section 138 of NI Act clearly indicates that a complaint could be filed against a person, who issues the cheque and same is dishonoured unless amount of cheque is not payable. For ready reference provision of Section 138 of NI Act is reproduced herebelow:-

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the accounts*** *- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act,*

be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, 3["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability]."

9. According to the explanation given in that provision, the word "Debt or other liability" means a legally enforceable debt or other liability. When the dispute between the parties was not settled and the respondent had to pay the expenditure done by the applicant to fulfil the terms and conditions of the agreement as a sub contractor then, the cheques which were kept for the security purpose could not be encashed. Those cheques were given against the mobilisation advance and therefore, the mobilisation advance was not legally enforceable liability at that time when the dispute between the parties was not settled.

10. In this connection, learned counsel for the applicant has placed his reliance upon the judgment passed by the Apex Court in case of *"M.S.Narayana Menon @ Mani Vs. State of Kerala and another"*, [2006 (4) M.P.L.J. 97] , in which it is held that if a cheque is issued for security or

for any other purpose, the same would not come within the purview of Section 138 of NI Act. Learned counsel for the applicant has also placed his reliance upon the order passed by the single Bench of this Court in case of *"Jitendra Singh Flora Vs. Ravikant Talwar"*, [2001 (1) M.P.H.T. 130], in which various judgments of Hon'ble the Apex Court were considered and it is held that if there was no "Debt or other Liability" under Section 138 of the NI Act in view of the agreement then, the concerned accused cannot be held liable under Section 138 of NI Act. In that case order of framing of charge against the accused was set aside. Learned counsel for the applicant has also placed his reliance upon the judgment passed by the Apex Court in case of *"Indus Airways Private Limited Vs. Magnum Aviation Private Limited and another"*, [(2014) 12 SCC 539], in which it is held that "Debt or other Liability" means legally enforceable debt or liability. Advance payment for supply of goods not supplied are not covered within the debt or other liability.

11. On the basis of the aforesaid discussion, in the light of judgments passed by the Apex Court and order of the single Bench of this Court, in the present matter cheques were given for security against the mobilisation advance and those cheques could not be encashed unless the total account between the parties would have settled and therefore, the amount of such cheques cannot be considered as Debt or other Liability as defined under Section 138 of NI Act. In case of *"State of Haryana Vs. Ch. Bhajanlal"*, [AIR 1992 SC 604] , the Apex Court has laid 7 conditions in para 106 of its judgment. Conditions No.3 and 5 as mentioned in that judgment may be reproduced as under:-

> *"3. where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
>
> *5. where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

12. When cheques issued by the applicant were issued for security purpose against mobilisation advance and those were submitted to the bank for withdrawal of the amount in a premature stage then, the entire pleadings of the complaint made by the respondent does not disclose the commission of any

offence and therefore, in the light judgment passed in case of *Ch.Bhajanlal* (supra) these complaints are not legally maintainable. When complaint cannot be prosecuted under Section 138 of NI Act, it is a good case in which inherent powers of this Court under Section 482 of the Cr.P.C. may be invoked and complaint filed by the respondent against the applicant may be quashed.

10. On the basis of the aforesaid discussion, the petition under Section 482 of the Cr.P.C. filed by the applicant Mahinder Singh Bhasin is hereby allowed. Proceedings of criminal complaint case No.2382/2009 pending before JMFC, Narsinghpur is hereby quashed. JMFC, Narsinghpur is directed to drop the case against the applicant.

11. Copy of the order be sent to the trial Court alongwith its record for information and compliance.

Order accordingly.

I.L.R. [2015] M.P., 2511
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice N.K. Gupta

M.Cr.C. No. 9942/2009 (Jabalpur) decided on 14 August, 2015

VIJAY KANWDE ...Applicant
Vs.
SUB DIVISIONAL OFFICER & ors. ... Non-applicants

Forest Act (16 of 1927), Sections 52, 52A & 52B - Confiscation of Vehicle - Knowledge and consent of owner **- Nothing on record that the driver of the jeep was transporting 25 bags of manganese ore with the knowledge and consent of owner - Owner has specifically stated that he had handed over the jeep to the driver for carrying passengers - Photographs of the jeep also shows that vehicle was registered as taxi having seats, which means it was meant for plying of passengers - In absence of any consent or knowledge on the part of the owner to commit forest offence, vehicle cannot be confiscated - Order confiscating the vehicle set aside. (Paras 9 to 12)**

वन अधिनियम (1927 का 16), धारा 52, 52ए व 52बी – वाहन का अधिहरण – स्वामी की जानकारी एवं सहमति – अभिलेख पर कुछ नहीं कि जीप का ड्राइवर, स्वामी की जानकारी एवं सहमति से मैंगनीज अयस्क के 25 बोरों का परिवहन कर

रहा था – स्वामी ने विनिर्दिष्ट रूप से कथन किया है कि उसने यात्रियों को ले जाने के लिए ड्राइवर को जीप सौंपी थी – जीप के छायाचित्र भी दर्शाते हैं कि वाहन टैक्सी के रूप में पंजीबद्ध था जिसमें सीटें लगी थीं, जिसका अर्थ यह है कि वह यात्रियों को लाने ले जाने के लिए थी – स्वामी की ओर से वन अपराध कारित करने की किसी सहमति या जानकारी की अनुपस्थिति में वाहन का अधिहरण नहीं किया जा सकता – वाहन के अधिहरण का आदेश अपास्त।

Cases referred :

1997(2) MPLJ 216, (2008) 14 SCC 624, 1995 (1) MPWN 199, 2006(2) MPLJ 65.

Atul Choudhary, for the applicant.
G.S. Thakur, P.L. for the non-applicants.

JUDGMENT

N.K.Gupta, J. :- The Authorized Officer and Up Van Mandal Adhikari, Balaghat vide order dated 3.11.2008 in Forest Crime No.5624/2013 confiscated a Max Jeep bearing Registration No.MP022T/0227. The Conservator of Forest and Appellate Authority vide order dated 16.4.2009 confirmed the order passed by the authorized officer and confiscating authority. The Second Additional Sessions Judge, Balaghat in Criminal Revision No.52/2005 vide order dated 29.6.2009 confirmed the order passed by the Forest Officer and the Appellate Authority. Being aggrieved with the aforesaid orders the applicant has preferred this present petition under Section 482 of the Cr.P.C to get the vehicle released.

2. Facts of the case in short are that on 30.9.2007 at about 11.45 p.m driver Dilip Vankhede transported 25 bags of manganese ore which was quantified to be 1203 kgs. by vehicle No. MP022T/0227 from Reserve Forest Beat No.580. On inspection, the jeep was stopped and it was taken to Mahekepar Rest House and Dilip Vankhede could not produce any permit etc. of that transportation and therefore, a forest case was registered and an Authorized Officer as well as Deputy Forest Divisional Officer, Balaghat was informed to initiate the confiscation proceedings. A notice was given to the applicant who was owner of the vehicle.

3. The applicant took a defence that he was not made an accused in concerned POR (FIR) of forest crime. Vehicle was given to driver Dilip

Vankhede to carry passengers in the vehicle and ply it as a taxi. He was not permitted to transport any illegal substance. The applicant went to Korba and he was not present at his residence at Village Piparwani, District Seoni on the date of incident and therefore, it was pleaded that vehicle be released. The authorized officer vide order dated 3.11.2008 confiscated the vehicle .

4. I have heard the learned counsel for the parties.

5. The learned counsel for the applicant has invited the attention of this Court to the order passed by the single Bench of this Court in the case of *"Mittanlal Mishra Vs. State of M.P. and another"* (1997 (2) MPLJ) 216). However, that order relates to a matter in which owner of the vehicle was not given an opportunity to participate in confiscating proceedings and therefore, matter was remanded to decide it again by giving an opportunity of hearing to the owner of the vehicle. In the present case the applicant was given an appropriate opportunity to contest and he himself has examined before the authorized officer as witness.

7. The learned counsel for the applicant also placed his reliance upon the judgment passed by the Apex Court in the case of *"State of Madhya Pradesh Vs. Madhukar Rao"* [(2008) 14 SCC 624] to show that such proceedings could not be initiated against the applicant in the matter before conclusion of criminal case, as the provision was not applicable and it was beyond jurisdiction. In this connection it is clear that in the matter of *Madhukar Rao* (supra) vehicle was seized under the provisions of Wild Life (Protection) Act, 1972 in which no parallel enquiry is provided. In the case of *Madhukar Rao* (supra) where the Supreme Court has confirmed the order passed by the Full Bench of this Court dated 28.10.1999 in W.P. No.4421/1997, the Full Bench in its order distinguished between the provisions of Forest Act under Section 52 and Wild Life (Protection) Act. A parallel enquiry is provided in that Act and therefore, the order passed by the Full Bench shall govern the case in which the vehicle or other article is seized under Wild Life (Protection) Act, 1972. Hence, the judgment passed by the Apex Court in the case of *Madhukar Rao* (supra) cannot be applied in the present case because it does not deal with the provisions of Wild Life (Protection) Act and it deals with the provisions of section 52 of the Indian Forest Act. In this connection judgment passed by the Division Bench of this Court in case of *"National Road Transport Service Vs. State of M.P."* [1995 (1) MPWN Note 199] may be

referred, in which it is held that provisions of Sections 52, 52A and 52B of Indian Forest Act are not ultravires. Hence, proceeding done of Authorized officer is not barred.

8. If contention of the applicant is examined on merits then it would be apparent that the decision given by the Authorized Officer was confirmed by the Appellate Authority and also by the Revisionary Court. Hence, there are concurrent findings on facts given by all the three below functionaries and appreciation of evidence can be done in the petition afresh in an exceptional case. After considering the evidence adduced by the prosecution as well as the defence, it appears that it is a good case in which appreciation of evidence should be done by this Court against the concurrent findings of the authorities below. .

9. In the present case, it is the plea of the applicant that he gave his vehicle to driver Prakash to carry the passengers in the vehicle as a taxi. The authorized officer took the photographs of vehicle from front and back and if those photographs are examined then the vehicle was registered as a taxi having some seats and therefore, it was meant for plying of passengers. It was not a Goods Vehicle. Hence, owner of the vehicle *prima facie* cannot authorize his driver to use the vehicle as a loading vehicle. Secondly, the prosecution has collected the evidence that the driver Prakash was often purchasing bags of manganese ore from various villagers and he was often in habit in taking such bags from such villagers. However, no evidence was adduced to show that he had permission of the applicant in doing so. It is settled view of the Apex Court that consent of owner about the overt act of the drivers is to be *primafacidely (sic:primafaciedly)* proved by the prosecution and thereafter, it would be the duty of the owner to rebut such presumption. The owner/ applicant is resident of a Village in District Seoni and it is not established that driver was dropping the vehicle at his house every day and therefore, if driver would have transported some mineral in a taxi which is not a loaded vehicle then it cannot be presumed that the applicant authorized the driver to transport such minerals in contravention of the various provisions of the Indian Forest Act. Thirdly, when the mineral was recovered, it was found that approximately it was 1203 kgs. and its cost was Rs.2000/-. Hence for a mineral costing Rs.2000/- the applicant would not have kept his vehicle having value in lacs at stake for smuggling of minerals. In a taxi meant for passengers no such mineral

could be transported and therefore, it was not possible for the applicant to permit his driver to smuggle mineral worth Rs.2000/- in a taxi having its cost in lacs. It would be inequitable if the amount of smuggled articles is much less in comparison to the cost of vehicle and for such meager amount of smuggled articles the owner of the vehicle was punished severely and his vehicle has been confiscated.

10. On the basis of the aforesaid discussion, evidence collected by the prosecution did not prove that the applicant gave any consent to driver Prakash to transport the mineral containing manganese. However, in a taxi meant for carrying passengers, he could not permit his driver to transport sand or mud otherwise, various seats of the vehicle would spoil for the passengers. In such a taxi passengers could not be transported. The authorized officer recorded statement of Prakash. He had stated that one Ramphal offered to purchase some manganese ore and since he had to go to Tumsar for personal work he contacted with Ramphal for purchase of manganese at the rate of Rs.2/- per kg. and thereafter, he transported the same. He has accepted in his statement that he took the vehicle on rent from its owner. Hence by statement of Prakash it would be apparent that he took the vehicle on rent and he was depositing monthly rent to the applicant and therefore, he was not required to drop the vehicle at the house of the applicant every day. This is the fourth ground to show that the applicant who was owner of the vehicle could not give any consent to transport any mineral in a passenger taxi, on the contrary he had no knowledge of the deeds of driver who was transporting bags of maganese ore in the passenger vehicle.

11. On the basis of the aforesaid discussion, it would be apparent that it is a case of exprte (sic:ex-parte) appreciation of evidence. It appears that the forest officers were bent upon to confiscate the vehicle valued in lacs for transportation of manganese ore with its value to be a sum of Rs.2000/-. The authorized officer ignored the statement given by the driver Prakash. If the applicant would have given his consent to transport such mineral in the passenger vehicle then he should also have been made accused along with the driver Prakash in a criminal case under the provisions of Section 34 or 120-B of I.P.C.

12. The learned Panel Lawyer has submitted that it is the duty of the owner whose vehicle is involved in the forest offence to prove that it was used by his driver without his knowledge and information and that he had no connivance with

the offender at any stage of commission of offence. It is true that such a burden is on the owner. In this connection order passed by the single Bench of this Court in the case of *"Sarjooprasad Vs. State of M.P. and others"* [2006 (2) M.P.L.J Page 65] may be referred in which it is held that when it was not in the knowledge of the owner of the vehicle that it was used in a forest crime then confiscation is not justified. In the present case when the driver Prakash took the vehicle on rent from the applicant then the applicant could not know that the driver had used a passenger taxi vehicle for loading manganese ore.

13. On the basis of the aforesaid discussion and appreciating the evidence again it is apparent that order of confiscation passed by authorized officer has no basis and the appellate authority as well as Additional Sessions Judge has committed an error in confirming the order of authorized officer. It is fit case in which the inherent powers of this Court may be invoked in favour of the applicant. Consequently, the petition under Section 482 of the Cr.P.C. filed by the applicant Vijay Kanwde is hereby allowed. All the impugned orders passed by authorized officer, appellate authority and revisionary Court are hereby set aside. It is directed that the seized truck No.MP022T/0227 be released and handed over to the applicant without any delay.

14. Copy of the order be sent to the Second Additional Sessions Judge, Balaghat and the forest authorities below along with their respective records for information and compliance.

Order accordingly.

I.L.R. [2015] M.P., 2516

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Shantanu Kemkar &

Mr. Justice Rajendra Mahajan

M.Cr.C. No. 4330/2015 (Jabalpur) decided on 18 August, 2015

TRIDEV JAN KALYAN SAMITI ...Applicant

Vs.

U.K. SUBUDDHI & anr. ...Non-applicants

Penal Code (45 of 1860), Section 197 - Sanction for Prosecution - Official Duties **- Petitioner alleged that respondents have misappropriated the public money while implementing the schemes in the course of their official duties - Hence, acts of misappropriation as**

alleged against respondents cannot be separated from their official duties - Sanction under Section 197 necessary. (Paras 7 & 8)

दण्ड संहिता (1860 का 45), धारा 197 – अभियोजन के लिये मंजूरी – पदीय कर्तव्य – याची ने अभिकथन किया कि प्रत्यर्थीगण ने अपने पदीय कर्तव्यों के दौरान में योजनाओं को लागू करते समय लोक धन का दुर्विनियोजन किया – अतः, दुर्विनियोजन के कृत्य, जैसा कि प्रत्यर्थीगण के विरूद्ध अभिकथित किये गये हैं, को उनके पदीय कर्तव्यों से अलग नहीं किया जा सकता – धारा 197 के अंतर्गत मंजूरी आवश्यक।

Cases referred :

(2013) 10 SCC 705, AIR 2007 SC 1274, AIR 1955 SC 309, (2006) 2 SCC (Cri.) 358, (2012) 12 SCC 72.

D.K. Tripathi, for the applicant.
Not summoned.

ORDER

The Order of the Court was delivered by : RAJENDRA MAHAJAN, J. :- In this petition under Section 482 of the Cr.P.C., the petitioner has challenged the order dated 29.01.2015 passed by the Special Judge Sehore under the Prevention of Corruption Act in an un-registered complaint Tridev Jan Kalyan Samiti through Member K.L. Bairagi Vs. U.K. Subuddhi and another.

2. The essential facts for the just and proper adjudication of the petition are given below:-

(2.1). The petitioner has filed the criminal complaint under Section 200 of the Cr.P.C for prosecution of the respondents for the offences punishable under Sections 409, 167, 420, 120-B of the IPC and Section 13 of the Act, in the Court of Special Judge Sehore (for short 'the Court') on the grounds that the petitioner is a registered society under the Firms and Societies Act. The object of the society is to highlight and fight against the corrupt activities of public servants and the government authorities through legal process. K.L. Bairagi is a member of the society and he is authorized to file this complaint against the respondents. From the year 2009 to 2011, respondent No.1 and respondent No.2 had been posted as Divisional

Forest Officer and Sub-Divisional Forest Officer Sehore respectively. The Central Government has passed Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the 'MANREGA'). For the implementation of provisions of the MANREGA, the Central Government has allotted large funds for various employment generated forest schemes to Forest Division Sehore. The respondents embezzled/ misappropriated 4.5 crores of the schemes. The modus operandi of the respondents for the embezzlement of aforesaid money is mentioned in detail in the complaint.

(2.2). The Court examined K.L. Bairagi, Girish Sharma, O.P. Khare and A.K. Pandey under Section 200 of the Cr.P.C. and also called for relevant documents.

(2.3). On 29.01.2015, the impugned order is passed by the Court whereby it has refused to register the complaint against the respondents on the ground that as per the law laid down by the Supreme Court in the case of *Anil Kumar Vs. M.K. Aiyappa* [(2013) 10 SCC 705], for registration of the private complaint under the provisions of the Act, prosecution-sanction under Section 19 (1) of the Act is a condition precedent.

(2.4). It is also stated in the impugned order that the petitioner had been given more than 4 to 5 years' time by the Court for seeking the aforesaid prosecution-sanction from the concerned authorities, but it failed to secure the same. Under the circumstances, the complaint is dismissed for want of prosecution-sanction.

3. Feeling aggrieved by the impugned order, the petitioner has filed this petition contending that for the prosecution of a public servant under the provisions of the Act prosecution-sanction under Section 19 (1) is a condition precedent in view of the decision of the apex court as rendered in the case of *Anil Kumar* (Supra), but such is not requirement of law for filing sanction for the prosecution under Section 197(1) of the Cr.P.C. with the complaint for registration of it against a public servant for the offences punishable under the I.P.C. Therefore, the Court ought to have registered the complaint against the respondents for the offences of the IPC as alleged in it. Upon this premise, the

Court has committed a grave error of law by not registering the complaint against the respondents for the offences punishable under the I.P.C. Therefore, the Court be ordered to register the complaint against the respondents for the relevant offences punishable under the IPC.

4. Vide order dated 27.03.2015, this Court has directed the learned counsel appearing for the petitioner to address this Court whether the prosecution-sanction under Section 197(1) is a condition precedent for registration of the complaint against the respondents for the alleged offences of the I.P.C.

5. Learned counsel for the petitioner has argued that the respondents had committed criminal misappropriation of public funds in the implementation of the various schemes under the MANREGA and the misappropriation of public money directly or indirectly is not connected with the official duties of the respondents. Hence, the prosecution sanction under Section 197(1) is not sine qua non for the prosecution of the respondents much less a condition precedent for the registration of the complaint for the offences punishable under the I.P.C. Moreover, the respondents will have an opportunity to raise this legal objection after their appearance in the case. In support of the aforesaid arguments, learned counsel for the petitioner has relied upon the law laid down in the case of *Prakash Singh Badal Vs. State of Punjab* (AIR 2007 SC 1274.), regarding the requirement of prosecution-sanction.

6. We have considered the submissions adduced by the learned counsel for the petitioner and perused the complaint, the impugned order and material on record with utmost circumspection. Following are the points for consideration before us:-

(i) Whether the prosecution-sanction under Section 197 (1) is required for the prosecution of the respondents for the alleged offences of the IPC?

(ii) Whether the prosecution-sanction under Section 197 (1) is a condition precedent for the prosecution of the respondents in view of the fact-situation of the case?

Point No.1

7. In *Amrik Singh Vs. State of Pepsu* (AIR 1955 SC 309), the facts of the case are that the accused/appellant was a Sub-divisional officer in the Public

Works Department, Pepsu at the relevant time. He was in-charge of certain works. It was part of his duties to disburse the wages to the workmen employed in the works. It is found in the course of an enquiry that in the acquittance roll the accused entered a fictitious name of one Parma, and a sum of Rs. 51/- was shown as paid to him for his wages. Thereupon, the State of Pepsu filed charge sheet against the accused for criminal misappropriation of the aforesaid money. The trial Court framed the charges against him for the offences under Sections 409 (for criminal misappropriation of Rs.51/-) and 465 (for forging the thumb impression of Parma) of the IPC, and after full trial of case it acquitted him of the aforesaid charges. Against this judgment of acquittal, the State of Pepsu filed an appeal in the High Court of Pepsu. The High Court having appreciated the evidence on record convicted the accused in the aforesaid sections. Feeling aggrieved thereby, the accused filed the SLP in the Supreme Court. It is argued before the Supreme Court that in the fact-situation of the case prosecution-sanction under Section 197(1) is required, but the same is not obtained. Hence, prosecution of the accused must fail on this ground alone without going into the merits of the case. The Supreme Court after referring to the decisions of the Federal Court and the Privy Council and noticing the facts of the case has stated thus:-

> "Even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197 (1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197 (1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

On the basis of the aforesaid observations, the Supreme Court has held that the offences of the accused complaint of cannot be separated from the discharge of his official duties. Hence, the prosecution-sanction under Section 197(1) is mandatory, and in the absence of such sanction the prosecution of the accused is not maintainable. On this very ground, the Supreme Court has set aside the conviction and the sentence as recorded by the High Court, acquitting the accused.

8. In the case in hand, the petitioner admits in the complaint that the

respondents have misappropriated the public money while implementing the schemes in the course of their official duties. Hence, the acts of misappropriation as alleged against the respondents cannot be separated from their official duties. Thus, the prosecution-sanction under Section 197(1) is required in view of the law laid down in the case of *Amrik Singh* (Supra).

Point No.2

9. *In Sankaran Moitra Vs. Sadhna Das and Another* (2006) 2 SCC (Cri.) 358, the facts of the case are that the complainant has filed a criminal complaint for the prosecution of accused/police officers for the offences punishable under Sections 302, 201, 109 and 120-B of the IPC, alleging that on 10.05.2011, they had beaten her husband to death. The Magistrate took cognizance of aforesaid offences against the accused-police officers who, in turn, challenged the cognizance in the High Court on the ground that the prosecution-sanction under 197 (1) is a condition precedent for the registration of the complaint against them. The High Court dismissed the petition of the accused-police officers holding that the prosecution-sanction under Section 197 (1) is not a condition precedent. Thereupon, the accused-police officers challenged the order of the High Court in the Supreme Court. In the case, the stand of accused-police officers was that on 10.05.2001, the date of incident, there was a general election to the Assembly of West Bengal. On that day, at about 14:10 hours, they got information of some disturbances at the polling station at CIT Office. Thereupon, they reached the spot and found violence between the supporters of the rival parties. In order to prevent the violence, they tried to separate them but the supporters of the parties started throwing brickbats and bombs indiscriminately against each other and the police force. Thereupon, they stepped into action and chased the unruly mob of the supporters and resorted to physical force. During the course, the complainant sustained serious injuries leading to his death. Since the offences as complained of by the complainant against them are occurred in the course of their official duties and are inextricable from the official duties, the prosecution-sanction under Section 197 (1) is a condition precedent for taking cognizance against them. In the aforesaid fact-situation of the case, the majority view of the Supreme Court is that when the acts/offences complained of are not separable from the official duties of a public servant, then the prosecution-sanction under Section 197 is a condition precedent. Having held so, the Supreme Court has quashed the complaint for want of prosecution-sanction under 197 (1).

10. In *Om Prakash and Others Vs. State of Jharkhand and Another* (2012 12 SCC 72), the complainant filed a criminal complaint for the prosecution of accused-police officers for the offences punishable under Sections 302, 323, 34 and 120-B of the IPC, alleging that the accused police officers had murdered four persons in a stage managed fake encounter. In this case, the accused police officers challenged the cognizance taken against them without seeking prior prosecution-sanction under Section 197(1). The matter travelled to the Supreme Court. Having relied upon the reports of the CID of the State and National Human Rights Commission, which are to the effect that there is no evidence that the alleged encounter was a fake one, the Supreme Court has held that for the prosecution of accused-police officers prosecution-sanction under Section 197 (1) is a condition precedent in the fact-situation of the case, because there is a reasonable connection between the alleged offences and the official duties of the accused-police officers. Having held so, the Supreme Court quashed the complaint for want of prosecution sanction under Section 197(1).

11. In the light of the aforesaid rulings, we are of the view that in the instant case, the prosecution-sanction under Section 197 (1) is a condition precedent because the respondents misappropriated the public money as alleged by the petitioner in discharge of their official duties while implementing the schemes as approved by the Government concerned. In other words, there is a reasonable and inseparable connection between the offence of criminal misappropriation of money by the respondents and their official duties.

12. It is pertinent to mention here that in the case of *Prakash Singh Badal Vs. State of Punjab* (Supra), the Supreme Court has held that when the prosecution-sanction under Section 197 (1) is not required. The law laid down in this case is not applicable in the present case because facts of the cases are quite distinguishable and we have already held that the offences complained of against the respondents are inseparable from their official duties.

13. In the light of above discussions, we find no infirmity in the impugned order and we are of the considered view that no case is made to direct the Court concerned to register the complaint against the respondents for the offences punishable under the IPC in the absence of sanction for the prosecution under 197 (1) of the Cr.P.C. Accordingly, this petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2015] M.P., 2523
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Rajendra Mahajan
M.Cr.C. No. 20084/2014 (Jabalpur) decided on 26 August, 2015

KAMAL DAVID & ors. ...Applicants
Vs.
STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Expunction of Adverse remarks - **Trial Court after recording the evidence of prosecution witnesses and before recording the statements of accused persons under Section 313 of Cr.P.C. directed the investigating agency to further investigate the matter and also directed the authorities to initiate departmental enquiry against the applicants - Held - Court below should not have passed the order of further investigation after taking cognizance by framing charges as the impartiality of the Court will erode and such act of Court will amount to usurping the role of prosecutor - Further the Court should have passed the Judgment pointing out lapses if any - Trial Court has passed the impugned order in gross violation of established procedure - Further no opportunity of hearing was given to the applicants before passing the order - The Court also cannot direct for holding a Departmental Enquiry - Order set aside. (Paras 5 to 20)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रतिकूल टिप्पणियों का हटाया जाना – विचारण न्यायालय द्वारा अभियोजन साक्षियों का साक्ष्य अभिलिखित करने के पश्चात् और दं.प्र.सं. की धारा 313 के अंतर्गत अभियुक्त व्यक्तियों के कथन अभिलिखित करने से पूर्व अन्वेषण एजेंसी को मामले में अतिरिक्त अन्वेषण करने के लिए निदेशित किया गया और आवेदकगण के विरूद्ध विभागीय जांच आरंभ करने के लिए प्राधिकारियों को भी निदेशित किया गया – अभिनिर्धारित – निचले न्यायालय को आरोप विरचित कर संज्ञान लेने के पश्चात् अतिरिक्त अन्वेषण का आदेश नहीं पारित करना चाहिए क्योंकि इससे न्यायालय की निष्पक्षता क्षीण होगी और न्यायालय की उक्त कार्यवाही अभियोजक की भूमिका को हड़पने की कोटि में आयेगी – इसके अतिरिक्त न्यायालय को गलतियों की ओर ध्यान दिलाते हुए, यदि कोई हो तो, निर्णय पारित करना चाहिए था – विचारण न्यायालय ने स्थापित प्रक्रिया के घोर उल्लंघन में आक्षेपित आदेश पारित किया है – इसके अतिरिक्त आदेश पारित करने से पूर्व आवेदकगण को सुनवाई का कोई अवसर नहीं दिया गया था

– विभागीय जांच कराने के लिए भी न्यायालय निदेशित नहीं कर सकता – आदेश अपास्त।

Cases referred :

AIR 1964 SC 703, AIR 1986 SC 819, AIR 1987 SC 1436, AIR 2000 SC 2626, 2005(2) MPLJ 276.

R.K. Tamrakar, for the applicants.
Shobhna Sharma, P.L. for the non-applicant.

ORDER

RAJENDRA MAHAJAN, J. :- Petitioners have filed this petition under Section 482 of the Cr.P.C., for expunction of observations and remarks made against them in Para-32 of the impugned order dated 21.11.2014 passed by the learned Special Special Judge, Burhanpur under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (for short 'the Act') in Special Case No. 21/14, *State of M.P. Vs. Rakesh* (for short 'the case').

2. The factual matrix of the case leading to filing of this petition is as follows:-

(2.1). On 23.01.2013 at about 11.00 a.m., informant Rakesh, who is later made an accused of the case, made an oral statement to Head Constable Manish Shah (PW-1) at police station, Nimbola, District Burhanpur that he is the owner of an agricultural field situated near Baniyanala Dam. In his field, there are some residential quarters for his labourers. In one of the quarters, Kesharbai, aged 60 years (now deceased), has been residing for about three years. On 22.01.2013, at about 5.30 p.m., when he left his field, he saw her alive. On 23.01.2013, at about 10 a.m., Yaqub Khan, who has an agricultural field near his field, informed his mother Pramila and brother Umesh that the door of the quarter of the deceased is ajar and her necklace and sweater are lying outside of her quarter and she is also found missing. His brother Umesh conveyed the aforesaid information to him. Thereupon, he reached his field with his friend Kamlesh. They searched the deceased and in the course of which they found blood-stains

near trough of his field. They also saw marks of dragging of a human body up to the well of the field. Thereupon, they peeped into the well and saw the dead body of the deceased floating.

(2.2) Upon the oral statement of the informant, Head Constable Manish Shah (PW-1), recorded marg intimation Ex. P-1 and registered marg case No.05/14 under Section 174 of the Cr.P.C.

(2.3) Petitioner No.3 Ravishanker Kokde, who was then posted as SHO, Police Station Nimbola, took up the marg case for inquiry. He reached the field on 23.01.2013 at about 2.30 p.m. with police personnel and public persons. In the well, he saw the dead body of the deceased floating. Thereupon, he got the dead body of the deceased extricated from the well and prepared a panchnama thereof. He noticed head injuries on her head wherefrom the blood oozed out and settled around the injuries. Thereafter, he prepared inquest report, seized various incriminating articles in and around the place of occurrence and prepared the spot map in presence of the witnesses. Thereafter, he sent the dead body for autopsy.

(2.4) On 23.01.2013, Dr. Muzjal Bohra (PW-9) and lady doctor Daud performed the autopsy upon the dead body and gave the postmortem report Ex. P-25. According to them, the deceased suffered antemortem injuries on her head. As a result, her frontoparietal, occipital and nasal bones were broken. They opined that the deceased suffered homicidal death. They also recommended the chemical examination of the clothes and viscera of the deceased by the F.S.L.

(2.5) On the basis of postmortem report, petitioner Ravishanker Kokde registered the FIR Ex. P- 15 on 25.01.2013 against the unknown offender(s) at crime no.20/13 under Sections 302 and 201 of the IPC and he took up investigation of the case.

(2.6) As per the FSL report Ex. P-20, the petticoat of the deceased contained stains of semen and human spermatozoa. On the

basis of the said report, petitioner Ravishanker Kokde had taken blood samples of suspects namely Rakesh, the informant, Bandu, Siliram, Miliram, Soniya Bhika and Shobha and he sent them along with the petticoat and sari of the deceased to the FSL, Sagar for the DNA test. As per the test report Ex. P-22, the human spermatozoa and stains of semen found on the petticoat of the deceased belong to Rakesh, the informant. On the basis the DNA report, petitioner Ravi Shaanker Kokde has made informant Rakesh accused of the case. Thereafter, he recorded the case diary statements of various witnesses including deceased husband and daughter namely Shobha (PW- 2) and Leelabai (PW-3). During the investigation, the petitioner Ravishanker Kokde found that accused Rakesh committed the murder of the deceased after committing rape upon her. Upon his command, petitioner No.2 Amit Singh arrested accused Rakesh on 25.05.2014. In the course of investigation, it is also found that the deceased is a member of tribal community. Thereupon, petitioner Ravishanker Kokde handed over the case for further investigation to the police station AJAK, Burhanpur. Thereafter, petitioner No. 1 Kamal David (PW-6) made further investigation. As per record, he did nothing except the filing of charge sheet.

(2.7) The charge sheet was filed in the Court of Abhishek Saxena Judicial Magistrate, Burhanpur. He committed the case to the Special Court, Burhanpur. Thereupon, the case is registered.

3. The learned trial Judge framed the charges against the accused Rakesh for the offences punishable under Sections 376, 302, 201 of the IPC and 3 (2) (5) of the Act. He denied the charges and claimed trial.

4. In the course of trial, the learned trial Judge has recorded the evidence of as many as 12 prosecution witnesses. On 11.11.2014, the prosecution closed its case. Thereupon, the case was fixed on 14.11.2014 for examination of accused Rakesh under the provisions of 313 of the Cr.P.C. On that day, instead of examining accused Rakesh under the aforesaid section the learned trial Judge posted the case for passing an order and on 21.11.14, he passed the impugned order.

5. The impugned order runs into 31 pages and in para- 32, the learned trial Judge has made following observations, directions and remarks:-

"अभियोगपत्र को पढ़ने एवं उपरोक्त विश्लेषण के बाद मेरा यह मत है कि स्थानीय पुलिस ने थाना निंबोला के अपराध कमांक 20/13 में जो कुछ भी किया, वह मध्यप्रदेश राज्य की नीति पर कुठाराघात, मृत आत्मा के साथ अन्याय तथा समाज के साथ धोखा है, उपरोक्त अपराध कमांक में वास्तव में दडं प्रकिया संहिता के प्रावधानों के अतंर्गत अनुसंधान किया ही नहीं था. केवल येनकेन प्रकारेण अभियुक्त को गिरफ्तार कर न्यायालय में प्रस्तुत किया तथा जांच के दौरान महत्वपूर्ण तथ्यों की खोज नहीं की, महत्वपूर्ण दस्तावेजों में लोप (Lacunas) किये तथा धारा–161 दंड प्रक्रिया संहिता के अंतर्गत न तो प्रकरण महत्वपूर्ण साक्षियों के कथन लेखवद्ध किये गये और न ही अपराध में लिप्त अन्य व्यक्तियों, जिनके संबंध में जांच के दौरान साक्षियों ने प्रकाश डाला था, उन तक पहुंचने का प्रयास किया. पुलिस ने अनुसूचित जनजाति की महिला के साथ बलात्कार एवं उसकी हत्या के प्रकरण को पुलिस परिसर के अंदर ही औपचारिक जांच कर अभियोगपत्र प्रस्तुत किया था अभिलेख से यह भी ध्वनित होता है कि पुलिस द्वारा जानबूझकर इस प्रकरण की गंध समाज को नहीं पहुंचने दी ताकि समाज आंदोलित न हो जाये तथा मीडिया वाले इसे प्रचारित व प्रसारित न कर दें. विगत दो वर्षों से ऐसा देखा जा रहा है कि महिलाओं के साथ अनाचार एवं हत्या के प्रकरणों में मीडिया सचेत एवं सतर्क है. वे ऐसे प्रकरणों को जनता के समक्ष इतना अधिक प्रचारित व प्रसारित करता है कि शासन ऐसे प्रकरणों का गहराई से अनुसंधान करने के लिये बाध्य हो जाती है और ऐसे अनुसंधान का परिणाम यह देखने में आ रहा है कि दोषी व्यक्ति को जो पूर्व में तकनीकी आधारों पर या विचारण को लबायमान खींचकर उसका लाभ उठाते थे, वंचित हो रहे हैं व पीड़ित महिलाओं को शीघ्र एवं त्वरित न्याय मिल रहा है. मीडिया के प्रचारित एवं प्रसारित करने के कारण पुलिस एवं प्रशासन भी सजग एवं सतर्क रहता है इस प्रकरण की दुर्भाग्यशाली भील महिला के भाग्य में उसकी दुर्दांत कथा का प्रचारण एवं प्रसारण नहीं था, इस कारण उसके साथ बलात्कार एवं उसकी हत्या का प्रकरण पुलिस परिसर के अंदर ही रह गया, इसका परिणाम जो कुछ भी आया, उसका विस्तृत उल्लेख ऊपर किया गया है।

चूंकि पुलिस द्वारा अनुसंधान ही नहीं किया गया, इसलिये मध्यप्रदेश शासन से यह अपेक्षा की जाती है कि:–

(1) थाना निम्बोला के अपराध क्रमांक–20/13, राज्य वि0 राकेश दलाल के प्रकरण का पुनः अनुसंधान किसी उच्च शक्तिवान् जांच एजेंसी स्थापित कर करवाये और यदि उपरोक्त आदेश का अध्ययन करने के पश्चात राज्य सरकार यह पाती है कि उसके राज्य के अंदर एक भील आदिवासी महिला के साथ हुए बलात्कार एवं हत्याकांड के प्रकरण में दोषी व्यक्ति को दंडित करने हेतु निष्पक्ष एवं न्यायपूर्ण गहन

अनुसंधान आवश्यक है तो वे उपरोक्त अपराध सी0बी0आई0 को पुनः अनुसंधान हेतु सौंपे.

(2) यदि उपरोक्त आदेश को पढ़ने के पश्चात् राज्य सरकार यह उचित समझती है कि अभियुक्त राकेश दलाल जिसे जांचकर्ता अधिकारी द्वारा किये गये लोपों के कारण जमानत का लाभ मिला है, कि जमानत निरस्त करवाना आवश्यक है तो इस पर गंभीरतापूर्वक विचार करते हुए उचित कदम उठाये.

(3) यदि राज्य सरकार उपरोक्त आदेश को पढ़ने तथा अभियुक्त एवं पुलिस डायरी के समीक्षा करने के पश्चात् यह पाती है कि विवेचना में प्रत्यक्ष या अप्रत्यक्ष रूप से जुड़े पुलिस अधिकारियों ने अपने वैधानिक कर्तव्यों का उचित रूप से निर्वहन नहीं किया है तथा उन्होंने जानबूझकर पूर्ण विवेचना नहीं की है तो उनके विरूद्ध विभागीय कार्यवाही करें।

(4) यदि राज्य सरकार उपरोक्त आदेश को पढ़ने, अभियोगपत्र एवं डायरी का अध्यन करने के पश्चात् यह पाती है कि विवेचना में प्रत्यक्ष या अप्रत्यक्ष रूप से जुड़े हुए पुलिस अधिकारियों ने भ्रष्टाचार किया है तो उनके विरूद्ध तद्नुसार आवश्यक कार्यवाही करें.

(5) और यदि इस आदेश को पढ़ने के पश्चात् राज्य सरकार यह सोचती है कि अनुसूचित जाति एवं जनजाति वर्ग के लोगों के साथ होने वाले अत्याचारों से पीड़ित वर्ग को विशुद्ध, निष्पक्ष एवं शीघ्र न्याय प्रदान करने में ***वर्तमान विधि में कमियां हैं*** तो विशेष न्यायालयों को अधिक शक्तिशाली बनाने हेतु अधिनियम 1989 में आवश्यक संशोधन करें."

6. The learned trial Judge has sent a copy of the impugned order to the Home Secretary to the Government of Madhya Pradesh, demanding his immediate action thereon.

7. Feeling aggrieved by the observations and especially remarks against them in para-32 (2) to (4), the petitioners have filed this petition under Section 482 of the Cr.P.C., invoking the extraordinary jurisdiction of this Court for their expungments on the ground that before passing the impugned order the learned trial Judge had not given them an opportunity of hearing. Thus, they have been deprived of natural justice.

8. The learned counsel appearing for the petitioners has submitted that it is a well settled law by a catena of decisions that before passing adverse remarks against an investigating officer for lapses and lacuna left by him in the course of investigation, the Presiding Judge of the criminal Court is bound to

give him an opportunity of hearing and explanation about the alleged lapses and lacunas. But in the present case, the learned trial Judge has not followed the established procedure before passing the impugned order. Therefore, the petitioners have been deprived of natural justice. Under the circumstances, the observations and remarks made against them be expunged. In support of the arguments learned counsel has relied upon the following judgments.

(i) *The State of Uttar Pradesh Vs. Mohammad Naim* AIR 1964 SC 703.

(ii) *Niranjan Patnaik Vs. Sashibhusan Kar*, AIR 1986 SC 819.

(iii) *S.K. Viswambaran Vs. E. Koyakunju* AIR 1987 SC 1436.

(iv) *State of Karnataka Vs. Registrar General High Court of Karnataka,* AIR 2000 SC 2626.

(v) *K.P. Singh Kushwaha Vs. State of M.P.* 2005 (2) MPLJ 276.

9. Per contra, learned panel Lawyer appearing for the respondents/State has supported the impugned order in its entirety in the facts and circumstances of the case.

10. I have anxiously considered the rival submissions, perused the impugned order, the entire record of the trial Court and the aforesaid citations.

11. Learned counsel for the petitioners has made limited prayer for expungment of adverse remarks and observations made against the petitioners. However, by perusal of the impugned order, I will consider whether other directions not connected with the petitioners are justifiable.

12. From perusal of the record of the case, it is evident that the impugned order is passed at the stage of examination of the accused under Section 313 of the Cr.P.C., and before passing the final judgment of the case. The judgment in the case is yet to be passed.

13. On 05.07.2014, the learned trial Judge framed the charges against

the accused for the offences punishable under Sections 376, 302 and 201 of the IPC and 3 (2) (5) of the Act, meaning thereby, he has taken cognizance of the aforesaid offences on the basis of the charge sheet. Hence, he has no power as a judge of the trial Court to direct further investigation into the case as he has directed vide the impugned order. However, the investigating agency has right to file supplementary charge-sheet in case it has come across fresh evidence against the accused as per the provisions of Section 173 (8) of the Cr.P.C. It is my considered view that if a trial Court passes an order for further investigation into the case after taking the cognizance by framing the charges, the impartiality of the Court will erode and the such act of the Court will amount to usurping the role of the prosecutor. Therefore, the directions given in respect of re-investigation of the case vide the impugned order is not proper and justifiable on the part of the learned trial Judge. In the result, the said directions are liable to be quashed.

14. No doubt, the criminal Courts have full powers and authority to pass adverse remarks against the investigating officer and witnesses and also has power for issuing directions to the concerned authority to take necessary actions in accordance with the law. But while doing so, they are required to follow the established procedure. This established procedure is that the Presiding Judge should pass first the judgment or order, as the case may be, pointing out the material lapses and lacunas committed and left by the investigating officer in the course of investigation, on account of which the case has ended in acquittal. Otherwise, the case would have been resulted into the conviction of the accused. As stated earlier, the learned trial Judge has passed the directions and the adverse remarks vide the impugned order at a time when the judgment in the case is yet to be passed. Thus, the learned trial Judge has passed the impugned order in gross violation of the established procedure, which deserves to be disapproved by this Court, and the procedure adopted by the learned Judge is liable to be quashed.

15. To satisfy myself whether the petitioners were given any opportunity of hearing before passing the observations and the adverse remarks against him? I have meticulously gone through the record, which reflects that the petitioners were not afforded any opportunity of hearing before passing of the said remarks. Thus, learned counsel appearing for the petitioners has rightly stated across the Bar that while passing impugned order, principles of natural

justice have not been followed.

16. The Supreme Court in the case of *State of Uttar Pradesh Vs. Mohammad Naiem* (supra) has clearly held that :-

> "It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks, and (c) whether it is necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve."

The same view was reiterated in the cases of *Niranjan Patnaik Vs. Sashibhusan Kar,* (Supra) and *S.K. Viswambaran Vs. E. Koyakunju,* (Supra).

17. As stated in para-15 that the learned trial Judge has not granted an opportunity of hearing to the petitioners before passing the observations and the adverse remarks against them. Hence, in view of the ratio law laid down in the aforesaid decisions, the adverse remarks are liable to be expunged.

18. In case of State of *Karnataka Vs. Registrar General, High Court of Karnataka* (supra) the Supreme Court has held that demoralisation of Police Department would badly erode the already impaired efficiency of the forces.

19. In view of the above, the learned trial Judge should not have at least made corruption-charges against the petitioners even obliquely without tangible evidence as he has made in para-32(4). Hence, remarks made in para- 32(4) are liable to be quashed.

20. As per the contents of 32(3) the learned trial Judge has directed the initiation of departmental enquiry against the petitioners. This Court, in the case of *K.P. Singh Kushwaha Vs. State of M.P.* (supra) has held that the

trial Court has no jurisdiction to direct the authority for initiation of departmental enquiry and to punish them. At most the learned trial Judge after passing the adverse remarks may have directed the authorities concerned to take necessary action in accordance with law. Thus, the learned trial Judge has exceeded his power by directing the authority concerned to hold the departmental enquiry against the petitioners. Hence, remarks made in para 32(3) are liable to be quashed.

21. Therefore, the directions, observations and adverse remarks passed by the learned trial Judge in the impugned order are not sustainable in the law. Consequently, in view of the forgoing discussions, this petition succeeds and is allowed. The directions, observations and adverse remarks passed in para 32 are hereby quashed and expunged.

22. Since the final judgment is yet to be passed in the case, the Registry is directed to send the record of the case immediately without delay to the Court concerned.

23. The incumbent Presiding Judge of the Court concerned is directed to proceed in the case further from the stage where the case is presently lying and to make all endeavours to expedite the disposal of the case. He is also directed that while passing the final order and judgment in the case, he will not be influenced by any observations made in this order and the impugned order. Further, if he arrives at the conclusion that the case is resulted into the acquittal on account of lapses and lacunas left by any of the petitioners, then he would grant him an opportunity for hearing against the lapses/lacuna, pointing them out to the concerned first. Thereafter, if he deems appropriate, he may pass suitable remarks.

24. Accordingly, this M.Cr.C., stands disposed of.

M.Cr.C. disposed of.