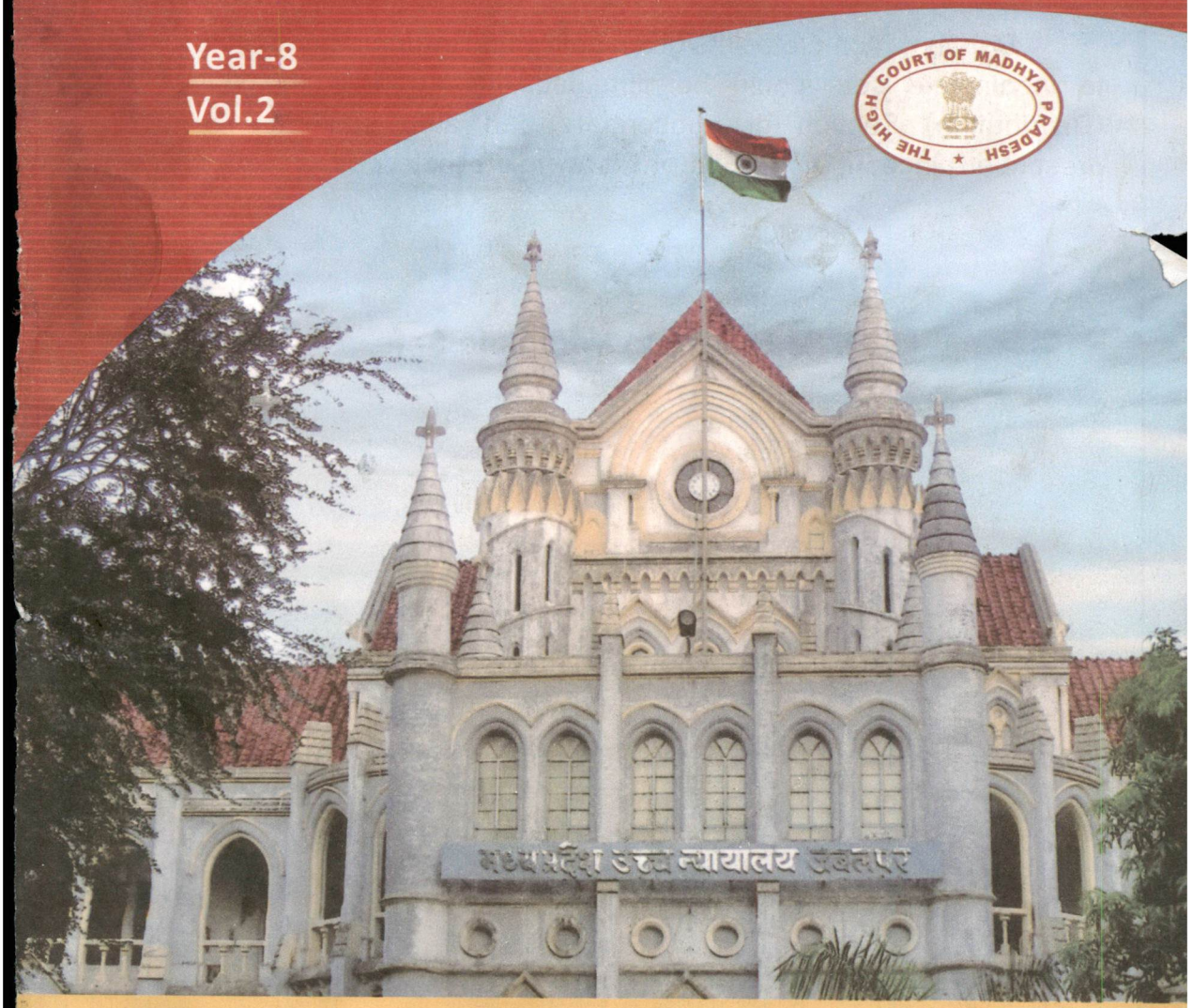
THE INDIAN LAW REPORTS

M.P. SERIES

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

Year-8
Vol.2



APRIL 2016 (pp. 943 to 1250) (Single Copy ₹50)

INDIAN LAW REPORT (M.P.) COMMITTEE

2016

PATRON

Hon'ble Shri Justice A.M. KHANWILKAR

Chief Justice

CHAIRMAN

Hon'ble Shri Justice S.K. SETH

MEMBERS

Shri Ravish Chandra Agarwal, Advocate General, *(ex-officio)*

Shri Rajendra Tiwari, Senior Advocate

Smt. Shobha Menon, Senior Advocate

Shri Kishore Shrivastava, Senior Advocate

Shri G.S. Ahluwalia, Advocate, Chief Editor, Member & Secy.*(ex-officio)*

Shri Pankaj Gaur, Registrar (Judicial-1) *(ex-officio)*

SECRETARY

Shri Akhil Kumar Srivastava, Principal Registrar (ILR)

PUBLISHED BY
SHRI AKHIL KUMAR SRIVASTAVA, PRINCIPAL REGISTRAR (ILR)

TABLE OF CASES REPORTED

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

TABLE OF CASES REPORTED

..*.*.*.*.*.*.*.

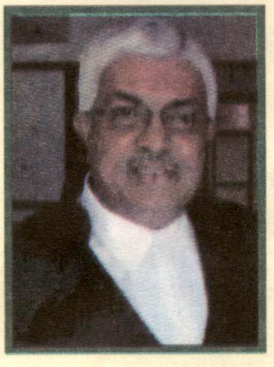
THE INDIAN LAW REPORTS M.P. SERIES, 2016

(VOL-2)

JOURNAL SECTION

APPOINTMENTS TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Atul Sreedharan on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Atul Sreedharan took oath of the High Office on 07.04.2016.



HON'BLE MR. JUSTICE ATUL SREEDHARAN

Born on May 24, 1966. Did B.A. (History), from the University of Madras in the year 1987 and LL.B from Meerut University in the year 1992. Enrolled as an Advocate on 03.04.1992. Practiced independently at Delhi from 1997. Shifted to Indore in the year 2001 and practiced before the Indore Bench of the M.P. High Court. Worked on the panel of the Madhya Pradesh Housing Board from the year 2002 to 2012. Represented the State of Madhya Pradesh as Panel Advocate before the High Court of M.P, Bench at Indore from 2001 to 2003. Represented the State of Madhya Pradesh as a Government Advocate before the High Court of M.P, Bench at Indore from the year 2003 to 2004. Was on the panel of the Kendriya Vidyalaya Sangathan from the year 2004 till 2012. Was appointed as Central Government Counsel on 19.09.2005 to appear in cases on behalf of the Union of India till 19.09.2008. Was appointed as Central Government Counsel (Senior Panel) on 19.02.2010 to appear in cases on behalf of the Union of India till 19.02.2013.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Atul Sreedharan, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Sushrut A. Dharmadhikari on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Sushrut A. Dharmadhikari took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE SUSHRUT A. DHARMADHIKARI

Born on July 8, 1966 at Raipur Chhattisgarh. Did B.Com. and LL.B. from Nagpur University. Enrolled as an Advocate with the State Bar Council of Madhya Pradesh in the year 1992 and started independent practice in the year 1996. Practiced in Civil, Constitutional, Criminal branches of law. Was Counsel for various Banks, Corporation, Companies & Industries. Was Standing Counsel for Central Excise Department, Income Tax Department, BSNL (Telecom Factory Circle) Jabalpur and Kendriya Vidyalaya Sangathan. Was Standing Counsel for Welfare Commissioner, Bhopal Gas Victims, Bhopal. Was Additional Central Government Standing Counsel since Januray 2000 and Central Government Counsel, High Court of M.P. Jabalpur since the year 2004.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Sushrut A. Dharmadhikari, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Vivek Rusia on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Vivek Rusia took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE VIVEK RUSIA

Born on August 2, 1969. Did B.Sc. in the year 1989 and LL.B. in the year 1992. Started practice in the year 1992, started independent practice in the year 1998 and was soon taken in the panel of coal India Ltd., South Eastern Coalfields Ltd., Western Coal Field Limited, Northern Coal Field Limited, Cantonment Board Jabalpur, Madhya Pradesh Poorve Kshetra Vidyut Vitran Co. Ltd., M.P. Power Management Company Ltd., M.P. Madhya Kshetra Vidyut Vitran Co., M.P. Power Transmission Company Ltd., M.P. Power Generating Company Ltd., Madhya Pradesh Housing & Infrastructure Development Board, M.P. Laghu Udyog Nigam, Jabalpur Development Authority, BSNL, Indian Olympic Association, Jila Sahakari Krishi & Gramin Vikas Bank Mydt. Panna, Sidhi & Satna, various Municipalities, Gram, Janpad & Zila Panchayats of Madhya Pradesh. Was appointed as Standing Counsel for Government of India in the year 2010 for the period of three years. Was elected as Joint Secretary of High Court Advocates Bar Association.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Vivek Rusia, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Anand Pathak on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Anand Pathak took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE ANAND PATHAK

Born on July 18, 1968. Did M.A. (History) and LL.B. Enrolled as an Advocate in the year 1996. Worked mainly in Civil, Constitutional, Service Revenue and Arbitration matters. Worked in Advocate General Office Indore as Deputy Government Advocate from 2005 to 2009. Appeared as Standing Counsel for Indian Railway Catering & Tourism Corporation, Western Railway, Employees Provident Fund, M.P. Road Development Corporation, M.P. Para Medical Council, M.P. State Dental Council & also appeared for M.P. Audhyogik Kendra Vikas Nigam, Indore, M.P. Power Transmission Company Ltd., M.P. Paschim Kshetra Vidyut Vitaran Company Ltd., Vikram University, Maharshi Panini Sanskrit Viswavidyalaya, Hindustan Lever, ICICI, HDFC, Dhar Cement etc. Worked as Member in continuous and permanent Lok Adalat and National Lok Adalat for last 7 years.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Anand Pathak, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Ved Prakash Sharma on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Ved Prakash Sharma took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE VED PRAKASH SHARMA

Born on January 2, 1956 at Agra. Did B.Sc., LL.B.. Joined M.P. State Judicial Services as Civil Judge Class II on April 16, 1983 at Gwalior. Was promoted to Higher Judicial Services on June 3, 1996. Was granted Selection Grade Scale on June 1, 2002 and Super Time Scale on January 2, 2012. Worked at Gwalior, Pichhore, Jora, Raipur (now Chhattisgarh) and Khandwa. Also served as Dy. Commissioner (Bhopal Gas Commission). Held the post of Additional Director and thereafter Director of the State Judicial Academy between May 2002 to June 2007. Has delivered lectures and speeches in various training programmes on varied subjects in different institutions including National Judicial Academy, Bhopal and National Law Institute University, Bhopal. From February, 2009 to March, 2010 served as Professor at the National Judicial Academy, Bhopal and thereafter, as District & Sessions Judge, Sehore. From March 2010 to March 2011, worked as Principal Registrar (Judl.) and thereafter, from April 2013 till 31.01.2016 as Registrar General of the High Court of M.P. Was Chairman, M.P. State Co-operative Tribunal, Bhopal from 01.02.2016 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Ved Prakash Sharma, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Jagdish Prasad Gupta on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Jagdish Prasad Gupta took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE JAGDISH PRASAD GUPTA

Born on March 21, 1959. Did M.A., LL.B. and joined Judicial Service on March 5, 1983. Worked as Civil Judge Class-II at Morena, Sehore and Bhopal. Worked as Railway Magistrate at Bhopal in the year 1986. Was appointed as Civil Judge Class-I on October 17, 1989. Was appointed as Chief Judicial Magistrate/Additional Chief Judicial Magistrate in the year 1994. Promoted /Posted as Officating District Judge in Higher Judicial Service on June 04, 1996 and worked as ADJ at Datia, Seodha, Shivpuri and Indore. Confirmed as District Judge in Higher Judicial Service on July 1, 2000. Was granted Selection Grade Scale on 01.06.2002. Was posted as Special Judge SC/ST (P.A.) Act & I AJ to I ADJ at Tikamgarh in the year 2004 and also as Special Judge NDPS Act in the year 2005. Was posted as Additional Registrar (J-1), High Court of M.P. at Jabalpur in the year 2005, and as Additional Registrar (Vig.), High Court of M.P. at Jabalpur in the year 2007. Was posted as Director, J.O.T.R.I., High Court of M.P. at Jabalpur in the year 2007. Was posted as District & Sessions Judge at Ujjain in the year 2012. Was granted Super Time Scale on 02.01.2012. Worked as Principal Registrar, High Court of M.P., at Gwalior in the year 2013. Was posted as District & Sessions Judge at Ujjain in the year 2014.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Jagdish Prasad Gupta, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Anurag Kumar Shrivastava on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Anurag Kumar Shrivastava took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE ANURAG KUMAR SHRIVASTAVA

Born on April 11, 1956 at Rajnandgaon, Chhattisgarh. Did B.Sc. in the year 1975 and LL.B. in the year 1979. Enrolled as an Advocate from State Bar Council M.P. in the year 1980. and started practice in District Court Rajnandgaon. Joined the State Judicial Service on April 27, 1983. Worked as Civil Judge in Mahasamund, Gariyaband, Mungeli, Korba, Tahsils of Raipur and Bilaspur Districts then promoted as Civil Judge Class-I and A.C.J.M. Maihar in the year 1994. Worked as CJM, Mandla in the year 1995-96. Was promoted as Additional District Judge in June 1996 and posted in District Court Jabalpur. Worked as ADJ in Rewa, Sakti, then promoted as Special Judge (Atrocities) and posted at Chhatarpur in the year 2005. Posted as District Judge at Balaghat from June 2010 to March 2012. Was granted Super Time Scale w.e.f. 02.01.2012. Worked as Member Secretary State Legal Services Authority (M.P.) Jabalpur from April 2012 to March 2014. Was posted as District Judge Balaghat in the year 2014 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Anurag Kumar Shrivastava, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Housla Prasad Singh on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Housla Prasad Singh took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE HOUSLA PRASAD SINGH

Born on July 1, 1956 at village Aschaura District Ballia in Uttar Pradesh. Did B.Sc. in the year 1974 from DBS College Kanpur and LL.B. degree from RDVV, Jabalpur. Enrolled as an Advocate in the year 1979. Joined M.P. Judicial Service in the year 1983 as Civil Judge Class-II and J.M.F.C. Promoted as Civil Judge Class-I, in the year 1990. Posted as Railway Magistrate, Jabalpur in the year 1992. Promoted as Additional District & Sessions Judge in the year 1996. Was granted Selection Grade Scale on 01.01.2003. Was appointed as Chairman, District Consumer Disputes Redressal Forum, Jabalpur, in the year 2005. Was appointed as Special Judge at District Satna in June, 2009. Was promoted as District & Sessions Judge at District Umaria in July, 2009. Was posted as District & Sessions Judge at Sagar in the year 2013. Was granted Super Time Scale on 15.03.2012. Worked in different capacities at Seoni, Sagar, Banda, Niwas, Sihora, Jabalpur, Damoh, Raipur, Satna, Umaria and Gwalior. Was posted as Chairman, State Transport Appellate Tribunal, M.P. Gwalior before elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Housla Prasad Singh, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Ashok Kumar Joshi on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Ashok Kumar Joshi took oath of the High Office on 07.04.2016.

HON'BLE MR. JUSTICE ASHOK KUMAR JOSHI

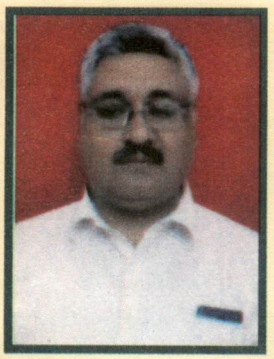
Born on November 11, 1956 at Anjad (District Barwani). Did B.Sc., M.Sc. (Chemistry) and LL.B. from Vikram University, Ujjain. Enrolled as an Advocate in the year 1981. Joined Judicial Service as Civil Judge Class-II in the year 1983. Appointed as Civil Judge Class-I in the year 1990. Was appointed as C.J.M./A.C.J.M., in the year 1994. Was Promoted/Posted as Officiating District Judge in Higher Judicial Services in the year 1996. Was posted as ADJ at Bhind, Agar and as ADJ and Special Judge (N.D.P.S. Act) Indore, also worked as Special Judge (SC/ST Act) Guna and Shajapur. Was granted Selection Grade Scale w.e.f. 01.01.2003. Was posted as District & Sessions Judge at Alirajpur in the year 2009. Was granted Super Time Scale w.e.f. 15.03.2012. Was posted as District & Sessions Judge (Inspection), at Indore in the year 2013.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Ashok Kumar Joshi, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mr. Justice Vivek Agarwal on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Vivek Agarwal took oath of the High Office on 07.04.2016.



HON'BLE MR. JUSTICE VIVEK AGARWAL

Born on June 28, 1967 at Kasganj, Uttar Pradesh. After completion of education, enrolled as an Advocate in August 1992 and started practice. Practised at Civil, Criminal and Constitutional sides.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mr. Justice Vivek Agarwal, a successful tenure on the Bench.

.....

We congratulate Hon'ble Mrs. Justice Nandita Dubey on her appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mrs. Justice Nandita Dubey took oath of the High Office on 07.04.2016.

HON'BLE MRS. JUSTICE NANDITA DUBEY

Born on September 17, 1961 at Gwalior. Did B.Sc. in the year 1981 and M.A. Economics in the year 1983 from Bhopal University. Did LL.B. in the year 2001 from Jiwaji University Gwalior. Practiced independently before the High Court, District Level Courts and also at various Tribunals Commissions, etc. especially in Constitutional matters, Debts-recovery related matters, Civil matters, Criminal matters, Corporate matters, Industrial and Labour matters. Was Standing Counsel for various Banks, Corporations, Financial institution. Was appointed as the Hon. Secretary of "Core Consultative Group" and subsequently as Convenor of the Complaint cell for Gwalior & Chambal Divisions, & worked actively as a human rights activist under the umbrella and patronage of the M.P. Human Rights Commission from year 2000 to 2004.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 07.04.2016.

We wish Hon'ble Mrs. Justice Nandita Dubey, a successful tenure on the Bench.

.....

OVATION TO THE NEWLY APPOINTED JUDGES GIVEN ON 07-04-2016 IN THE CONFERENCE HALL OF THE HIGH COURT OF M.P. AT JABALPUR.

Shri Ravish Chandra Agrawal, Advocate General, M.P., while felicitating the New Judges, said :-

It is indeed a momentous and unprecedented moment of glory for this great institution as 11 distinguished personalities have donned the chair as Judges of this Hon'ble Court. This moment is a moment of pride and honour, both for the bar and the bench as the baton of the future of this institution is being handed over to able minds of your lordships Justice Shri Atul Sreedharan, Hon'ble Shri Justice Sushrut A. Dharmadhikari, Hon'ble Shri Justice Vivek Rusia, Hon'ble Shri Justice Anand Pathak, Hon'ble Shri Justice Ved Prakash Sharma, Hon'ble Shri Justice Jagdish Prasad Gupta, Hon'ble Shri Justice Anurag Kumar Shrivastava, Hon'ble Shri Justice Housla Prasad Singh, Hon'ble Shri Justice Ashok Kumar Joshi, Hon'ble Shri Justice Vivek Agarwal and Hon'ble Mrs. Justice Nandita Dubey.

Today we stand at cross roads of a major change in the democratic set-up of our country where the push and pull as well as the need for check and balance between the three pillars of our democracy is felt like never before. The Judgment pronounced by the Apex Court to uphold the Collegium system and strike down the N.J.A.C. casts an unprecedented burden on your lordship to carry the weight of this great institution on their shoulder and come out with flying colour. The faith reposed by the Apex Court in our selection process and the might of the basic structure of our Constitution lends utmost credence to our justice delivery system and we sincerely hope and expect that your lordship shall leave no stone unturned to scale new heights during your tenure as a judge of this Hon'ble Court.

Once the basic structure of the Constitution is interpreted to the extent of power of selecting the Judges by Collegium system then it definitely conveys that the new appointments which are being made and the oath has been administered today have the greater responsibility not only to justify the Constitutional mandate but they have to fulfil the expectation of the common man of the country.

That, father of our nation Mahatma Gandhi appositely described the duty of a judge in the following terms:

"The best way to find yourself is to lose yourself in the service of others ".

There is no better service to the society at large than imparting justice to the down trodden and the poor.

The oath of your lordship succulently epitomizes the spirituality required for imparting justice as your lordships shall be expected to deliver justice without "fear or favour", "ill will or affection". Hence from this day all and sundry are equal for your lordships.

That, with great power comes great responsibility and as Confucius said **"the superior man is modest in speech but exceeds in his actions'.** Hence we sincerely hope and pray that your lordships shall maintain equanimity and equilibrium as judges of this Hon'ble Court.

It is said that a Judge must have the grace to hear patiently, to consider diligently, to understand rightly and to decide justly with a sense of humility. John Ruskin said:

"I believe that the first test of a great man is his humility. I don't mean by humility; doubt of his power. But really great men have a curious feeling that the greatness is not of them, but through them. And they see something divine in every other man and are endlessly and incredibly merciful."

I on behalf of State of Madhya Pradesh, on my own behalf and on behalf of Law Officers of the State extend my heartiest wishes and choicest of blessings to your lordships for discharging the arduous duty of dispensation of justice for decades to come.

May the almighty grant you the steadiness, humility, integrity, fairness and uprightness throughout your tenure for times immemorial.

.....

Shri S.C. Datt, Sr. Advocate, President, Adhoc Committee, M.P. High Court Bar Association, said :-

Today, it is a very happy occasion in the history of M.P. High Court when 11 Judges taking oath as Judges simultaneously..

This is the third time since 1984 when 9 judges had taken oath as

Judges of High Court together. In 2004 seven Judges had taken oath together.

This time your Lordships have been elevated as Judges of M.P. High Court from two streams. Your Lordship Shri Atul Sreedharan, your Lordship Shri Sushrut Arvind Dharmadhikari, your Lordship Shri Vivek Rusia, your Lordship Shri Anand Pathak, your Lordship Shri Vivek Agarwal and Your Lordship Smt.Nandita Dubey.All of you were working as lawyers and have come from the profession of law.

Each of you worked in various branches and streams of law and gained expertise and fame. It is good for lawyers who would be appearing and arguing before your lordships as they will get patient and expert hearing.

Your Lordship Shri Ved Prakash Sharma, your Lordship Shri Jagdish Prasad Gupta, your Lordship Shri Anurag Kumar Shrivastrava, your Lordship Shri Housla Prasad Singh and your Lordship Shri Ashok Kumar Joshi have been elevated from higher judicial service of the State. All of your lordships have gained vast experience while working in the higher judicial service.

I may say, here, that working as a Lawyer or working as District Judge is completely different from the work of the High Court Judge. Vast vision and horizon is required to be a good High Court Judge.

Justice R.N. Sahai retired judge of the Supreme Court had observed in his book ***'A Lawyer's Journey' at p.63.***

" to be a good judge, it is not only patience which is required, but one has to be willing to learn. Law is such a vast subject that one can never claim to be perfect. Yet unfortunately, some judges are under a delusion that once they have come to occupy the chair, they alone know the law. As a young member of the Bar, I used to hear that there were three stages of judgeships, one where the judge did not know any thing, second when he knew something and third when he alone knew the law. Today , one finds that the last category has gone up".

The Judges of the High Court are great persons and they must be great persons I quote from ***Roth vs. United States (354 US 476).***

" The law is not an end in itself nor does it provide ends. It is pre-eminently a means to serve what we think is right ... law is here to serve! To serve what? To serve, in so far as law can properly do so within limits that

realizations of man's ends, ultimate and mediate".

I and Bar would like you to be what Earl Warren , that great Chief Justice, of US wrote.

" Our Judges are not monks or scientists, but participants in the living steams of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other".

At the end of this glorious day, I on behalf of High Court Bar and myself congratulate all of you Lordships and wish that every lawyer and litigant who comes to your Court to get justice goes back smiling as justice has been done.

.....

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

The appointments of 11 Hon'ble Judges were long awaited. After some ups and downs, occasion has now come to congratulate all newly appointed Hon'ble Judges, which I hereby do and wish them a very happy and successful tenure. The High Court of Madhya Pradesh was short of Judges and with these appointments, the requirement would be fulfilled to a large extent.

We, the Members of the Bar, do hope that working would now gather speed and momentum in the matter of disposal of cases.

Hon'ble Mr. Justice Atul Sreedharan

Hon'ble Mr. Justice Atul Sreedharan started his practice as Junior to Mr.Gopal Subramaniyam, Senior Advocate, Supreme Court of India and a well known jurist of the country. He practiced in the Supreme Court as also in Delhi Court and the trial Courts. He shifted to Indore, where soon he acquired name and fame. He was Government Advocate at Indore Bench and a Senior Panel Counsel of Union of India from 2009 to 2011. He was standing counsel for various public and private sector/organizations. My Lord practiced practically in all branches of law and criminal law, in particular. He has a very rich experience, which would enure to the benefit of the people at large.

Hon'ble Mr. Justice Sushrut Arvind Dharmadhikari

My Lord Hon'ble Mr.Justice Sushrut Arvind Dharmadhikari also has

to his credit 24 years long experience in law. He started practice as a Junior Advocate to Late Y.S.Dharmadhikari, Senior Advocate and Ex-Advocate General of Madhya Pradesh. My Lord started independent practice since 1996. My Lord has been practicing in Civil, Constitutional and Criminal branches of law. My Lord has been the Standing Counsel for Union of India for High Court of Madhya Pradesh and also for Central Administrative Tribunal, Central Government Industrial Tribunal, Labour Court, District Court, Consumer Forum and Debts Recovery Tribunal. His appointment is well merited and we have no doubt that he will serve the humanity with all his vigour, knowledge and enthusiasm at his command.

Hon'ble Mr. Justice Vivek Rusia

Hon'ble Mr. Justice Vivek Rusia has been practicing in the High Court since 1992. He is the son of illustrious father Late Prabhakar Rusia who was a Senior Advocate and he learnt law lessons initially working with him. It is rather unfortunate that he is not here to witness this solemn ceremony. My Lord, later joined the office of an eminent lawyer Late P.S.Nair. My Lord acquired deep knowledge of Law while working in his chamber. My Lord's mother-Smt.Vimla Rusia and his wife-Smt.Preeti Rusia are also practicing advocates. My Lord has been the standing counsel for practically all coalfields and electric supply companies. He has also been the standing counsel for M.P. Laghu Udyog Nigam, Jabalpur Development Authority, BSNL, Indian Olympic Association and other government and semi government undertakings. He was appointed as Standing Counsel for Union of India in the year 2010 for a period of 3 years. I had an opportunity of having very valuable assistance of My Lord as Joint Secretary of High Court Advocates' Bar Association. His elevation to the Bench is well merited. My Lord has a very sober temperament and loved by each and every member of the Bar.

Hon'ble Mr. Justice Anand Pathak

My Lord Hon'ble Mr.Justice Anand Pathak having been enrolled as an Advocate on 07.5.1996 with the State Bar Council started his practice soon thereafter. My Lord has been practicing in the High Court Bench at Indore and has also been appearing before the Central Administrative Tribunal, Bench Jabalpur as also in Camp Sittings at Indore. He has also been practicing in the erstwhile State Administrative Tribunal at Indore and Bhopal Benches since 1996 to 2001. My Lord has vast experience of about 20 years in the

field of law and his elevation to the Bench is well merited.

Hon'ble Mr. Justice Ved Prakash Sharma

My Lord Hon'ble Mr.Justice Ved Prakash Sharma joined Judicial Service on 16.4.1983 as Civil Judge. Since then he was being continuously promoted to the higher ranks and ultimately retired as Registrar General of High Court of Madhya Pradesh and thereafter he occupied the Office in the Cooperative Tribunal. My Lord carries with him very vast judicial experience. I had very close relations with My Lord in his capacity as Registrar General of High Court as I kept on meeting from time to time in connection with several Bar matters. Although the term of My Lord is short, but I hope that he would come with flying colours while being in high Office.

Hon'ble Mr. Justice Jagdish Prasad Gupta

My Lord Hon'ble Mr.Justice Jagdish Prasad Gupta has also very vast judicial experience of 33 years. Before My Lord's elevation he was granted Selection Grade and Super Time Scale. He worked in different capacities at Morena, Sehore, Bhopal, Begumganj and many other places including Jabalpur. My Lords elevation to the Bench would prove to be an asset to the institution.

Hon'ble Mr. Justice Anurag Kumar Shrivastava

My Lord Hon'ble Mr.Justice Anurag Kumar Shrivastava also carries with him vast experience of 33 years. He too, before his elevation, was granted Selection Grade and Super Time Scale. He also worked in different capacities in different places including Jabalpur. Although the term of My Lord is short, yet it is hoped that he would serve the institution with distinction.

Hon'ble Mr. Justice Housla Prasad Singh

My Lord Hon'ble Mr.Justice Housla Prasad Singh joined judicial services on 07.3.1983 and since then has been occupying higher posts. Before his elevation My Lord was posted as District and Sessions Judge, Sagar. His tenure is also short. Nevertheless, it is hoped that My Lord, by his sheer dent of merits and hard work, will enhance the glory and prestige of the institution.

Hon'ble Mr. Justice Ashok Kumar Joshi

My Lord Hon'ble Mr.Justice Ashok Kumar Joshi joined judicial

services on 11.3.1983 and ultimately occupied the office of District & Sessions Judge, Indore. I have been informed that My Lord's relations with the Bar were very cordial and he was very much popular amongst his subordinates as also the members of the Bar. His appointment is also well merited.

Hon'ble Mr. Justice Vivek Agarwal

My Lord Hon'ble Mr.Justice Vivek Agarwal is no stranger to us. He has been working with us. He has been practicing in the High Court for the last 22 years with great distinction. My Lord's father joined State Administrative Services in Madhya Pradesh and subsequently was inducted in the cadre of I.A.S.. My Lord has been practicing in almost all the branches of law. My Lord was the standing counsel of various Tribunals, government and semi-government undertakings. My Lord has to go very long way and it is hoped that he would be an asset to the institution. My Lord has an enviable temperament and is very popular amongst lawyers. He has appeared in very important cases and now, by sheer dent of his merit, he will make name for himself.

Hon'ble Justice (Smt.) Nandita Dubey

My Lord Hon'ble Smt. Justice Nandita Dubey having been enrolled as an advocate on 25.8.2001 has been continuously practicing in the High Court. She has also appeared in several matters before Supreme Court. My Lord's grandfather-in-law Late P.L.Dubey was a Senior Advocate and Former Advocate General of Madhya Pradesh. Her father-in-law Justice S.K.Dubey is Former Judge of M.P. High Court. He is now practicing in the Supreme Court and is present today to bless her. My Lord's elder daughter is a practicing lawyer in the Supreme Court for the last 3 years and younger daughter is a student.

I, on behalf of High Court Advocates' Bar Association and my own behalf congratulate all Hon'ble Judges for being appointed as Judges of High Court of Madhya Pradesh and wish them a very happy and successful tenure.

.....

Shri Radhe Lal Gupta, Representative, State Bar Council of M.P., said :-

Before this august gathering today I have the honour of welcoming a new team of eleven legal personalities who have traversed a lengthy but equally

enlightening, a prolonged but preserved steady but progressive odyssey towards this constitutional responsibility.

I am thankful to Shri Justice A. M. Khanwilkar, Hon'ble Chief Justice for recommending such worthy appointments of Hon'ble Judges. Because of efforts of Hon'ble Chief Justice despite of the hurdles and ordeals in system where dilemma was created on the present scenario Hon'ble Chief Justice by his endeavors which can be termed as "Bhagirath Prayas" we are blessed by the assests of team of new eleven judges. It is happening for the first time in the history of MP High Court that 11 Judges are taking oath on the same day and all these elevated Judges are from their illustrious background.

My Lord the judiciary as a whole is facing enormous problems. They are complicated. They do not admit easy solutions. There is an erosion of confidence of the ordinary public in the effectiveness of the justice delivery system. Every institution is accountable to the public for whom it is made.

My Lord MP High Court is the second largest State in the country is made to work with such a less number of Judges and the diminished number of Judges are working hard to cater the needs of three benches of the High Court of Madhya Pradesh.

The pendency on paper might appear alarming in trial courts but on an average a Session Trial gets over within a period of 2-3 years, it is the appeal before the High Court which remains pending for close to a decade. There has been an old saying that "Justice delayed is Justice denied" and thus it is important that something is done to ensure that the litigants do not loose their hope and they continue to have faith in our justice delivery system and the cases are decided on a time bound manner.

Therefore, looking to the number of pendency of cases as per the annual report of High Court of MP 2015, it is required that the sanctioned strength of Madhya Pradesh High Court may be increased by 25% i.e 13 additional posts, and be made to 66 Judges and all the vacancies may be filled up at the earliest for increasing the strength of MP High Court by 13 more Judges.

My Lord the apex Court has said in S P Gupta's case that "The Judges and the Laywers are partners in the administration of justice. The justice is the result of team work though the function of Judges and Lawyers are different

we have to see that the entire system of judiciary works smoothly and effectively. The problems could be solved if there is a relationship of cordiality, mutual respect and proper understanding between the Judges and the Lawyers.

Bar is nursery of bench. The proficiency and maturity acquired during practice comes handy if the gentlemen are persuaded to sit on the bench for larger roles in administration of justice in my view that is also a part of obligation of this noble profession. Unless they are not bothered by prospect of crisis of vacuum in judiciary. It is senior lawyers who must lead by example and accept these responsibilities.

Therefore each member of Bar is highly indebted to Hon'ble Judges for assuming this daunting tasks onto themselves and shouldering this herculean responsibilities of dispensing corrective and distributive justice to the nation.

My Lord there can be no other work greater and better than the work dispensation of justice to the creation God.

When divinity finds magnanimity and generosity rooted in a person's character, it is then that he is picked amongst hundreds or thousands but even amongst millions to adorn such high esteemed positions.

Hon'ble Shri Justice Raina once said:

Administrative Justice is a very solemn duty and it demands whole hearted devotion. Being religious minded I believe that God alone is the true fountain of justice and the judges are called upon to discharge the judicial function as his agents. We are accountable to God for all that we do in the discharge of his function and therefore it is necessary for us to do our best according to light and wisdom given to us by him. I have always felt that if we fail in doing justice to others we shall not be entitled to claim justice for ourselves from God.

Hon'ble Shri Justice Gajendra Gadkar said that:

Efforts and attempts pave the way to opportunities; opportunities pave the way to credentials, credentials pave the way to excellence, if the person keeps working, then excellence paves the way to perfection but the last phase of journey can be traversal, when a person competes with himself every year, every month, every hour and every second of life, he spends with himself.

Justice is divine rationality which dawns upon the Wisdom of the persons

responsible for dispensation of justice. We are just instrumentalities so we should not hold our head high under the impression that this is our personal contribution. We should learn from the words of Abdul Rahim Khan Khanna -

I quote:

देवन हार कोऊ और है, देवत जो दिन रैन
लोग भ्रम मोरा करें, ताते नीचे नैन।

With this I would now like to welcome and congratulate all the newly appointed Judges of Hon'ble High Court.

My Lord Hon'ble Shri Justice Atul Sreedharan,

My Lord Hon'ble Shri Justice Sushrut Arvind Dharmadhikari,

My Lord Hon'ble Shri Justice Vivek Rusia,

My Lord Hon'ble Shri Justice Anand Pathak,

My Lord Hon'ble Shri Justice Ved Prakash Sharma,

My Lord Hon'ble Shri Justice Jagdish Prasad Gupta,

My Lord Hon'ble Shri Justice Anurag Kumar Shrivastava

My Lord Hon'ble Shri Justice Housla Prasad Singh,

My Lord Hon'ble Shri Justice Ashok Kumar Joshi,

My Lord Hon'ble Shri Justice Vivek Agarwal

My Lord Hon'ble Smt. Justice Nandita Dubey

My Lords the repetition of Bio Datas of all the recently elevated Hon'ble Judges would be a sheer waste of time as already the same has been narrated in details by all my other speakers so I adopt the same. I joined my hands with all my predecessor speakers in welcoming and congratulating all newly elevated Hon'ble Judges to this temple of justice.

We find sportsmanship in the field of dispensation of justice inherent in the instant team of eleven new elevated Judges, who are eleven in number and who will commence their judicial work from 11th of April 2016.

1. **My Lord Hon'ble Shri Justice Atul Sreedharan,** has an extremely patriotic background where on one hand his father served the country as a renowned upright IPS officer, his elder brother has served the country as

Naval Officer guarding the porous borders of country day and night. He received his mentorship in the Chamber of Mr. Gopal Subramaniam renowned Sr. Advocate of the country. We hope that like his father and his brother he will also serve as a soldier for the institution. I welcome and congratulate to your Lordship.

2. **My Lord Shri Justice Shusrut Arvind Dharmadhikari,** comes from a family which has a very big image and pride attached to it, the renowned Dharmadhikari family of erstwhile Madhya - Bharat now Madhya Pradesh and Maharashtra. Distinguished Sr. Adv Y. S. Dharmadhikari, Justice D. M. Dharmadhikari by his self given effort became Supreme Court Judge. My Lord Justice S. A. Dharmadhikari who comes from Betul District in MP. has his two cousins Mr. Justice V. P. Dharmadhikari as the Adm. Judge of Mumbai High Court and Mr. Justice S. C. Dharmadhikari, Sr. Judge of Mumbai High Court are the pride of this Dharmadhikari family. There is a strong expectation from Justice Dharmadhikari that he will also establish his independent standing as one of the outstanding Judge. I welcome and congratulate to your Lordship.

3. **My Lord Shri Justice Vivek Rusia,** is the youngest Judge in this whole team of eleven elevated Judges and is also the First Judge from his family. He is son of most respectable and knowledgeable Member of the Bar Late Shri Prabhakar Rusia. Late Shri Rusia sahib always used to tell all of us in our learning days that a Judge is an incarnation of God on high seat and he must be extremely sensitive to the pain of every litigant as no litigant comes to the Court as a matter of luxury but because his faith drives him to Court. All of us see the same reflection in Vivek. Mr. Vivek Rusia had also been very committed and honest. I welcome and congratulate to your Lordship.

4. **My Lord Shri Justice Anand Pathak,** has been known for his sobriety and simplicity in the Indore Bar Association. Even whilst handling complicated matters Mr. Pathak is known for his ability to keep the Bench with him. He had diversified work experience in various fields of law. I welcome and congratulate to your Lordship.

5. **My Lord Shri Justice Ved Prakash Sharma,** a distinguished academician whilst also being a distinguished Judge. Very few people know that he was a guest faculty to the National Law University for utmost two years on honorary basis. His classes on CPC were attended in

full attendance by the students of National Law Institute. My Lord has been known for his extremely systematic approach towards his work. Particularly as Registrar General MP High Court he has been accessible and co-operative to every lawyer of this Court and in my memory I am not able to recollect any moment when any lawyer was made to wait out of his office. So I welcome and congratulate to your Lordship.

6. **My Lord Shri Justice Jagdish Prasad Gupta,** is a very learned and honest Judicial Officer. He always during the span of his Judicial Services always devoted his full time for the cause of justice. Lastly he was posted at District Court Ujjain and by blessing of the Mahakal your Lordship is today adorning the High Office of Hon'ble Judge of this temple of High Court of M. P.. I welcome and congratulate to your Lordship.

7. **My Lord Shri Justice Anurag Kumar Shrivastav,** gave his contribution to the Judiciary in several districts of MP including the Registry of High Court of MP. The contribution of my Lord in judiciary of all Districts of MP as Well as Registry of High Court is remarkable and memorable. I welcome and congratulate to your Lordship.

8. **My Lord Shri Justice Housla Prasad Singh,** came in the profession as advocate at Jabalpur and from the same place he entered in the Judicial Service and thereafter continuously contributed his experience and knowledge to various districts, tehsils as Judicial officer and now stepped up to the esteem position of the state judiciary by his simple and gentle behavior with smiling face he always made a balance between the Bench and the Bar every place wherever he was posted. In the field of mediation also by his efforts, complicated matters were resolved by your Lordship. I welcome and congratulate to your Lordship.

9. **My Lord Shri Justice Ashok KumarJoshi,** also started the journey of judiciary in the year 1990 and contributed his experience and knowledge upto his elevation in various district of the State of MP. I welcome and congratulate your Lordship.

10. **My Lord Shri Justice Vivek Agarwal** belongs to a very renowned family. The contribution of the family of my Lord towards the administrative as well as on towards the judicial side is memorable. Father of my Lord was in State Admin. Service in MP and various members of the family are giving contributions in computer software development as well as

in the field of public health. Contribution of experience and knowledge of my Lord at Bhopal, Jabalpur, Indore in various tribunals and courts and towards public is very remarkable. My Lord also contributed his knowledge and experience to the State govt. by representing not only in High Court but in various Tribunals also. I welcome and congratulate to your Lordship.

11. **My Lord Smt. Justice Nandita Dubey,** got the name and fame in the early stage of her career. Her grand father in law Shri P. L. Dubey was Sr. Adv. and former Advocate General of MP. Her father in law Shri Justice S. K. Dubey is a former Judge of MP High Court. Her elder daughter is also practicing in the Supreme Court. So my Lord is continuing the legacy of her family. Due to great experience of my Lord, in various fields of law and the experience of High Court and Supreme Court she has been elevated. I welcome and congratulate to your Lordship..

I once again welcome and on this occasion extend my good wishes to the all newly appointed Hon'ble Judges and believe firmly that your Lordships will be greatly contributing for the cause of common man while dispensing justice and also simultaneously will solve the problems of the members of the Bar also.

Once again on behalf of all Advocates of the State and the Members of the State Bar Council of MP, Jabalpur express my good wishes and welcome your Lordships on adoring office of Judges of this High Court of MP.

At the end, I again welcome and congratulate all the newly appointed Judges with the following lines.

May flowers always line your path
and sunshine light to your way
may songbirds serenade you
every step along the way,
may a rainbow run beside you,
in a sky that's always blue,
and may happiness fill your
heart each day, your whole life through,.

.....

Shri Jinendra Kumar Jain, Asstt. Solicitor General, said :-

प्रतीक्षा एवं अंतराल के पश्चात आज यह अवसर प्राप्त हुआ है जबकि हम अपने साथियों एवं राजकीय न्यायिक सेवा में कार्यरत न्यायाधीशगणों का स्वागत, वन्दन, अभिनन्दन करने इस सभागार में उपस्थित हुये हैं। सभी को इस गरिमामय पद पर सुशोभित देखकर मन प्रफुल्लित हो रहा है।

श्री वेद प्रकाश शर्मा, श्री जगदीश प्रसाद गुप्ता, श्री अनुराग कुमार श्रीवास्तव, श्री एच.पी. सिंह, श्री अशोक कुमार जोशी, सभी न्यायाधीशगण विधि विधायी प्रक्रिया, एवं विधि के विभिन्न आयामों में पारंगत हैं, अपने अनुभव, परिश्रम निष्ठा एवं लगन से निरन्तर प्रगति कर आपने विधि जगत को गौरवान्वित किया है।

श्री अतुल श्रीधरन, श्री सुश्रुत अरविन्द धर्माधिकारी, श्री विवेक रूसिया, श्री आनन्द पाठक, श्री विवेक अग्रवाल एवं श्रीमति नंदिता दुबे ने अपने कार्यक्षेत्र में विधिक कार्य संपादित करते हुये अपनी अलग पहचान बनाई है, आपने अपने कृतित्व से अपने परिवार एवं म.प्र. बार की गरिमा को गौरवान्वित किया है।

इस शुभ अवसर पर मैं अपनी ओर से भारत सरकार की ओर से एवं समस्त विधि अधिकारियों की ओर से आप सभी को बधाई देता हूँ आपके उज्जवल भविष्य की कामना करता हूँ एवं आशा करता हूँ वरन् पूर्ण विश्वास प्रकट करता हूँ कि न्यायाधीश के पद पर कार्य करते हुये न्याय दान करने में भी सहजता, सरलता, निष्ठा लगन एवं निष्पक्षता के साथ जनमानस की अपेक्षाओं को संविधान के अन्तर्गत न्याय दर्शन एवं निर्णयों के माध्यम से पूरा करते हुये म.प्र. उच्च न्यायालय का सम्पूर्ण भारतवर्ष में नाम रोशन करेंगें।

जय–भारत

.....

Shri T.S. Ruprah, General Secretary, Senior Advocates Council, said :-

My Lords, by Your Lordships long awaited elevation as Judges of this glorious High Court, the Bar has taken a sigh of great relief.

The legal fraternity experiences immense pleasure and is extremely happy on Your Lordships elevation as Judges of this great institution. The Senior Advocates Council extends its heartfelt welcome to Your Lordships. It is my proud privilege to offer felicitations to Your Lordships.

My Lords, this Bar is known for its illustrious seniors and courteous juniors. The Bar and the public have great expectations from your Lordships. Long pendency of cases is a challenge before Your Lordships. Cases need to be heard and decided. Your Lordships will be the hand that will guide the administration of justice in this State. My Lords will bring to your task a wealth of experience, vast knowledge of law coupled with patience, tolerance and compassion.

Hon'ble Shri Justice R.M. Lodha of the Supreme Court, in the case of *R.C.Chandel Vs High Court of M.P.* (2012) 8 SCC 58, has marvelously laid down, and I quote,

"The office that a Judge holds is an office of public trust When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The credibility of the judicial system is dependent upon the Judges who man it. Every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty." Unquote.

May these lines be the guidelines in Your Lordship's future career.

My Lords, it is imperative for a sound judicial functioning, that a counsel must be allowed to say what according to him, would be in the best interests of his client, in an atmosphere of mutual respect. Independence of judiciary and patient hearing are pillars of judicial system.

Also, Hon'ble Shri Justice Dipak Misra of the Supreme Court, in *Census Commissioner Vs R. Krishnamurty,* (2015) 2 SCC 796, has beautifully reminded us, and I quote,

"No adjudicator or a Judge can conceive the idea that sky is the limit, or for that matter, there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones." Unquote.

Today with firm conviction we assure Your Lordships of our fullest co-operation in discharging your functions.

Once again, I, on behalf of the Senior Advocates Council and on my own behalf welcome Your Lordships to this glorious institution and wish Your Lordships a very brilliant and successful tenure at the Bench.

.....

Reply to Ovation, by Hon'ble Mr. Justice Atul Sreedharan :-

A famous French Philosopher, Jean Jaques Rousseau once said "Patience is bitter, but its fruit is sweet". There are eleven of us here today who could perhaps testify to that truth.

The kind words spoken by all of you have touched the inner most

recess of my heart and have cast an onerous duty upon me to come good on the expectations you have of me.

Until a short while ago I found myself in a rather strange situation where I was a Advocate Resignate and a Judge Designate. I became aware that I was moving from a life of carefree abandon to one which is a life of self imposed denial on a daily basis. Where Learned and tempered aggression, steadfastness and persistence must give way to sobriety, patience and poise, a privilege which I accept with the greatest humility.

First of all I would thank God for having made me a recipient of his blessings and thereafter I bow down to all my teachers from school to Law college who guided me down the only path there is, the right path.

I am grateful to Ld. Collegium of the Hon'ble Supreme Court of India. I also hold myself deeply indebted to Hon'ble the Lord Chief Justice of Madhya Pradesh Mr. A.M.Khanwilkar, Hon'ble Mr. Justice Ajit Singh and Hon'ble Mr. Justice Rajendra Menon for having considered and found me fit to occupy the seat of a Judge of this Hon'ble Court. The oath that I have taken for me are not merely words or platitudes mouthed to occupy a hallowed chair but a sacrament, a prayer.

About my Gurus. Being a first generation lawyer I had an extremely sketchy idea of the profession. In the year 1992, when I took baby steps in the profession, I was fortunate enough to read in the chamber of Senior Advocate Mr. Gopal Subramanium at Delhi. Gopalji is a combination of eloquent articulation and a vast knowledge of law. I was with Gopalji till the year 1997 during which time I enriched myself from his experience and his guidance and learnt much about the profession. In the year 2001, I shifted from Delhi to Indore and started my practice before the Indore Bench of this High Court. At Indore I was fortunate enough to observe and learn from several learned Senior Members of the Bar. However, I was blessed to be intimately associated with Mr. Satyendra .Kumar Vyas, Senior Advocate who practices on the criminal side. His brilliance and eloquence notwithstanding, he epitomises for me the goodness of a human being, he taught without being patronising. From him I learnt not just about law but of life itself. From him I learnt how ephemeral money is and how eternal human values are: Today in all humility and extreme gratitude, I bow my head before Mr. Gopal Subramanium and Mr. Satyendra Kumar Vyas, my Gurus.

I have kept the reference to my parents and the rest of my family and one other individual at the end of the address, as there is a propensity to get overtly emotional when it comes to giving thanks to those who mattered the most. Several well wishers told me how happy my father would have been if this would have happened during his life time. My father is the spirit and as always, he is here this very moment this very place telling me "welcome to the hot seat". My mother, who couldn't take the journey on account of her health but has always been a towering pillar of strength, my wife, and daughters who have lived a frugal life and never demanded anything from me which I couldn't afford. My elder brother, sister in law and niece though far away dwell within my very being. The multitude of friends and well wisher and my Junior Gaurav who has truly been God sent. Last, but certainly not the least, I want to thank that one other individual who set the ball rolling which has seen me here today. Hon'ble Mr. Justice Shantanu Khemkar, Sir, I am grateful to you for having seen worth in me and having proposed my name for this august office. To you Sir I give my word that I shall strive hard within my mortal limitations, if not for anything else, but to ensure that no one ever says that you made a mistake. To all the ladies and gentlemen of the bar, I say that I shall strive to do my job with the humility and openness of a student. I shall learn from you in the process and I shall do my work with independence and as per the law and the voice of my conscience, so help me God. Thank you.

.....

Reply to Ovation, by Hon'ble Mr. Justice S.A. Dharmadhikari :-

I am extremely grateful and overwhelmed for the kind words expressed by all of you.

My experience at the bar tells me that, without competent and efficient support of the members of the bar it is not possible for a judge to dispense quality justice within a reasonable time. I would therefore, expect whole hearted support of the members of the bar in course of discharge of my duties on the bench. I assure all of you that on my part, I shall make every endeavor to come up to your expectations.

On this day, it is but natural for me to mention the great legal tradition which I have inherited. My great grandfather, Late Shri. Krishna Mahadev Dharmadhikari & my grandfather Late Shri. Harihar Krishna Dharmadhikari, both were lawyers of great repute in Betul district of Madhya Pradesh.

It is equally important for me to remember my late parents, Shri. Arvind Harihar Dharmadhikari and Smt. Shubha Dharmadhikari. My father did not join the legal profession. He was a mining engineer but had always encouraged and initiated me into the legal profession and got me inducted in the office of my Late uncle Shri. Yashwant Shankar Dharmadhikari who was a well-known leading advocate and Advocate General of this state. In his office, I had my first lesson in law. It offered to me the opportunity to assist him in handling cases in various legal branches and equipped me for my onward journey in the judicial field.

I have also been fortunate in receiving great inspiration and guidance whenever necessary from my uncle Hon'ble Justice D.M. Dharmadhikari, former Judge of this court and the Supreme Court who is fortunately present with all of us today.

My wife, Smt. Anjali, my two sons Siddharth and Nilay and my younger brother Aditya have sacrificed their time for me and throughout supported me in my legal career.

I pray the almighty to grant me enough strength, ability and wisdom for discharging the onerous duties and responsibilities of rendering Justice.

Once again I thank you all.

.....

Reply to Ovation, by Hon'ble Mr. Justice Vivek Rusia :-

"By extreme grace of God and eternal blessing of my father Late Shri Prabhakar Rusia, Senior Advocate and my mother Smt. Vimla Rusia, Advocate and my seniors Late Shri P. Sadasivan Nair Senior Advocate and Mrs. Indira Nair Senior Advocate, I happen to be here to hold this office of high esteem.

I am grateful to My Lord Hon'ble the Chief Justice Shri A.M. Khanwilkar and the members of the Collegium Hon'ble Mr. Justice Ajit Singh now Chief Justice of Assam High Court and Hon'ble Mr. Justice Rajendra Menon for considering me worth appointment of this august office. I am also grateful to Hon'ble the Chief Justice of India and the members of the Collegium of the Supreme Court. I am also grateful to Hon'ble Mr. Justice Dipak Misra, Hon'ble Mr. Justice Sharad Arvind Bobde, Hon'ble Mr. Justice Arun Mishra Hon'ble Mr. Justice Abhay Sapre Judges Supreme Court of India, who has

been very kind to me.

I am in no less gratitude to all the other Hon'ble sitting and former Judges of this court, and senior Advocates who have guided me from time to time and wished for my success.

I am grateful to my father and my mother who taught me values of life. I am also grateful to my elder brother Shri Sanjay Rusia nad bhabi Mrs. Pratima Rusia who helped and gave me confidence and lots of thanks to my sister and brother in laws for supporting me. My wife Priti deserves special recognition for always standing by my side and helping me in working hard. My daughter Tanvi and son Tanishq been a blessing for me.

I cannot forget the happiness and feeling of pride in my In-laws Mr. Mahendra Seth and Mrs. Kusum Seth and the happiness shown and shared by my family members of both the sides and special caring by my friend Mr. Vivek Jain and Dr. G.S. Ahluwalia.

When I was studying in school my father decided that after becoming an Advocate I shall join the office of Mr. P. Sadashivan Nair and Mrs. Indira Nair Senior Advocates. By their learning and blessing I am the third one from his chamber to become a High Court Judge after Justice Shri Rajendra Menon, Administrative Judge of High Court Madhya Pradesh and Justice Shri P. Sam Koshy, Judge of High Court of Chhattisgarh.

I am overwhelmed by the kind and noble words spoken for me by the learned speakers and I express my innermost thanks to them all. I will endeavor my level best to keep the high values and traditions and will be discharging my duties with sincerity and honesty, that too with the co-operation of Bar. At last I am thankful to my associate advocate and office staff members and special thanks to my clients.

Thank you all once again".

.....

Reply to Ovation, by Hon'ble Mr. Justice Anand Pathak :-

If I owe anything to the truth and honesty, at the outset, I would like to say that the words seem inadequate to express my gratitude for the kind words extended for me and simultaneously the compliments showered on me in, this august assembly. I am indeed, emotionally overwhelmed to express

my sentiments in reply. I, however, hasten to offer my millions of thanks to all the esteemed dignitaries.I am ushering into a new era in my career and with the changing of Robes, with the kind guidance of Hon'ble the Chief Justice, I sincerely hope that I shall be in a position to discharge my duties both in letter and spirit with full dedication and unflinching loyalty to the Nation and the Institution, backed by enlightened assistance, cooperation and support from the superiors, seniors and colleagues of the Bar and Bench, both.

Here I am recalling the *shlok of Maharishi Ved Vyas* which reads thus:

यावत्भ्रियेत जठरम तावत स्वत्वम ही देहिनाम्।
अधिकापि या भिमन्योत् सस्तेनो दण्ड मर्हति।।

meaning thereby, that if a person flouts the Law for satisfying his hunger, then it is not a sin, but after satisfying his hunger, if he commits anything wrong, then he is liable for punishment.

This is one of the bottom lines of Justice where human values and emotions have been included into interpretations.

A French Writer **Vauvenarcues** has beautifully said that "Emotion has taught mankind to reason". With same alphabets, every 'File' contains a 'Life'.

Civilisational Evolution demands the egalitarian and democratic society, which in turn, requires the equitable distribution of resources and the said distribution can be achieved mainly through administration of justice and maintaining law and order. This establishes the Rule of Law. Therefore, the Law and Order and the concept of Rule of Law is one of the necessary components of infrastructural development of the Society for achieving the goal of Welfare State and Egalitarian Society. With my limited abilities, I would make an endeavour to give my iota of contribution for achieving such broader goals.

'Gratitude' is a single word, but with wider connotations and is not an empty formality for me as I am acknowledging debt which I owe. Through expression of gratitude I am grateful to Almighty God who gave me life and a chance to serve the Society and nation in such a meaningful manner.

At this juncture, I acknowledge the debt of gratitude which I owe, to

my mother late Mrs. Vijaya Pathak and my father Shri R. P. Pathak. Their discipline and hard work always inspired me to strive better in life. Personality of my mother and father carved out subliminal impression over my mind and soul.

I am grateful to Hon'ble the Supreme Court and Hon'ble Members of its Collegium. They upheld the principle of judicial independence.

I am grateful to Hon'ble Shri Justice A. M. Khanwilkar Sb., Hon'ble the Chief Justice and for his kind efforts as well as other Hon'ble Members of the Collegium, Hon'ble the Administrative Judges of Principal Seat Jabalpur, Indore and Gwalior Benches who reposed confidence in me. I am also grateful to Hon'ble Shri Justice S. S. Kemkar Sb. and the other Hon'ble Judges of the Indore Bench who always guided me with their wisdom and their blessings travelled with me through out.

I am grateful to my senior Shri Amit S. Agrawal, who has been a Tough Task Master,who taught me the primary of profession and inspired me to achieve the goals.

I am thankful to my professional Alma-mater, The High Court Bar Association Indore as well as the senior and other members of the Bar. They always encouraged me and accepted me with all my strength and weakness.

Senior Advocates Shri S. C. Bagadia and late Shri Jaisingh Ji were ford makers for my entrance in the profession. Senior Advocates Shri G.M. Chaphekar, Shri A.K. Chitale, Shri Shekhar Bhargava, Shri Piyush Mathur, Shri B. I. Mehta, Shri Vinay Zelawat and Shri Ramesh Chhazed always encouraged me to strive better. Shri Bhargava, Shri Zelawat and Shri Mathur constantly enlightened me about Law and Life both, from time to time.

I candidly admit that I learnt a lot while observing my late grand-father Shri B. P. Pathak and my grand-uncle Shri Rajendra Tiwari, who happens to be a Senior Advocate of this Bar. I also feel privileged to be part of the Advocate General's Office at the time when Shri R. N. Singh, Senior Advocate was the Advocate General and Shri A. S.Kutumble and Shri Manoj Dwivedi were Additional Advocate Generals, respectively.

Friends in the profession were my competitors in the Court rooms but they were compatriots in the Corridors. My association with Senior Advocate and Additional Advocate General Shri Sunil Jain, Shri Vivek Sharan, Former

Asstt. Solicitor General, Shri Umesh Gajankush and Shri Ajay Bagadia reveal that Competition and Comradery can go together. I would like to thank them for their lovely company and frank opinions.

Advocacy is a collective endeavour. Therefore, my success, in fact, is a success of hard work of my senior and my colleagues. I am thankful to Shri Prasanna Bhatnagar, Shri Manoj Manav, Shri Pankaj Sohani, Shri Satyendra Jain, Shri S.P.S. Dhaliwal, Shri Rohit Mangal with whom I learnt initial lessons of profession in my senior's office. I also extend my sincere thanks to my junior colleagues Shri Anshuman Shrivastava, Shri Manuraj Singh, Shri Pawan Sharma, Shri Narsingh, Shri Harsh Thakur and last but not the least Shri Lalaram Jarwal, caretaker of my Office. With their assistance and cooperation, I could manage to work smoothly as a counsel.

At this juncture, I would like to extend my heartfelt gratitude and thanks to my life partner Dr. Charu whose faith in me was unflinching and has been a constant pillar of strength for me. Without her cooperation I could not have concentrated on my profession. I am also thankful to my loving children Kanishk and Rudraksh, who taught me that parenting is an art and a two way affair. I would like to thank my elder sister Dr. Sangeeta Mishra and brother-in-law Shri Ravi Mishra, my elder brother Professor Shri Ashish Pathak, sister-in-law Professor Smt. Namrata Pathak, my younger brother Shri Amrit Pathak and his wife Smt. Monika Pathak along with their children for giving me unconditional support, encouragement and affection.

Although my In-laws Dr. M. G. Kher and Dr. Smt. Sujata Kher are not alive to witness this moment of pride, but I would like to express my sincere gratitude towards them who reposed extreme faith and confidence in me while handing over their daughter's hand, otherwise match making with Lawyers has never been an easy proposition, especially 20 years back.

I am thankful to my sisters-in-law Dr. Shubhda Tiwari and her husband Shri Udayan Tiwari as well as Dr. Neeta Bhatia and her husband Sujal Bhatia and their children for constant encouragement.

I would like to remember my school and college Teachers who guided me to ameliorate for better exacting and Friends who accompanied me through out. With them, journey was fun. I extend my thanks to all my maternal and paternal uncles, relatives, friends and all Bar Members from Indore who are present here to witness this splendid ceremony and to enhance my joy. I

acknowledge their presence earnestly with special reference to Shri P.K. Shukla, Bar President, Shri Anil Ojha, Secretary & other Committee Members.

I, at this juncture, offer my sincere thanks to all the Institutions and the Litigants who showed faith in my abilities as a counsel and on whose behalf I appeared in the High Court as well as Civil Courts.

I thank the Registrar General, other officers and staff of the High Court at Jabalpur as well as the Principal Registrar, other officers and staff of the Indore Bench.

Thanks again to all the respected Members of the Bar gracing the occasion.

THANKING YOU,

JAI HIND

.....

Reply to Ovation, by Hon'ble Mr. Justice Ved Prakash Sharma :-

Having the privilege of joining this prestigious Institution as a Judge, is a matter of great honour to me. I, with all the humility at my command, offer my obeisance to God, the Almighty, for bestowing upon me thy utmost grace and kindness.

At this solemn occasion, I also express my deep reverence to my late parents whose teachings have throughout been guiding light of my life.

My Lord Hon'ble the Chief Justice, a ***'KARMA YOGI'*** in the truest sense of the word, has always been a source of strength and inspiration to me. I believe myself to be blessed, as I have been considered worthy of this High Office.

Chief Justice **Warren E. Berger**, the 15th Chief Justice of United States, said, and I quote-

"Concepts of Justice must have hands and feet to carry out justice in every case in the shortest time and lowest possible costs. This challenge applies to every Lawyer and Judge of America".

The challenge before our justice delivery system is no way different, as the

need for dispensation of timely and affordable justice is urgent. This reminds me of the onerous responsibilities that are attached to the office of a Judge.

However, I am confident that under the dynamic and vibrant leadership of My Lord Hon'ble the Chief Justice, with the able guidance from the senior brother and sister Judges and sincere and meaningful support from the Bar, I shall be able to discharge my duties befitting the oath of the office that has been administered to me today.

I am deeply touched by the kind sentiments expressed today by the learned speakers showering plentiful of praise upon me. I understand that this is but an expression of their affection towards me and also a reflection of their expectations from me as a Judge. I convey my heartiest thanks to each of them and further assure all present here that I will try my level best to come up to their expectations.

I once again offer my prayers to the Almighty and convey my sicere thanks to all those, who have motivated and encouraged me, directly or indirectly, in traversing the long path of life with a sense of satisfaction.

Thanks.

JAI HIND

.....

Reply to Ovation, by Hon'ble Mr. Justice J.P. Gupta :-

First of all I express my sincere thanks to the Honorable Members of the Collegium of Madhya Pradesh High Court and the Honorable Members of the Collegium of Supreme Court who recognized my 33 years unblamed services as Judicial Officer and providing me this opportunity.

I also express my heartiest gratitude towards my family members especially my wife and relatives, friends, respective seniors and dear junior colleagues and all well wishers who every time supported and encouraged me in discharging my duties honestly and sincerely without any fear and favour.

I also extend my gratitude towards my extreme senior Late Shri B.S.Dhakar, Advocate, practicing at Tehsil Sabalgarh District Morena, who tend the foundation of my career in the legal field. Whatever I am today is because of his motivation and encouragement.

I know the difficulty of the common men and their handicappedness. Millions of eyes are looking forward this august institution with the hope of

justice.

I am also aware of the fact that there are a lot of expectations from the newly appointed Judges, the respected members of the Bar, Litigant and General public and Judges of the District Judiciary, but it is not possible to fulfill all the expectations. However all sincere efforts ought to be made to achieve rational and judicious expectations and those are relating to enhance democratic values in the system.

At present great expectation from this institution is to reduce huge pendency of the cases. This herculean task can be addressed by a joint efforts of Judges and Bar. In this regard rational listing of the cases and effective control on avoidable adjournment of hearing of the cases as well as extension of strength of the Judges are necessary.

We are grateful that our present Honorable Chief Justice is taking too much pain to address the problem. I think that if in this process deliberations and consensus of all stakeholder is enhanced the results would definitely be more productive and efficacious.

At this juncture I can only assure all of you that I shall make all possible efforts to fulfill the spirit of the words of the oath that I have taken today and serve to the cause of justice with the best of my ability. I shall be kind enough to you all if you ignore my short comings.

As I enter into this office today I wish for the blessing (from all of you) of my senior, my teacher, the Honorable Chief Justice and Honorable Companion Judges and all the respective member of Bar. I also pray to god especially Baba Mahakal of Ujjain from where I have been elevated to give me strength and wisdom to discharge my responsibilities which conferred on me as Judge of this Court.

I would also like to express my sincere vote of thanks to all attending this function including those who took pain to come down here and be present on this occasion.

Last but not the least once again I would like to extend thanks to all of you.

.....

Reply to Ovation, by Hon'ble Mr. Justice Anurag Shrivastava :-

At the outset, I express my gratitude to the almighty God for his benevolence bestowed on me for discharging the duties of this High Office.

"On this occasion, very kind words have been said about me by indulging in exaggeration. However, whatever has been said, I acknowledge firstly as an expression of your affection for me; secondly, as reminding me of my responsibilities; and thirdly, as an assurance of your full co-operation in the discharge of my responsibilities. I have thankfully received them as your expectation to which I shall try my best to rise.

I have no adequate words to express my gratitude to My Lord the Chief Justice Hon'ble Mr. Justice A.M. Khanwilkar and the Hon'ble Justices of the Collegium for this appointment. It is indeed their greatness if they could see in me the qualities deserving this high office.

Whatever I am today, is because of the blessings of my mother Late Smt. Premlata Shrivastava and father Late Dr.Pankajlal Shrivastava, who always strove to shape me as a better human being. On this occasion I remember my revered parents, my father in Law Late Shri Harish Chand Shrivastava who was very anxious to see me as Judge of this Hon'ble Court. I am also thankful to my family members who have always helped and encouraged me specially my Mother in Law Smt. Sarla Shrivastava, my beloved wife Smt. Madhu Shrivastava My son Swapnil and daughter Neha, who have always supported me and without their help it would not have been possible for me to reach this position.

I owe a debt of gratitude to my Senior Advocate Shri K.C. Jain, Rajnandgaon under whom I had started my career as an Advocate. I am also thankful to all my Senior Judges under whose valuable guidance. I have successfully completed my 33 years of Judicial Service hitherto.

I express my deep gratitude to my colleagues, personal staff and members of Bar Associations of all the districts where I had been posted as a Judge, who had always extended their fullest co-operation to me during my tenure.

Hon'ble Chief Justice Hidayatullah said that it is not given to every Judge to become a "Great Judge" but every Judge can endeavour to be a "Good Judge". Therefore, that shall be my aspiration, for which I would enlist

sincere co-operation of the Bar.

I promise you all to strive ceaselessly to uphold the dignity of the office, I am going to occupy and do nothing out of fear or for favour as would compromise it.

Once again, Thanks to all the dignitaries and invitees for being a witness to this occasion."

.....

Reply to Ovation, by Hon'ble Mr. Justice Housla Prasad Singh :-

At the out set, I bow in reverence to the Almighty God for bestowing upon me the pious responsibility to serve this noble institution and August office. And same time, I offer my humble salutations at the Lotus feet of my late Parents due to whom I exist.

I offer my hearty, sincere, profound, cordial and genial thanks to the learned speakers for the kind and encouraging words spoken on this occasion. I feel very humble for all the praise showered upon me by the esteemed speakers. I pledge to myself, to perform the work entrusted upon me with integrity, conviction, purity and dedication. I promise to strive ceaselessly to uphold the dignity of the High Office.

I would take this golden opportunity to express my heartfelt gratitude to My Lord Hon'ble Shri Justice A.M. Khanwilkar, Chief Justice of this High Court and Members of the Collegium, Hon'ble Shri Justice Ajit singh and Hon'ble Shri Justice Rajendra Menon for reposing confidence on me and recommending my name for elevation to the Bench of this August Court .I highly value your trust and will work hard to keep it. Thanks again for all your help. I am truly grateful for your support.

I am very thankful and very much indebted to Hon'ble Chief Justice of India and all the Hon'ble Judges of the Collegium of the Supreme Court for the kindness bestowed upon me.

I have the proud privilege to have administered the oath of office by Hon'ble the Chief Justice Shri A.M. Khanwilkar, a legal luminary, a jurist and above all a great human being. I am very grateful to my lord the Chief Justice Shri A.M. Khanwilkar for his blessings, guidance and affection which I shall never forget in my life.

I am also deeply indebted and express my gratitude to Hon'ble Shri Justice Deepak Misra, Former Judge of this High Court and presently Judge, Supreme Court of India, Hon'ble Shri Justice Arun Mishra, Former Judge of this High Court and presently Judge, Supreme Court of India. Hon'ble Shri Justice A.M. Sapre, former Judge of this High Court and presently Judge, Supreme Court of India.

I once again take this opportunity to pay my sincere regards to all Former Judges of this High Court for their love, guidance and affection showered on me.

I express my gratitude to all the members of subordinate judiciary, which is the back bone of the system and the path paver of trust of common people in judiciary, for their cooperation best wishes and affection bestowed upon me. Now once again I take this opportunity to express my gratitude to all the members of Bar, Consumer Grievances Redressal Forum, all officers, staffs of Revenue, Police, State Transport Appellate Tribunal M.P., prosecution wings and all the officers and staffs of other departments of the places where I was posted, which are Seoni, Sagar, Banda, Niwas, Sihora, Jabalpur, Damoh, Raipur, Satna, Umaria, Gwalior, for their cooperation and for I have learnt so many things from them.

I was born on 1 July 1956 at village Aschaura in Distt. Ballia in a middle class family of Jobbers and Agriculturist. I got my primary education up to 5th standard in primary school of my Village and from 6th to 8th I completed from high school of neighbouring village Chatta . Then after I went to Kanpur where my uncle Late Shri V.N Singh, who was a teacher then. I pursued my graduation with biology subject from there. In my childhood, I had many stars in my eyes but becoming even a mere judge was not one of them as there was no one in judiciary from my family. There were Doctors, Engineers etc. but not Judge. I wanted to be a doctor so I prepared hard and appeared twice but couldn't crack. As it is rightly said, "Man proposes God disposes".

After that I came to Jabalpur where my elder brother Y.P. Singh was working in GCF factory. Having lived there, I completed my LL.B from "Rani Durgavati Vishwavidyalaya Jabalpur." I started my career as an advocate under the wings of adorable and renowned civil Advocate Late Shri N.K. Patel. In the meanwhile, I got through Civil Judge in 1983. At that time, people used to

say that he can hardly reach upto CJM. I never even dreamt of reaching to this great altitude. My adorable uncle Late Shri V.N Singh, my late aunt, elder brother Shri Y.P. Singh and sister in law (My Bhabhi) Mrs. Pratibha Singh loved me like their son and facilitated me in gaining education. Without their support, love and blessings I just can't imagine where would I have been? As I have stated earlier that there was no one from judiciary in our family and at the same time we did not have much knowledge and information about it. In-spite of all this when I was selected in judiciary as Civil Judge, my parents were the happiest persons to acknowledge that. During my posting as railway magistrate, I used to reside in front of this majestic building of Hon'ble High Court, when my mother first time came to know that it's building of High Court she spontaneously blessed me and said one day you would become a Judge of this High Court and today her blessings have come true.

I joined as trainee Civil Judge in Distt. Seoni and my guiding torch was District and Session Judge Late Shri V.D. Vajpayee who was known for his punctuality and strictness .He taught me the lessons of duties, responsibilities of a Judge which I cherish even today. I offer my sincerest gratitude to him. Having touched the feet of Hon'ble Shri Justice N.S. 'Azad', I want to express my heartfelt gratitude to him, who has been my District Judge twice, showered his absolute faith and inspired me to work hard and impartially.Now I want to show my gratitude to all Judges who have been my District Judges who contributed to groom my skills of working and motivated me to deliver beyond my capacity.

I express my deepest gratitude, from the heart of my heart, towards my father late Shri Raj Naraian Singh and my mother late Smt. Devmunni Singh. Although my parents were not learned academicians as such yet they were the persons of great practical wisdom and with great humanitarian values. They always inculcated great values and principles like 'WORK IS WORSHIP' and 'YATO DHARMS TATO JAYAH' in me. My parents instilled a strong commitment to honesty and impartiality. They moulded me in such way that I can overcome to every adversity of life. Though they are no more yet their invisible hands still guide me and bless me with the same wisdom and gentleness in times of need. What I am and what I am going to be I owe it to my parents for their inspiration. They took every care up to their capability to see that I am not inconvenienced during my student days. They are above teacher and god and once again I bow my head in the pious feet of my parents.

I must also express my thanks to my father in law Late Shri Bharat Singh and all other relatives and family members who have constantly remained strength of my life.

Last but not the least, I am extremely thankful to my wife Dr. Smt. Pratibha Singh, not only for her unstilted support, dedication and co-operation in all walks of my life but also for her prayers and good wishes, which gave me the courage and strength to traverse through good and bad times and to devote myself to my duties and responsibilities as a Judge. She always stood by me in the thick and thin of my life. Without her support and inspiration I am sure, the shaping of my career ,as well as career of our children would have been little possible. I am thankful to my daughter Ku. Sneha Singh, Civil Judge and son Harsh Singh, IAS of M.P. State cadre for their Co-operation and affection. They have always respected my professional obligations and never complained of reflective disciplinary limitations on their own expression.

As I step into this office today, I wish for the blessings of my parents, my teachers, my family and friends, the Hon'ble Chief Justice and companion Judges and all the members of the Bar. I pray to God to give me the strength and wisdom to uphold the oath that I have taken today and discharge the pious responsibilities conferred upon me.

The voyage, I know is not all bed of roses there may be bed of thorns as well. But I am prepared and determined to do my best. I recall the famous lines of Robert Frost where he says :-

"Woods are lovely, dark and deep

I have promises to keep before I sleep

And miles to go before I sleep."

Thank you all .Lordships, thank you all speakers and thank you all august guests present on occasion.

JAI HIND

.....

Reply to Ovation, by Hon'ble Mr. Justice Ashok Kumar Joshi :-

First of all, I thank the almighty God. I am here only because of his bountiful blessings.

At the outset, I am obliged to Hon'ble the Chief Justice Shri A.M.Khanwilkar and Hon'ble Members of the Collegium for having considered and recommending my name for elevation to the Bench of this august Court.

I greatly miss the presence of my beloved parents who would have been indeed happy on this event. I am sure I have their blessings from their heavenly abode. I am grateful to all my teachers and Gurujis who have inspired me to shape my career.

I would be failing in my duties if I do not express my sentiments and gratitude to late Shri Justice R.P.Awasthy, Shri Justice S.B.Sakrikar, Shri Justice A.K.Saxena, Shri Justice W.A.Shah and my other District Judges late Shri M.L.Tiwari, Shri Pundlik, Shri Mohit Vyas and especially to Shri A.K.Selot. They played a great role in enrichment of my judicial career.

I can never forget the guidance and blessings of my seniors and colleagues, who have always been rendering assistance and proper guidance to me. I am also thankful to all the Members of Bar, with whom I came in contact wherever I remain posted.

Last but not the least, I am thankful to my wife Dr.Smt.Shobha Joshi and daughters and other relatives who have been very supportive in all walks of my life.

I am extremely thankful to all those personalities and persons known or unknown to me who have blessed me and helped me.

Thank you, Sir, thank you very much for being here today.

Jai Hind.

.....

Reply to Ovation, by Hon'ble Mr. Justice Vivek Agarwal :-

I am deeply touched by the kind and encouraging words of praise showered on me.

My hearty gratitude to them. I am sincerely grateful to Hon'ble the Chief Justice Shri A.M.Khanwilkar who has considered me worthy of appointment to this August office. I solemnly assure that I will do my best to live up to the confidence reposed in me by His Lordship. I will also like to thank the Members of the Collegium, Hon'ble Shri Justice Ajit Singh and Hon'ble Shri Justice Rajendra Menon.

Today, I find myself at the crossroad of my career where I shall take a detour from the road long tread of advocacy, which I have enjoyed and cherished for 23 long years and embark on a new journey altogether. I am deeply indebted to my parents, my mother Late Smt. Madhuri Agarwal and my father Shri Prem Prakash Agarwal for inculcating in me values of humanity and constantly guiding me towards the righteous path. I am also thankful to my wife, children, brother, sister, relatives and friends, who have also been the constant source of encouragement and positivity to me. I also express my gratitude towards my seniors Hon'ble Shri Justice A.K.Gohil, former Judge of this Court, who taught me skills of Advocacy, Late Shri K.L.Jain, an expert on service jurisprudence, Shri Pramod Dayal, Advocate on record in the Hon'ble Supreme Court and Shri I.B. Shastri Advocate at Bhopal for their valuable guidance in my career and life. I will be failing in my duty if I fail to mention the names of Hon'ble Shri Justice R.S.Garg and Hon'ble Shri Justice N.K.Jain, former Judges of this Hon'ble Court, who guided me in my professional life.

I would also like to thank Shri R.D.Jain, former Advocate General for giving me an opportunity to work with him in the Advocate General Office. I am also thankful to the Advocates and staff in the Advocate General's office for extending their helping hand during my tenure with the State. Last but not least, I am also thankful to all those who have helped and guided me directly or indirectly.

My special thanks to the Almighty and I pray to Him to give me courage and strength to serve this August Institution without fear or favour, upholding the values cherished in our Constitution.

I once again thank you all.

.....

Reply to Ovation, by Hon'ble Mrs. Justice Nandita Dubey :-

I am extremely thankful for the kind & enlightening words spoken here.

At the outset I am very thankful to the God Almighty for bestowing upon me this opportunity.

I am deeply indebted to my parents who inculcated high morals and taught me to stand for truth come what may.

I also express my sincere gratitude to my in laws to whom I owe my existence in legal fraternity. My father in law Retd. Justice S.K. Dubey who is also present here, always encouraged & supported me. I also pay my respect to my late great father in law Shri P.L. Dubey & my late husband Shri Aditya Dubey, under whose guidance I started my legal journey. Without their blessings, relentless support & guidance it would not have been possible for me to reach where I am today. Though they are not here to share this moment with me, but their blessings and good wishes are always with me.

I am also thankful to my daughters Shreya & Stuti for the love, affection & faith they reposed in me.

I learnt law in the court room, with the help of both Judges & members of the Bar. It is not possible to name all my seniors, colleagues & well wishers who acted as a stepping stone in my legal journey and led me where I am today. I remember them all with high gratitude.

I take this opportunity to request the senior members of the Bar to guide me & urge the junior members to extend their cooperation & support. As by your assistance alone I will continue to serve my obligation.

Last but not the least, I must appreciate the assistance provided by my juniors & my office staff.

I also take this opportunity to congratulate all my colleagues, who have also administered oath today as Additional Judges of the High Court. I congratulate them all.

Thank You all once again.

.....

I.L.R. [2016] M.P., 943
FULL BENCH
Before Mr. Justice A.M. Khanwilkar, Chief Justice,
Mr. Justice Shantanu Kemkar & Mr. Justice J.K. Maheshwari
W.P. No. 14549/2015 (Jabalpur) decided on 15 September, 2015

FAROOQ MOHAMMAD ... Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

A. Municipalities Act, M.P. (37 of 1961), Sections 55 & 56(3) and Municipalities (Election of Vice-President) Rules, M.P. 1998, Rule 3(3) - Issuance of the Notice - **Notice is required to be despatched to every councillor and exhibited at the Municipal Office - Notice must be despatched "Seven clear days" before an ordinary meeting and three clear days before a special meeting. (Para 15)**

क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराऐं 55 व 56(3) एवं नगरपालिका (उपाध्यक्ष का चुनाव) नियम, म.प्र. 1998, नियम 3(3) – नोटिस का जारी किया जाना – नोटिस का प्रत्येक पार्षद को प्रेषित किया जाना एवं नगरपालिका कार्यालय में प्रदर्शित किया जाना अपेक्षित है – नोटिस साधारण सभा के "सात स्पष्ट दिवस" पूर्व एवं विशेष सभा के "तीन स्पष्ट दिवस" पूर्व आवश्यक रुप से प्रेषित किया जाना चाहिए।

B. Municipalities Act, M.P. (37 of 1961), Sections 55 & 56 - Convening meeting of council - Ordinary or special meeting - **Date of every meeting shall be fixed by the specified Authority - It is a general enabling provision, but it makes exception of the first meeting after general election which is to be fixed by the Chief Municipal Officer with the approval of the prescribed Authority within specified time. (Para 15)**

ख. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराऐं 55 व 56 – परिषद की सभा आयोजित किया जाना – साधारण अथवा विशेष सभा – प्रत्येक सभा की दिनांक विनिर्दिष्ट प्राधिकारी द्वारा नियत की जावेगी – यह एक सामान्य सामर्थ्यकारी उपबंध है, परंतु यह आम चुनाव के पश्चात प्रथम सभा जिसे मुख्य नगरपालिका अधिकारी द्वारा, विहित प्राधिकारी के अनुमोदन पर, विनिर्दिष्ट समयावधि के भीतर नियत किया जाना होता है का अपवाद है।

C. High Court of M.P. Rules, 2008, Chapter IV, Rule 8(3) - Reference to Larger Bench - **It is not open to Single Judge to doubt the**

correctness of the view expressed by Division Bench - However, Single Judge sitting alone while hearing a case is free to refer the decision of coordinate or Larger Bench of High Court for reconsideration.

(Paras 10 & 22)

ग. उच्च न्यायालय, म.प्र. नियम, 2008, अध्याय IV, नियम 8(3) – वृहद खण्डपीठ को संदर्भ – एकल न्यायाधीश खण्डपीठ द्वारा लिए गए दृष्टिकोण की सत्यता पर संदेह करने हेतु स्वतंत्र नहीं है – यद्यपि, एकल न्यायाधीश अकेले किसी प्रकरण की सुनवाई करते समय उच्च न्यायालय की किसी समकक्ष अथवा वृहद खण्डपीठ के निर्णय का पुनर्विचार किये जाने हेतु निर्दिष्ट करने के लिए स्वतंत्र है।

Cases referred :

1969 JLJ 144 = 1968 MPLJ 638, (1985) 1 SCC 61, 1985 Supp. SCC 611, (1996) 4 SCC 188, (2002) 8 SCC 237, 2008 (4) MPLJ 485, (2013) 11 SCC 122, AIR 1954 SC 210, (1989) 4 SCC 671, (1995) 5 SCC 159, (2009) 6 SCC 735, 1989 MPLJ 285, (1996) 3 SCC 364, 2001 (2) MPLJ 372, (2003) 8 SCC 498, AIR 2006 SC 182, (1998) 4 SCC 343, (2003) 3 SCC 272, (2004) 8 SCC 312, (2005) 4 SCC 480, (2006) 1 SCC 75, (2006) 1 SCC 46, 1952 SCR 612, (1965) 1 SCR 970, (2011) 9 SCC 354, (2014) 9 SCC 772, (1998) 9 SCC 594, (2009) 7 SCC 387, 2001 (4) MPLJ 206, 1967 MPLJ 941, AIR 1966 SC 330, AIR 1963 SC 5, AIR 1955 Nagpur 35, (2005) 2 SCC 673, AIR 1962 SC 113, (2011) 7 SCC 141, AIR 1958 SC 918,

M.P. S. Raghuvanshi, on behalf of *J.P. Mishra,* Adv. for the petitioner.

Samdarshi Tiwari, Dy. A.G. for the respondents/State.

JUDGMENT

The Judgment of the Court was delivered by : **A.M. KHANWILKAR,C. J. :-** This petition originally filed at Gwalior Bench (numbered as W.P. No.929/2015), has been placed before us pursuant to the order passed by the learned Single Judge dated 14.8.2015. The learned Single Judge has referred the matter by framing following question:-

> "Whether the Division Bench decision in the case of *Awadh Behari Pandey V. State of Madhya Pradesh and Ors.* reported in 1969 JLJ 144 = 1968 MPLJ 638 was correct to the extent of holding the provision of Sec. 56

(3) of M.P. Municipalities Act 1961 as mandatory to the extent of vitiating the duly held elections to the office of Vice President despite the petitioner not only participating but also contesting the election without demur."

2. The relevant facts for considering the above said question are as follows: That the general elections to the Municipality Council Chanderi, District Ashoknagar was concluded by issuance of notification under Section 45 of Madhya Pradesh Municipalities Act 1961 (hereinafter referred to as the Act), declaring the names of elected Councillors and President. After election the State Government directed the Collector to ensure convening of the first meeting of the Municipal Council within one month from the date of general election, as per Section 55 of the Act. In furtherance thereof, the Collector, District - Ashoknagar, appointed the Sub Divisional Officer as a Presiding Officer and prescribed Authority for convening and conducting the first meeting under Section 55 (2) of the Act; and fixed the date of meeting as 6.1.2015 at 10:30 a.m. vide notice dated 1.1.2015. The said notice was dispatched on 2.1.2015. The meeting for election to the office of Vice President and two members of the Appeal Committee was proceeded further in which the writ petitioner also participated without any demur or objection.

3. In the said meeting, Rajiv (Ballu) was elected as Vice President and Vishvendra Tiwari (Vicki) and Jabbar Khan (Guddu) were elected as members of the Appeal Committee. Thereafter, the petitioner filed writ petition before the High Court challenging the entire action of election on the ground that the notice period for convening the first meeting after general election was not in conformity with Section 56 (3) of the Act. The sole ground was that the notice was dated 1.1.2015 and was dispatched to the Councillors only on 2.1.2015 for convening meeting on 6.1.2015. As a result, the entire action including election of Vice President and two members of Appeal Committee be declared as vitiated in law. The writ petitioner had relied on the decision of the Division Bench of our High Court in the case of *Awadh Behari Pandey Vs. State of Madhya Pradesh and others* [1]. The learned Single Judge, however, doubted the correctness of the view taken by the Division Bench that requirement of dispatching the notice to convene first meeting

1. 1969 JLJ 144 = 1968 MPLJ 638

after general election of the Council as per Section 56 (3) of the Act, of seven (7) clear days before the first meeting is mandatory. The learned Single Judge opined that the said view was not correct for the following reasons:-

> "(A) Whether breach of procedural provision contained in Sec. 56 (3) of the 1961 Act can vitiate the entire elections duly held to the office of Vice President and two members of Appeal Committee. A mere shortage of notice period, without prejudice following therefrom, cannot unsettle an election held strictly following all the statutory and democratic norms.....
>
> (B) The office of Vice President filled by indirect elections is not constitutionally provided in Part IX-A of Constitution of India which is an indication that Office of Vice President is not essential for a valid and legal composition, existence and subsistence of a Municipal Council as per section 19 of the 1961 Act which in turn raises necessary inference that all procedures connected to the elections to the Office of Vice President cannot be construed to be mandatory.....
>
> (C) Procedural provisions are normally directory in nature unless the statute in express terms provides for a penal consequence for it's breach.....
>
> (D) Procedural provisions are directory in nature unless prejudice or inconvenience is proved. Moreso the petitioner by his conduct of participating in the first meeting and contesting election without demur waived his right to assail the election.....
>
> (E) Procedural provisions relating to time are normally directory.....
>
> (F) Procedural provisions are meant to further the cause of substantive provisions. The provision for issuance of notice by giving certain time gap between it's dispatch and holding of meeting is procedural in nature whereas conduction of the election to the office of Vice President is substantive provision.....

(G) Procedural provisions prescribing public duty to be performed by a public functionary are directory in nature, unless public interest is hampered leading to injustice or inconvenience.....

(H) After introduction of Part IX-A - 'The Municipalities' in the Constitution of India by way of 74th Amendment w.e.f. 01-06-1993, under Article 243ZG strict bar to interference by Courts in electoral matters has been placed. The provision begins with a non-obstante clause thereby providing in mandatory terms that an election to any municipality ought not to be interfered with while exercising supervisory jurisdiction in a Writ Petition filed under Article 226/227 except in very exceptional cases....."

4. In support of the points delineated by the learned Single Judge for not agreeing with the view expressed by the Division Bench, the learned Single Judge adverted to the following decisions - *Bhag Mal Vs. Ch. Parbhu Ram and others* [2], *Ram Singh Vs. Col. Ram Singh* [3], *Bhim Singh Vs. Election Commissioner of India* [4], *Special Reference No.1 of 2002, In re (Gujarat Assembly Election matter)* [5], *Satyarath Prakash Agrawal Vs. State of M.P. and others* [6], *Pradip Kumar Maity Vs. Chinmoy Kumar Bhunia* [7], *Jagan Nath Vs. Jaswant Singh and others* [8], *M. V. "Vali Pero" Vs. Fernandeo Lopez* [9], *Karnal Improvement Trust Vs. Parkash Wanti* [10], *Ram Deen Maurya (Dr.) Vs. State of U.P.* [11], *Deo Prasad Kashyap and another Vs. Chancellor, Indira Gandhi Krishi Vishwavidyalaya and others* [12], *State Bank of Patiala Vs. S.K. Sharma* [13], *Smt. Bhulin Dewangan Vs. State of M.P. and others* [14], *P. T. Rajan Vs. T.P.M. Sahir and others* [15], *Punjab State Electricity Board Ltd. Vs. Zora Singh & others* [16], *Saiyad Mohd. Bakar El-Edross Vs. Abdulhabib Hasan Arab* [17], *Sardar Amarjit Singh Kalra Vs. Pramod*

---

2. (1985) 1 SCC 61
3. 1985 Supp SCC 611, (3 J.B)
4. (1996) 4 SCC 188, (3 J.B.)
5. (2002) 8 SCC 237, (5 J. CB)
6. 2008 (4) MPLJ 485, (MP (DB)
7. (2013) 11 SCC 122, (3 J.B.)
8. AIR 1954 SC 210, (5 J CB)
9. (1989) 4 SCC 671, (3 J. B.)
10. (1995) 5 SCC 159, (DB)
11. (2009) 6 SCC 735, (DB)
12. 1989 MPLJ 285, (MP) (DB)
13. (1996) 3 SCC 364
14. 2001 (2) MPLJ 372 (FB), (MP)
15. (2003) 8 SCC 498 (3 J.B.)
16. AIR 2006 SC 182, (DB)
17. (1998) 4 SCC 343 (DB)

Gupta and others[18], *N. Balaji Vs. Virendra Singh and others*[19], *Kailash Vs. Nanhku and others*[20], *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another*[21], *Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others*[22], *Dattatraya Moreshwar Vs. State of Bombay*[23], *Raza Buland Sugar Co. Ltd. Vs. Municipal Board*[24], *M/s Delhi Airtech Services (P) Ltd. Vs. State of U.P. and another*[25], *State (NCT of Delhi) Vs. Sanjay*[26], *Jaspal Singh Arora Vs. State of M.P. and others*[27], *Kurapati Maria Das Vs. Dr. Ambedkar Seva Samajan*[28], *Ashok Kumar Tripathi Vs. Union of India (UOI) and others*[29].

5. After having considered the oral and written submissions, we may now proceed to analyze the question formulated by the learned Single Judge. The question is in two parts. First part is to doubt the correctness of the view taken by the Division Bench in *Awadh Behari Pandey's* case (supra) - that the procedure specified in Section 56 (3) regarding dispatch of notice to every Councillor seven (7) clear days before the first meeting after general election is mandatory. The second part of the question essentially is about the discretion of the Court to interfere with the challenge to the action at the instance of the person who has participated in the election process in the meeting so convened without any demur.

6. For dealing with the first part of the question, we may straightway refer to the principle expounded by the Division Bench of this Court in the case of *Awadh Behari Pandey* (supra). That was also a petition under Article 226 of the Constitution of India by a Councillor of the Municipal Council challenging the legality of the election of non-applicant as President of the Council. The challenge was, *inter alia,* on the ground that the President could be elected only at the first meeting of the Council and not in the subsequent meeting. Secondly, meeting in question could not be said to be properly held as it was presided over not by one of the Vice Presidents as per Section 59 of the Act. Thirdly, the notice issued provided for time for delivery of nomination papers, which was contrary to the

---

18. (2003) 3 SCC 272 (5 J. CB)
19. (2004) 8 SCC 312, (3 J.B.)
20. (2005) 4 SCC 480 (3 J.B.)
21. (2006) 1 SCC 75 (3 J. B.)
22. (2006) 1 SCC 46 (DB)
23. 1952 SCR 612 (5 J. CB)
24. (1965) 1 SCR 970 (5 CB)
25. (2011) 9 SCC 354 (DB)
26. (2014) 9 SCC 772 (DB)
27. (1998) 9 SCC 594
28. (2009) 7 SCC 387 (DB)
29. 2001 (4) MPLJ 206 (MP (DB)

mandatory provisions; and lastly, that the meeting in question was invalid as seven clear days' notice before the first meeting was not given as required in Section 56 (3) of the Act.

7. The last of these questions pointedly arose in the case on hand before the learned Single Judge. While dealing with the said contention, the Division Bench in *Awadh Behari Pandey's* case (supra) adverted to the earlier decision of the Division Bench in the case of *Raghuvans Prasad Vs. Mahendra Singh and others* [30]. That decision has held that the provision about seven clear days' notice for convening of such meeting of the Council "is mandatory" and that in the computation of that period both the terminal days have to be excluded. Further, the Division Bench for the reasons recorded in Paragraphs No.7 to 9 of its decision, distinguished the decision of the Supreme Court in the case of *Narasimhiah Vs. Singri Gowda* [31], while rejecting the argument that the provision about seven clear days notice was not a mandatory one. In Paragraph No.9, the Division Bench unambiguously noted that in the Act of 1961, there is no provision for the curtailment of notice period at the discretion of the Presiding Officer. Similarly, there is also no provision analogous to Section 36 of the Mysore Act. The Division Bench also adverted to Section 81 of the Act and opined that the presumption is rebuttable one. The Division Bench also analysed the decision of the Supreme Court relied by the non-applicant in the case of *Jai Charan Lal Vs. State of U.P.* [32], on the question of exclusion of terminal days. It has then relied on the dictum in *Rambharoselal Gahoi Vs. State of M.P. and others* [33] and Raghuvans Prasad (supra), to hold that the same reinforces the view taken - that in the computation of seven clear days notice period, both the terminal days have to be excluded. Furthermore, as in that case seven clear days did not intervene between the dates of dispatch of the notice and holding of the meeting on scheduled date, the meeting was held to be invalid; and consequently the election of the non -applicant as the President of the Council was annulled.

8. As the Division Bench in the case of *Awadh Behari Pandey* (supra) has relied on the dictum of earlier Division Bench in the case of *Raghuvans Prasad* (supra), we may usefully refer to that decision. In this case also the provisions of Section 56 (3) of the Act were considered, providing for seven clear days notice of the meeting be given to every

30. 1967 MPLJ 941
31. AIR 1966 SC 330
32. AIR 1963 SC 5
33. AIR 1955 Nagpur 35

Councillor and this provision was mandatory. In Paragraph No.7 to 9 the Court observed thus:-

> "7. The second ground on which learned counsel for the petitioner attacked the validity of the election is that under section 43(2)(c) read with section 52(3) and section 56(3) of the Act, seven clear days' notice of the meeting should have been given to every Councillor and that this provision about seven clear days' notice was mandatory. It was said that according to the notice given by the Collector, the meeting for the purpose of electing the office-bearers commenced on 7th April 1967, the date fixed for the receipt of the nomination papers; that this notice was served on the petitioner on 2 nd April 1967; and that consequently the petitioner did not have seven clear days' notice of the meeting. Learned counsel referred us to *Rambharoselal v. The State* (1) for the proposition that in the computation of seven clear days, both the terminal days should be excluded.
>
> 8. This contention must be given effect to. By virtue of section 43 (2) (c), the provisions of sub-section (3) of section 55 have been made applicable to a meeting under clause (b) of section 43 (2). The effect of section 55 (3) read with section 43 (2) (c) is to apply all provisions contained in Chapter III regarding meetings of the Council to a meeting held under section 43 (2) (b). Sub-section (3) of section 56, which is contained in Chapter III, prescribes that notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor seven clear days before an ordinary meeting. A meeting convened under section 43 (2) (b) is an ordinary meeting and not a special meeting within the meaning of section 57.
>
> 9. In the present case, the notices of the meeting which the Collector convened, were despatched on 31st March, 1967. In the return filed by the Collector, there is no categorical denial of the averment made by the petitioner that the notices were despatched on 31st March

1967. All that has been said on this point in paragraph 8 of the return is that the notices were despatched within the period prescribed. The election meeting clearly commenced on 7th April, 1967, the date fixed for the filing of the nomination papers and their scrutiny, for it was on that date that the process of election commenced. [(See *N.P. Ponnuswami v. Returning Officer, Namakkal* (2)]. The provision about seven clear days' notice for the meeting is a mandatory one and in the computation of that period both the terminal days have to be excluded. See *Rambharoselal v. The State* (1). It is thus manifest that the mandatory provision contained in Section 56(3) about seven clear days' notice of the meeting was not complied with. It is true that rule 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962, which provides that the presiding authority shall specify in the notices of the meeting the time and place so fixed, is silent about the period of notice for the meeting at which the election is to be held. But this rule does not in any way override section 56(3). It has to be read with section 56(3) and, so read, it necessarily follows that the presiding authority must dispatch to every Councillor notice of meeting seven clear days before the meeting. As this was not done in the present case, the election meeting which commenced on 7th April 1967 was invalid and so also was the election held at that meeting which continued even on 8th April 1967. The election of the respondents Nos.1, 2 and 3 must, therefore, be declared to be invalid on this ground."

(emphasis supplied)

9. As this decision essentially relies on the principle expounded in the case of *Rambharoselal Gahoi* (supra), we deem it apposite to reproduce the relevant discussion in this decision in paragraphs 10 and 11, which reads thus :

"(10) It is contended that the rule must be regarded as merely directory, at least in so far as the president is concerned, and reference is made to a passage in Maxwell

at page 376 'ibid' to the following effect:

> "But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time; or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative."

This statement was cited with approval in the two Calcutta cases, particularly the first. In that case the date of election which had to be fixed not less than two months after the notification, was so fixed but was changed by another notification which did not give more than six weeks. It was held that the provision was merely directory and that the election was validly held.

(11) We do not propose to examine the correctness of the Calcutta decisions because the facts were different. But if it be contended that the decision holds good in a case like the present, we express our disapproval of such a contention. No doubt, the rule which requires a notice of ten days is so framed that it, perhaps, postulates a meeting already fixed an a notice by a member of ten clear days with the date of the meeting in view. But the notice is not to the president alone; it is also to the members. It was the duty of the member who gave the notice (if the president fixed the meeting too early) to ask for the postponement of the meeting to a date ten clear days ahead of the notice before the resolution was moved. No waiver, estoppel or acquiescence could make the motion proper if it was not in compliance with the rules framed.

In our opinion, the rules do require that ten clear days should elapse between the notice of a resolution of no-confidence & the motion of no-confidence. The rule of ten days which is framed is in the interest of municipal

administration and also of the electors whose representative the president is. The section which enables a vote of no-confidence to be moved enables the members of the committee to get rid of a president with whom they cannot work. But in this clash of principles, the Legislature has thought it wise to put in a provision about ten clear days. We cannot regard that provision, in the circumstances, as merely directory. In our judgment, that provision has to be complied with and the State Government was perfectly correct when it declined to accept the resignation based on a vote of no-confidence moved improperly."

(emphasis supplied)

10. This legal position has been in vogue since then. Therefore, that legal position was not only binding on the Single Judge of this Court; but it was also not open to be doubted on the principles of *stare decisis*, in particular by the Single Judge . The Constitution Bench of the Supreme Court in the case of *Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another*[34] in paragraph 12 has observed thus:-

"**12.** Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the

34. (2005) 2 SCC 673

matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh and Hansoli Devi.*"

(emphasis supplied)

Keeping in mind the principles underlying this decision, it is not open to the learned Single Judge of the High Court to doubt the correctness of the view expressed by the Division Bench as the decision of the Division Bench is binding on the Single Judge.

11. Be that as it may, we will now advert to the relevant provisions of the Act of 1961. Section 43, 54, 55 and 56 of the Act read thus:-

"**43. Election and Term of Vice - President.** - (1) The President and the elected Councillors of the Council shall, [x x x] at its first meeting as referred to in [sub - section(1) of Section 55] elect a Vice-President from amongst the elected Councillors in the prescribed manner.

[(2) The meeting under sub-section (1) shall be presided over by such officer as mentioned in sub-section (2) of Section 55].

(3) The term of the Vice-President shall be conterminous with the term of the Council.

54. Meeting of the Council and Committee- The Council shall meet at least once in every two months and every Committee shall meet at least once in every month for the transaction of its business.

55. First meeting after General election.-(1) The Chief Municipal officer shall with the approval of the prescribed authority, within one month of every general election, call a meeting of the elected Councillors for the purpose of electing a Vice-President.

(2) The first meeting of the Council called under sub-section (1) shall be presided over by such officer not below the rank of Deputy Collector in the case of a Municipal and not below the rank of Tehasildar in the case of Nagar Panchayat, appointed by the Collector and all provisions contained in this Chapter regarding meetings of the Council, shall, as far as may be, apply in respect of such meeting:

Provided that the presiding officer shall not have right to vote at such meeting and in case of equality of votes, the result shall be decided by lot.

56. Convening of meeting. - (1) A meeting of Council shall be either ordinary or special.

(2) The date of every meeting, except the meeting referred

to in Section 43, 43A, 47, 55 or 71, shall be fixed by the President, or in the event of his being incapable of acting by the Vice-President, and in the like event in his case, by the Chief Municipal Officer.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor and exhibited at the Municipal Office seven clear ays before an ordinary meeting and three clear days before a special meeting.

(4) No business other than that specified in the notice relating thereto shall be transacted at a meeting".

(emphasis supplied)

12. We may also refer to Rule 3(3) of the Madhya Pradesh Municipalities (Election of Vice-President) Rules, 1998 which is applicable to the matter in issue. The same reads thus :-

"3. Time and place of election.-

(1) .....

(2) .....

(3) Notice of the meeting shall be dispatched to every Councillor and exhibited in the Council Office at least seven clear days before the meeting."

(emphasis supplied)

13. The main reason which has weighed with the learned Single Judge is that the provision such as Section 56 of the Act is a procedural provision and, therefore, should be construed as directory in nature. For that, we must understand the purpose underlying the calling of the first meeting after the general election. It is to ensure that within one month from the general election, a meeting must be convened by the authorized person for electing the Vice President from amongst the elected Councillors. No doubt, the post of Vice President is not ascribable to Part IX-A of the Constitution. That, however, does not mean that it is not essential to elect a

Vice President of the Municipal Council. On the other hand, electing a Vice President from amongst elected Councillors is a mandatory requirement,by virtue of Section 43 read with 55 of the Act. The office of Vice President has been fastened with the specified functions and duties, such as referred to in Sections 52 and 57 of the Act. Elaborate statutory Rules for election of Vice President have been framed titled as **"The Madhya Pradesh Municipalities (Election of Vice-President) Rules, 1998"**. It may not be necessary to dilate on those Rules for considering the question posed by the learned Single Judge. In the context of the question posed, suffice it to observe that convening first meeting after the general election within specified time has been made mandatory; and in that meeting one of the agenda must be for electing a Vice President from amongst the elected Councillors.

14. Before we deal with the decisions of this Court which are directly on the point, it may be useful to recapitulate the principle of interpretation expounded by the Constitution Bench of the Supreme Court in the case of *Bhikraj Jaipuria Vs. Union of India* [35]. The Court has observed that where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliances, the question whether the provision would be mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the Statute. Further, if the Statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity. The Supreme Court has quoted with approval **Maxwell on Interpretation of Statutes 10th Edn. p. 376** which reads thus :

> "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or

35. AIR 1962 SC 113

> advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded."

The Supreme Court has also reproduced the observation of *Lord Campbell in Liverpool Borough Bank v. Turner,* (1860) 30 LJ Ch 379 which reads thus :-

> "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

15. The next question is how the meeting in question has to be convened. Convening of meeting either ordinary or special is governed by Section 56 of the Act. Sub Section (2) stipulates that date of every meeting shall be fixed by the specified Authority. That is a general enabling provision, but it makes exception of the first meeting after general election which is to be fixed by the Chief Municipal Officer with the approval of the prescribed Authority within specified time. The provision in sub-Section (3) of Section 56 is a general provision applicable to every meeting and the modality of giving notice of such meeting. It not only defines about the contents of the notice, but also the manner of issuance of the notice. In that, the notice is required to be despatched to every Councillor and exhibited at the Municipal Office. Further, that notice must be despatched "seven clear days" before an ordinary meeting and three clear days before a special meeting.

16. Despatch of notice to every Councillor must conform to the requirement of seven clear days notice, for the first meeting after the general election, to transact the business specified in Section 55 (1) read with Rule 3(3) of the Rules of 1998 for electing a Vice President from amongst the elected Councillors. This procedure has been justly construed as mandatory by the Division Bench of our High Court and which legal position is in vogue since 1955, followed in 1967 and again in 1968. It has been so construed because of the nature of the business to be transacted in the first meeting after the general election and also because it is concerning the election of a public

representative.

17. These decisions, in the context of provisions of no confidence motion, have been considered by the Full Bench of our High Court in the case of *Smt. Bhulin Dewangan* (supra). In Paragraph 8 the Full Bench has dealt with the purport of second part of sub Rule (3) of Rule3 of the M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994, which stipulates the time and place of the meeting within the prescribed period not later than 15 days and for despatch of notice of such meeting to every member of the panchayat seven (7) days before the meeting. In Paragraphs No.8 to 10 and 19, the Court observed thus:-

> "8. The second part of sub-rule (3) of Rule 3 mandates that the prescribed authority after fixing date, time and place of the meeting within the prescribed period not later than 15 days as laid down in the first part of the Rule, shall cause despatch of notice of such meeting to every member of the Panchayat 7 days before the meeting. The said latter part of sub-rule (3) of Rule 3 of 1994 Rules is mandatory as intimation of date, time and place of meeting to every member is essential to ensure his presence, if he so desires, in the meeting to be held on such vital issue of passing of no-confidence motion.
>
> 9. ..... The law intends that the notice of meeting should be sent to the members concerned seven days in advance of the meeting to enable them to participate in the motion of no-confidence. ..... The latter part of Sub-rule (3) of Rule 3 uses the words 'shall be caused' indicating clearly that the rule is mandatory and requires due compliance. .....
>
> .....
>
> 19. We, however, with respect, are unable to subscribe to the view expressed by the Division Bench in *Gayasuddin v. Gram Panchayat*, 1971 MPLJ 1012 = 1971 JLJ 286 that the requirement of the rule is service of notice of no-confidence motion seven clear days in advance of the holding of the meeting. The decision in the case of *Gayasuddin* (supra)

has failed to notice the earlier Division Bench decision in *Raghuvans Prasad v. Mahendra Singh and Ors.*, 1967 MPLJ 941. In *Raghuvans Prasad v. Mahendra Singh* (supra), construing comparable provisions contained in Section 56 (3) of the M.P. Municipalities Act, where similar language was used as in the second part of Rule 3 (3) of the 1994 Rules, it was observed :

.....

It would thus be noticed that the Division Bench in the case of *Raghuvans Prasad* (supra) has only read into the rule mandatory requirement of despatch of notice of the meeting to every councillor clear seven days before the meeting. But rule has not been construed to mean 'receipt of such notice' by the councillor clear seven days in advance of the actual holding of the meeting."

(emphasis supplied)

In the light of the abovequoted observations of the Full Bench, the decision of the Division Bench in *Awadh Behari Pandey* (supra) must be held as impliedly affirmed by the Full Bench. For, the Full Bench has approved the decision in *Raghuvans Prasad* (supra), which has been followed in *Awadh Behari Pandey's* case (supra).

18. In the backdrop of series of decisions on the point, it is not open to doubt the correctness of the view expressed in the case of *Awadh Behari Pandey* (supra); nor the reasons recorded by the learned Single Judge in that behalf merit any consideration. By now it is well established position that the Single Judge is bound by the opinion of the Division Bench and more so,on legal position which has been in vogue for such a long time if not time immemorial. Merely because some other view may also be possible, cannot be the basis to question the settled legal position. Such approach is not only counter productive but has been held to be against the public policy. In the case of *Abhay Singh Chautala Vs. Central Bureau of Investigation*[36], while dealing with this aspect and restating the maxim of *stare decisis et non quieta movere*, in Paragraphs No.35 and 36 the Court observed thus:-

36. (2011) 7 SCC 141

"35. There is one more reason, though not a major one, for not disturbing the law settled in *Antulay's* case. That decision has stood the test of time for last over 25 years and it is trite that going as per the maxim *stare decisis et non quieta movere*, it would be better to stand by that decision and not to disturb what is settled. This rule of interpretation was approved of by Lord Coke who suggested -."those things which have been so often adjudged ought to rest in peace". This Court in *Shanker Raju Vs. Union of India* [2011 (2) SCC 132], confirmed this view while relying on the decision in *Tiverton Estates Ltd. Vs. Wearwell Ltd.* [1974 (1) WLR 176] and more particularly, the observations of Scarman, L.J., while not agreeing with the view of Lord Denning, M.R. about desirability of not accepting previous decisions. The observations are to the following effect:-

> "17... '... I decline to accept his lead only because I think it damaging to the law to the long term - though it would undoubtedly do justice in the present case. To some it will appear that justice is being denied by a timid, conservative adherence to judicial precedent. They would be wrong. Consistency is necessary to certainty - one of the great objectives of law."

The Court also referred to the following other cases: *WamanRao Vs. Union of India* [1981 (2) SCC 362], *Manganese Ore (India) Ltd. Vs. CST* [1976 (4) SCC 124], *Ganga Sugar Corpn. Vs. State of U.P.* [1980 (1) SCC 223], *Union of India Vs. Raguhbir Singh* [1989 (2) SCC 754], *Krishena Kumar Vs. Union of India* [1990 (4) SCC 207], *Union of India Vs. Paras Laminates (P) Ltd.* [1990(4) SCC 453] and lastly, *Hari Singh Vs. State of Haryana* [1993 (3) SCC 114].

36. We respectfully agree with the law laid down in *Shanker Raju Vs. Union of India* and acting on that decision, desist from disturbing the settled law in *Antulay* case. We have in the earlier part of the judgment, pointed out as to how the decision in *Antulay* case (cited supra) has been

followed right up to the decision in *Prakash Singh Badal v. State of Punjab* - (2007) 1 SCC 1 and even thereafter."

(emphasis supplied)

19. The principle of *stare decisis* is also well ingrained and legitimate reason for not doubting the settled legal position. The Supreme Court in the case of *Maktul Vs. Mst. Manbhari and others* [37] in Paragraph No.9 observed thus:-

"9. There is one more point which still remains to be considered. Having regard to the principle of *stare decisis*, would it be right to hold that the view expressed by the High Court of Punjab as early as 1895 was erroneous ? The principle of *stare decisis* is thus stated in Halsbury's Laws of England:

"Apart from any question as to the Courts being of co- ordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other, ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

The same doctrine is thus explained in Corpus Juris Secundum:

"Under the stare decisis rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy,

37. AIR 1958 SC 918

and, although generally it should be strictly adhered to by the courts, it is not universally applicable.....

....."

(emphasis supplied)

20. Following these decisions, the learned Single Judge should have eschewed from referring the matter to the Larger Bench. We may now usefully refer to Rule 8 in Chapter IV of the High Court of Madhya Pradesh Rules, 2008, in particular, Clause 3 thereof, which reads thus:-

"Reference to Larger Bench

8. (1).....

(2).....

(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this court needs reconsideration, he may formulate question (s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench."

21. The expression "reconsider" and "reconsideration as mentioned in The Major Law Lexicon by P Ramanatha Aiyar, 4th Edition, read thus:-

"Reconsider. "Reconsider", as used in an Act, providing that, upon the return by the mayor of a vetoed ordinance with his objection, the aldermen shall at their regular meeting order the objection entered on the journal, after which they shall proceed to *re-consider* the same, means the taking up of the matter and discussing it. The word "reconsider" s not given the artificial meaning which it may have acquired in strict parliamentary proceedings, but only the ordinary meaning, which is to think or consider the matter over again, for the purpose of passing upon the matter on such second consideration.

A resolution adopted by the city council that a certain ordinance theretofore enacted "be reconsidered" does not

amount to a repeal of such ordinance.

> **Reconsideration**. Reconsideration, in parliamentary law, is defined to be taking up for renewed consideration that which has been passed or acted on previously."

22. Indeed, the learned Single Judge sitting alone while hearing a case is free to refer the decision of Coordinate or Larger Bench of this Court for reconsideration. The expression "reconsideration", will have special connotation when the Judge sitting alone while hearing a case doubts the opinion of a Division Bench. The Single Judge cannot opine that another view or opinion is possible; or that he disagrees with the decision of the Division Bench. *Sensu stricto,* in the light of the principles underlying the decision of the Constitution Bench of the Supreme Court in *Central Board of Dawoodi Bohra Community and Anr.* (supra), he can merely invite the attention of the Chief Justice and request for the matter being placed for hearing before a larger quorum than the Bench whose decision has come up for consideration. At best, he may delineate the points which may require reconsideration, such as, that the Division Bench decision is per incuriam or has failed to refer to the settled legal position or any decision of the Supreme Court on the subject or for that matter the relevant statutory provisions of the Act or Rules have gone unnoticed.

23. Be that as it may, on the first part of the question as formulated by the learned Single Judge, we answer the same by upholding the decision of the Division Bench in the case of *Awadh Behari Pandey* (supra); and further hold that the said decision does not require any reconsideration.

24. Reverting to the second part of the question as formulated by the learned Single Judge, as mentioned earlier, it is essentially about the discretion of the Court. Even this aspect is no more *res integra*. The Full Bench of our High Court in the case of *Smt. Bhulin Dewangan* (supra) has considered the same. The Court in Paragraphs No.14 and 15 has observed thus:-

> 14. An incidental question arose is whether non-compliance of the second part of sub-rule (3) of Rule 3 of the Rules of 1994, which we have held as mandatory, would as a necessary corollary invalidate the proceedings held in the meeting called for passing the no-confidence motion. This question has not directly been posed, but as the learned Single Judge

appears to have noticed some conflict or cleavage of opinion between several Single Bench decisions of this Court, we find it necessary to express our opinion on the same.

15. The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. This appears to be the reason for learned C.K. Prasad, J., in *Dhumadhandin v. State of M.P.*, 1997 (2) MPLJ 175 = 1997 (1) Vidhi Bhasvar 49 which was followed by R.S. Garg, J., in *Mahavir Saket v. Collector, Rewa,* 1998 (2) JLJ 113 for holding that mere non-compliance of first part of the rule in fixing a meeting beyond the prescribed days of the motion of no-confidence would not invalidate the whole proceedings. In case of *Dhumadhandin* (supra), the Sarpanch did not question the validity of the notice calling the meeting of no-confidence and in fact had taken chance by facing the motion. R.S. Garg, J., in *Mahavir Saket* (supra) placed reliance on the decision of C.K. Prasad, J., in *Dhumadhandin* (supra) to up-hold the passing of the no-confidence motion in the adjourned meeting as in the meeting called within the prescribed fifteen days the Presiding Officer was not available. Sub-section (4) of Section 21 permits reference of a dispute to the Collector by Sarpanch or Up-Sarpanch against whom a notice of no confidence motion had been passed. The proceedings of the no-confidence motion or other proceedings under the Act are also assailable in this Court as Constitutional Court under Article 227 of the Constitution of India. As has been construed by us, even though second part of the rule requiring dispatch of notice of the meeting to the member is mandatory, yet in every case of challenge to the proceeding of no-confidence motion either before the Collector or this

Court, it would still be open to the Collector or this Court to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties. The general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In a given situation even for non-fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice had been caused to the party affected or to any other party which would have any other substantial interest in the proceeding. This Court under Article 227 of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused. This is how various Single Bench decisions in which even after finding some infraction of the second part of Rule 3 (3) of the Rules of 1994, the resolution of no-confidence motion passed was not invalidated on the ground that no substantial prejudice thereby was caused to the affected parties. The intention of the legislature has to be gathered from the provisions contained in Section 21 and the Rule 3 (3) framed thereunder. The provisions do evince an intention that a meeting of the no-confidence motion be called within a reasonable period of not later than 15 days and every member has to be informed of the same seven days in advance. A notice of no-confidence motion is required to be moved by not less than 1/3rd of the total number of elected members as required by first Proviso to Sub-rule (1) of Rule 3 and can be lawfully carried by a resolution passed by majority of not less than 3/4th of the Panchas present and voting and such majority has to be more than 2/3rd of the total number of Panchas constituting the Panchayat in accordance with sub-section (1) of Section 21 of the Act. This being the substance of the provisions under the Act and

the rules, a mere non-compliance of second part of Sub-rule (3) would not in every case invalidate the action unless the Collector while deciding the dispute under Sub-section (4) of Section 21 or this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution comes to the conclusion that such non-compliance has caused serious prejudice to the affected office bearer or has otherwise resulted in failure of justice."

(emphasis supplied)

25. In view of this legal position already enunciated, the learned Single Judge should have decided the controversy brought before him by applying the settled legal position.

26. Accordingly, the questions referred to us are answered on the above terms.

27. We direct the Registry to place the matter before the learned Single Judge forthwith for further consideration in accordance with law.

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

Order accordingly.

I.L.R. [2016] M.P., 967
WRIT APPEAL

Before Mr. Justice P.K. Jaiswal & Mr. Justice Jarat Kumar Jain
W.A. No. 93/2015 (Indore) decided on 27 July, 2015

MSJ COLONIZING & LEASING COMPANY LTD. ...Appellant
Vs.
INDORE MUNICIPAL CORPORATION,
INDORE & ors. ...Respondents

A. ***Municipal Corporation Act, M.P. (23 of 1956), Sections 203(2), 302, 307, 308, 403 & 421 - Illegal construction work changing the purpose of the building*** **- Appellant who is a builder, after receiving the notice has made unauthorized construction - He was directed to stop the work immediately even though he ignored the notice and**

continued the illegal construction work - Appellant has changed the purpose of building from residential to commercial - Such construction cannot be regularized - Appellant cannot be absolved from the liability of removal of illegal construction. (Paras 23 & 25)

क. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराऐं 203(2), 302, 307, 308, 403 व 421 – अवैध निर्माण कार्य से भवन के प्रयोजन में परिवर्तन – अपीलार्थी जो कि एक भवन निर्माता है, ने नोटिस प्राप्त करने के पश्चात अनधिकत निर्माण किया – उसे तत्काल कार्य रोकने हेतु निर्देशित किया गया, फिर भी उसने नोटिस की अवज्ञा की एवं अवैध निर्माण कार्य जारी रखा – अपीलार्थी ने भवन का प्रयोजन आवासीय से व्यावसायिक में परिवर्तित कर दिया – ऐसे निर्माण को नियमित नहीं किया जा सकता है – अपीलार्थी को अवैध निर्माण हटाने के दायित्व से विमुक्त नहीं किया जा सकता।

***B. Municipal Corporation Act, M.P. (23 of 1956), Section 308-A & B* - Section 308-A inserted in the act w.e.f. 30.05.1994 and Section 308-B which is relaxation from the provision of Section 308-A, inserted w.e.f. 25.08.2003 - Provisions have no application to the present case as the construction of building in question was already completed in the year 1993. (Para 24)**

ख. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 308-ए व बी – अधिनियम में धारा 308-ए दि. 30.05.1994 से प्रभावी रुप से समाविष्ट की गई एवं धारा 308-बी, जो धारा 308-ए के उपबंधों का शिथिलीकरण है, दि. 25.08.2003 से प्रभावी रुप से समाविष्ट की गई – वर्तमान प्रकरण में इन उपबंधों की कोई प्रयोज्यता नहीं है क्योंकि प्रश्नाधीन भवन का निर्माण वर्ष 1993 में ही पूर्ण हो गया था।

Cases referred :

1973 JLJ 922, 2004 AIR SCW 5932, 1993 MPLJ 228, AIR 1967 SC 895, 1994 MPACJ 271 (MP).

Ajay Bagadiya, for the appellant.
Anand Agrawal, for the respondents No. 1 & 2.
Pushyamitra Bhargava, Dy. A.G. for the respondent No.3/State.

JUDGMENT

The Judgment of the Court was delivered by :

J.K. JAIN, J. :- **THIS** intra-Court Appeal is against the order dated 02.03.2015 passed by the learned Single Judge of this Court in WP No.10006/

2011 whereby dismissed the Writ Petition of the appellant.

2. The brief facts of the case are that the petitioner/ appellant being an owner of the property in question bearing house No.17/1, South Tukoganj, Indore, applied for building permission and the same was granted on 16.12.1992. Thereafter the appellant constructed the building in consonance with the sanctioned map, however on 31.03.1993 and 16.04.1993 notices were served on the appellant stating that the appellant has constructed in excess of marginal open space portion and shops have been constructed in the basement and ground floor. The appellant preferred an appeal under Section 403 of the Municipal Corporation Act, 1956 (in brief "Act") before the Appeal Committee. The Appeal Committee in Appeal No.241/1995 vide order dated 15.12.1995 imposed a compounding fees Rs.5,000/- for unauthorized construction. The appellant deposited the compounding fees on 27.12.1995. Thereafter on 29.11.2011 notice was issued directing the appellant to remove the unauthorized construction within two days. On 07.12.2011, the appellant sent the reply of the notice. The appellant thereafter challenged the notice dated 29.11.2011 before the Writ Court and prayed for quashment of the same. After filing of the reply of respondent No.1 the appellant by way of amendment pleaded that the respondents have stated that the State Govt. has cancelled the compounding order passed in favour of the petitioner/appellant under Section 421 of the Act but no opportunity of hearing was given to the petitioner/ appellant before passing of the order by the Government and even otherwise the State Govt. has no jurisdiction to pass the orders, therefore, also challenged the order passed by the Govt. By way of rejoinder it is pleaded that the Respondents have issued notice u/s 302 of the Act. Thus, against such notice u/s 403 of the Act appeal is maintainable before the Appeal Committee. Hence the appeal committee has rightly entertained and allowed the appeal of the appellant. The respondents have not filed any representation to the State Govt. against the order of appeal committee. Therefore, the order of State Govt. is illegal and without jurisdiction.

3. The stand of the respondent No.1 before the Writ Court is that the petitioner/appellant has raised illegal construction contrary to the sanctioned map causing nuisance, traffic hazards, traffic congestion, therefore, deserves to be removed. The appellant was granted permission for residential complex; however, he has constructed shops and other illegal structures on every floor.

The appellant was initially served a notice on 31.03.1993 and thereafter on 16.04.1993 and 25.09.1995. The appellant preferred the appeal before the Appeal Committee. The order of the Appeal Committee was set aside by the State Govt. on 09.05.1997. The Appeal Committee has no jurisdiction to pass an order in reference to Section 307 of the Act, even otherwise it is settled principle of law that in case of compounding it is only the offence which is compounded and not the illegal structure thus the notice issued by the respondent No.1 is well within the jurisdiction.

4. After hearing learned Counsel for the parties, Writ Court held that the appellant raised the construction which is contrary to the sanctioned lay out and respondent No.1 has got every right to demolish the illegal construction. Accordingly the petition has been dismissed. Being aggrieved the appellant has filed this appeal.

5. Learned counsel for the appellant submitted that the learned Single Judge has not considered the fact that before issuance of the impugned notice dated 29.11.2011, no opportunity of hearing was given to the appellant. A bare perusal of the impugned notice reflects that the said notice was based upon prior notices of the year 1993 and the order passed by the Appeal Committee compounded the alleged unauthorised construction in question. Thus, the entire procedure and action taken by the respondent No.2 is in violation of principles of natural justice.

6. Learned counsel for appellant further submitted that the State Government has no jurisdiction to set aside the order of Appeal Committee without providing opportunity of hearing to the appellant. Learned Single Judge has overlooked this aspect of the matter. The State Government while exercising the powers u/s. 421 of the Act, when the matter referred to a private individual whose rights are involved, the Government is expected to give proper opportunity of hearing. For this purpose, he placed reliance on the judgment of this Court in the case of *Moolchand Vs. Indore Municipal Corporation* : 1973 JLJ 922.

7. Learned counsel for appellant further submits that the learned Single Judge has not considered this fact that once the Corporation has compounded the matter, then it is not open to the Corporation to start further action for demolition of the property. The finding of the learned Single Judge holding

that the compounding fees is related to compounding of offence and not the construction, is in defiance of the scheme of the Act.

8. Learned counsel for the appellant contended that the learned Single Judge has erred in not giving effect to the provisions of Section 308-B of the Act before issuance of the impugned notice. In the present case, the deviations as alleged in the sanctioned map are not extreme and serious breaches of the licensing provisions which called for demolition. The building in question is not in specified area, therefore, there is no restriction in passing the order of compounding of illegal construction as per provisions of Section 308-B of the Act. Learned counsel for appellant submitted that the learned Single Judge has not considered that the respondent No.1 issued the notice u/s. 302 of the Act, against which, an appeal u/s. 403(2) of the Act is competent and against such an order, no appeal or revision shall lie as provided u/s. 403(6) of the Act. He submitted that when the Appeal Committee has compounded the unauthorised structure, then there was no occasion for respondents to send any notice for demolition of alleged illegal construction.

9. On the other hand, learned counsel for respondents No.1 and 2 supported the order passed by learned Single Judge and submitted that the Appeal Committee acted beyond jurisdiction and allowed the appeal, whereas as per provisions u/s. 403 (2) of the Act, the Appeal Committee has no power to decide the appeal against the order passed u/s. 307 of the Act by the Building officer (respondent No.2). Therefore, the order of Appeal Committee was a nullity and on the basis of such an order, the appellant is not entitled for any relief. He submits that the learned Single Judge has rightly held that the Appeal Committee by order dated 15.12.1995 has only compounded the offence, but not the illegal construction, therefore, the respondent No.2 has a right to demolish the illegal and unauthorised construction. Learned counsel for respondents No.1 and 2 further submits that this is not a case in which the appellant has made some minor changes from the sanctioned map, whereas the appellant has changed the use of the building from residential to commercial and has illegally made the construction in basement which is meant for parking place.

10. Learned counsel for respondents No.1 and 2 further submits that the provisions of Section 308-B of the Act were only for limited period and now, they are not in existence. The period had already been expired and, therefore,

these provisions are not applicable in the present case. It is also not correct to say that when the construction activities were being carried out, no notice was served on the appellant. The appellant was served with a notice dated 30.3.1993 stating that he has constructed in excess of marginal open space portion and shops have been constructed in the basement and ground floor. Hon'ble the Apex Court in the case of *Friends Colony Development Vs. State of Orisa* : 2004 AIR SCW 5932 held that deviations from sanctioned constructions being regularised by compounding only when such deviations are bonafide or attributable to some mis-understanding. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deserve to be dealt with sternly so as to act as a deterrent for future. Thus, the learned Single Judge has rightly dismissed the petition. There is no merit in the appeal and the same is liable to be dismissed.

11. After hearing learned counsel for the parties, we directed the counsel for respondent No.1 to produce the original file of Indore Municipal Corporation in regard to building in question.

12. We have perused the record as well as the original file of the Corporation. It reveals from the original file that the appellant had applied for building permission and the same was granted on 16.12.1992. Thereafter, appellant started construction. When the construction of building was going on, respondents No.1 and 2 on 31.3.1993 sent a notice u/s. 302(1) of the Act that the appellant has made unauthorised construction by raising RCC columns on third floor, covered the balconies from first floor to third floor and constructed shops at ground floor and, therefore, he was directed to stop the work immediately otherwise, action would be taken against him u/s. 203 (2) of the Act. The notice has been filed by the appellant with appeal as Annexure P/6. In the light of this notice, it is not correct that when the unauthorised construction was going on, no notice was given to the appellant.

13. Learned counsel for the appellant has tried to convince us that the appellant has not committed any serious breach while constructing the building in question and the Appeal Committee vide order dated 15.12.1995 had compounded the entire illegal and unauthorised construction. To appreciate the argument of learned counsel for appellant, we would like to refer the notice dated 16.4.1993 (Annexure P/5), which reads as under :-

"इंदौर नगर पालिक निगम कार्यालय
अनाधिकृत कार्य बाबद सूचना
(म.प्र.न.नि. विधान सन 1956 की धारा 302 के अन्तर्गत)
क्रमांक 66 दिनांक 16–4–93

नामः मे. एम.एस.जे. कन्स्ट्रक्शन

ठिकाना प्लाट नंबर 17–6–2 ए सा. तुकोगंज

सदर मकान में जगह पर आपने नीचे बताये मुजब बिना इजाजत काम किया है।

बिना इजाजती कार्य का विवरण

सदर मकान के स्वीकृत नक्शा क्र. 3280 दिनांक 16–12–92 के खिलाफ कार्य किया है। सदर मकान के तलघर को एम.ओ.एस. पोर्शन में बढ़ाकर बनाया है तथा तल घर में दुकानें तथा ग्राउण्ड फ्लोअर पर दुकानों का शेप दिया है तथा हाईट 12 मी. के स्थान पर 1.90 मी के ज्यादा बना है। गैलरियां सभी तलों पर 0.91 मी. के स्थान पर 1.50 मी. बनाई है तथा एम.ओ.एस. पूर्व पश्चिम तरफ कम रखा है। तथा गैलरियों को कवर किया है। तृतीय मंजिल के ऊपर कालम खड़े किये है। यह कार्य नक्शे के खिलाफ है।

1. धारा 307 (2) अ के अन्तर्गत सूचना देने में आती है कि आप स्वयं या आपके द्वारा विधिवत अधिकृत कार्य प्रतिनिधि द्वारा दिन 3 में या इससे पूर्व पर्याप्त कारण लिखित में बतलाये कि अनाधिकृत कार्य क्यों न हटाया जावें।

2. यदि आपने ऊपर लिखे हुए आदेश का पालन नहीं किया तो धारा 307 (3) के अन्तर्गत कार्यवाही की जावेगी।

सही/–
वा. आयुक्त
न.पा.नि. इन्दौर

After receiving the aforesaid notice, the appellant filed an appeal and the Appeal Committee vide order dated 15.12.1995 (Annexure P/7) decided the appeal, which reads as under :-

"अध्यक्ष (अपील समिति) नगर पालिक निगम
इन्दौर के समक्ष
अपील प्रकरण क्रमांक 241/95

एम.एस.जे. कालोनाईजिंग एण्ड लीजिंग कम्पनी
लिमिटेड द्वारा संचालक दिग्विजयसिंह जैन

पिता मुख्त्यारसिंगजी जैन,

ठिकानी–17/1 साउथ तुकोगजं इंदौर अपीलान्ट

विरूद्ध

श्री आयुक्त, नगर पालिक निगम इंदौर रिस्पोन्डेन्ट

विषयः– बिना इजाजती कार्य बाबद।

निर्णय दिनांक 15–12–95

1. अपीलान्ट ने यह अपील आयुक्त, नगर पालिक निगम इंदौर द्वारा जारी दाखला क्रमांक 3188 दिनांक 31–3–93 एवम दाखला क्रमांक 66 दिनांक 16–4–93 अन्तर्गत धारा 302 एवं 307 मध्यप्रदेश नगर पालिक निगम विधान के असंतुष्ट होकर प्रस्तुत की है जिसमें अपीलार्थी को बिना इजाजती कार्य किये जाने की सूचना दी गई है।

2. अपीलार्थी की ओर से श्री एन.जी. बाहेती अधिवक्ता ने उपस्थित होकर यह तर्क दिया है कि उन्होंने नगर पालिक निगम से विधिवत् दाखला क्रमांक 3280 दिनांक 16–12–92 के द्वारा मानचित्र स्वीकृत करवाकर निर्माण कार्य किया है, जिसमें परिवर्तन करते हुए तलघर के सामने की तरफ दुकानें बनाई है तथा ऊपर की मंजिलों पर गैलरियों को कवर किया गया है। बिना अनुमति से किये गये कार्य को कम्पाउण्डिग शुल्क पर कायम रखा जावे।

3. आयुक्त की ओर से संबंधित झोनल अधिकारी का कथन है कि अपीलार्थी के द्वारा प्रस्तुत मानचित्र पर आवासीय निर्माण कार्य की स्वीकृति प्रदान की गई तथा सभी मंजिलों पर स्वीकृत गैलरी को बढ़ाकर बनाया गया है। उक्त गैलरी प्रथम मंजिल द्वितीय मंजिल एवं तृतीय मंजिल तक निर्मित कर उसके ऊपर तृतीय मंजिल तक निर्मित किया है।

4. उभय पक्षों का कथन श्रवण किया गया। प्रकरण का अवलोकन किया। अपील समिति ने मौके पर संबंधित अधिकारी एवं अपीलार्थी की उपस्थिति में मौके का निरीक्षण भी किया। अपील समिति का निर्णय है कि अपीलार्थी ने जो सूचना पत्र में वर्णित ..... बिना इजाजती कार्य किया है उसे रू. 5000/– अक्षरी रूपये पांच हजार मात्र कम्पाउडिगं शुल्क पर कायम रखा जावे। अपीलार्थी कम्पाउण्डिग शुल्क का आकार निगम खजाने में 7 दिन में जमा करे। इस निर्देश के साथ अपीलार्थी द्वारा अपील समिति के समक्ष प्रस्तुत अपील सशर्त स्वीकार की जाती है। निर्णय पारित। संबंधित को सूचित हो।

:हः मधुकर वर्मा
अध्यक्ष
अपील समिति"

NOTE – In the blank space, the words " गैलरी का" were written, but the same were erased in Annexure P/7.

14. From the aforesaid notice, it is clear that the appellant has unauthorisedly and against the sanctioned map constructed the shops in the basement and on other floors and balconies have been covered. The contents of the notice are admitted by the counsel for the appellant before the Appeal Committee, which is in Para 2 of the order. Thus, it is clear that the appellant has raised unauthorised and illegal construction against the sanctioned map and by constructing the shops in the basement and on other floors has changed the use of the building from residential to commercial. Therefore, there is no force in the argument of learned counsel for the appellant that the appellant has not committed any serious breach while constructing the building in question.

15. According to learned counsel for the appellant, the Appeal Committee has compounded the entire illegal construction raised by the appellant. This argument is again misconstrued and it is based on a forged order of the Appeal committee dated 15.12.1995. The operative portion of the order of Appeal committee reads as under :

> "अपील समिति का निर्णय है कि अपीलार्थी ने जो सुचना पत्र में वर्णित गैलरी का बिना इजाजती कार्य किया है उसे रू. 5000/– अक्षरी रूपये पांच हजार मात्र कंपाउडिंग शुल्क पर कायम रखा जावे।"

Whereas in the copy of the order (Annexure P/7), the word " गैलरी का" has been intentionally erased to show that the Appeal Committee has compounded the entire illegal and unauthorised construction shown in the notice dated 16.4.1993. This fact has came to our knowledge when we called the original file from the Corporation. This is a very serious matter. The appellant shown so dare to file the forged order (Annexure P/7) before this Court. Thus, it is clear from the original order of Appeal Committee that the Appeal Committee had only compounded the illegal and unauthorised construction in respect of balconies which have been covered by the appellant on every floor and not the other unauthorised construction.

16. No we would like to examine whether the order dated 15.12.1995 was within the jurisdiction of appeal committee. Learned Counsel for the appellant misconstrued the facts that the notice dated 16.04.1993 was issued under Section 302 of the Act, therefore, appeal under Section 403(2) of the

Act was competent, the said notice was issued under Section 307 of the Act. As per the provisions under Section 403(2) of the Act the appeal committee can decide any notice or order issued by the Commissioner and sub ordinate officers passed under Sections 174, 193, 195 to 199, 202, 204, 205, 207 to 210, 237, 241, 243, 246 to 249, 292-A, 295, 296, 299, 301, 302, 310 to 313, 315, 322, 323 or 393 of the Act. Notice dated 16.04.1993 was issued under Section 307 of the Act against which no appeal is competent before the appeal committee under Section 403 (2) of the Act. Even though the appeal committee has decided the appeal, therefore, the order is without jurisdiction and *per se* illegal.

17. It is vehemently argued that no opportunity of hearing was given by the State Govt. before setting aside the order of appeal committee and this fact came to know only when the respondents have filed their return before Writ Court. One Parmanand has filed Writ Petition No.1564 of 1996 (PIL) along with the list of cases, including the case of property in question, that the appeal committee has illegally exercised the power in compounding many unauthorised constructions. Therefore, this Court vide order dated 26.02.1997 allowed the petition and directed the Indore Municipal Corporation to examine such cases and if necessary review the matters and also directed to take action for removal of illegal constructions in accordance with the law. In the light of this order, the appellant has filed a Review Petition before the appeal committee. Meanwhile, the State Government has taken cognizance and by invoking power under Section 421 of the Act stayed the order dated 15.12.1995 passed by the appeal committee and subsequently in June, 1996 State Government has set-aside the order of appeal committee dated 15.12.1995. In the light of the order of State Government, the appeal committee vide order dated 13.05.1997 dismissed the review petition filed by the appellant. Thereafter the respondent No.1 vide letter dated 05.07.1997, along with the copy of the order, communicated the same to the appellant. Thereafter on 24.07.1997 Municipal Corporation of Indore has sent a notice to the appellant that the appeal committee has dismissed review petition, therefore, it is directed to the appellant to remove his unauthorised construction within 7 days. After receiving the notice, the appellant has sent a reply dated 29.07.1997 stating that the State Government has passed the order without giving him an opportunity of hearing. In such circumstances it is incorrect that the appellant has no knowledge about the order passed by the State Government of setting-aside the order dated 15.12.1995 passed by the appeal committee.

18. From the above discussions, it is clear that the appellant was communicated the order on 05.07.1997. Thereafter notice on 24.07.1997 for removal of illegal construction has also been served on him but at that time he has not challenged the order of State Government as well as order of the Respondent No.1. Therefore, at this juncture after lapse of so many years, the appellant cannot take a plea that he was ignorant about the order passed by the State Government and no opportunity of hearing was granted to him by the State Government. Therefore, we find no merit in this argument.

19. Now we have considered that even if the order of appeal committee stands then whether the appellant is absolved from the liability of removal of illegal construction. This Court in the case of *Kaushalkumar V/s. Indore Municipal Corporation* reported in 1993 MPLJ 228 held that in any case compounding will relate only to an offence and unless specifically provided by the Act it would not result in absolving the offender from all other consequences of his illegal Act. The Supreme Court has observed in *Bis wabahan Das V/s. Gopen Chandra Hazarika and others* reported in AIR 1967 SC 895 held as under :-

> **"If a person is charged with an offence, however, trivial it may be, then unless there is some provision for composition of it the law must take its recourse and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for."**

20. This Court in the case of *Abdul Sattar V/s. Municipal Corporation, Indore* reported in 1994 MPACJ 271 (MP) held that the provision of Section 307(5) of the Act is independent and merely because the offence has been compounded, it does not absolve the person making illegal construction from removing the illegal construction or else all illegal constructions would be regularised by making certain payments to the Corporation.

21. Full Bench of this Court in the case of *Dilip Kaushal V/s. State of Madhya Pradesh* while interpreting Section 307 (5) of the Act held that not only the Corporation but every other person has been given the right to apply to the District Court for injunction for removal or alternation of any building on the ground that it contravenes any provisions of the Act or by laws made thereunder.

22. Admittedly appellant is a builder. Hon'ble the Apex Court in the case of *Friends Colony Development Committee* (Supra) while examining the issue of deviation from sanctioned construction being regularised by compounding, held as under :

> **"25. Though the Municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.** ***The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future.*** **It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and there from develop a welfare fund which can be utilised for compensating and rehabilitating such Innocent or unwary buyers who are displaced on account of demolition of illegal constructions."**

23. In the present case, the appellant who is a builder, after receiving the notice dated 31.3.1993 that he has made unauthorised construction and he was directed to stop the work immediately, even though he ignored the notice and continued the illegal construction work. In such a situation, when the appellant has altogether changed the purpose of the building from residential

to commercial, such construction cannot be regularised.

24. Now, we have considered the objection in regard to Section 308-B of the Act. Section 308-A has been inserted in the Act w.e.f. 30.05.1994 and Section 308- B which is a relaxation from the provisions of Section 308-A, inserted w.e.f. 25.8.2003. These provisions have no application to the present case as the construction of building in question was already completed in the year 1993. Thus, there is no force in the argument of learned counsel for the appellant that appellant is entitled for the benefit of Section 308-B of the Act.

25. With the aforesaid, we are of the view that before issuing the impugned notice dated 29.11.2011, proper opportunity of hearing was given to the appellant and he was served with many notices i.e. dated 31.3.21993 (sic:1993), 16.4.1993, 25.9.1995, 24.7.1997, but the appellant has not paid any heed to these notices and now he has taken a false plea that he had no knowledge about the order passed by the State Government u/s. 421-A of the Act. The appellant cannot be absolved from the liability of removal of illegal construction.

26. In view of the foregoing discussion, we are of the view that there is no substance in this appeal and learned Single Judge has rightly dismissed the writ petition. We are in full agreement with the order passed by learned Single Judge. Thus, the appeal fails and is hereby dismissed. No order as to costs.

Appeal dismissed.

I.L.R. [2016] M.P., 979
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 10596/2014 (Jabalpur) decided on 1 August, 2014

MOHD. ALI ...Petitioner
Vs.
MUNNILAL AHIRWAR & ors. ...Respondents

Court Fees Act (7 of 1870), Section 35 **- Petition against the order allowing the application filed u/s 35 of the Court Fees Act seeking exemption from payment of ad valorem Court fees, on the ground that trial court has allowed the same merely on the basis of income certificate issued by Tehsildar without holding any enquiry - Held -**

Trial court has not committed any illegality in allowing the application by considering prima facie circumstances - The income certificate has been issued by Tehsildar under its authority and no document contrary to that has been placed on record by the petitioner - However, income certificate issued by Tehsildar cannot be treated as gospel truth - Trial court directed to frame issue with regard to income and decide the same alongwith other issues on appreciation of evidence.

(Paras 6 & 7)

न्यायालय फीस अधिनियम (1870 का 7), धारा 35 – मूल्यानुसार न्यायालय फीस के भुगतान में छूट हेतु न्यायालय फीस अधिनियम की धारा 35 के अंतर्गत प्रस्तुत आवेदन पत्र मंजूर किये जाने के आदेश के विरुद्ध यह याचिका इस आधार पर प्रस्तुत की गई कि विचारण न्यायालय ने बिना जांच कराये मात्र तहसीलदार द्वारा जारी आय प्रमाण पत्र के आधार पर आवेदन मंजूर किया – अभिनिर्धारित – प्रथम दृष्ट्या परिस्थितियों पर विचार कर आवेदन मंजूर करने में विचारण न्यायालय द्वारा कोई अवैधता कारित नहीं की गई है – तहसीलदार द्वारा आय प्रमाण पत्र अपने प्राधिकार के अंतर्गत जारी किया गया है एवं याची द्वारा उसके प्रतिकूल कोई भी दस्तावेज अभिलेख पर प्रस्तुत नहीं किया गया – किंतु, तहसीलदार द्वारा जारी आय प्रमाण पत्र को पूर्ण सत्य नहीं माना जा सकता – विचारण न्यायालय को आय के संबंध में विवाद्यक विरचित करने एवं साक्ष्य का मूल्यांकन कर उसे अन्य विवाद्यकों के साथ विनिश्चित करने हेतु निदेशित किया गया।

Anoop Saxena, for the petitioner.
Rahul Jain, G.A. for the respondent No.5/State.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J.:- Heard on the question of admission.

2. On behalf of the petitioner/defendant no.1, this petition is preferred under Article 227 of the Constitution of India, for quashment of the order dated 07.01.2014 (Annexure-P-7) passed by the IIIrd Civil Judge Class-I, Chhatarpur, in Civil Original Suit No.1A/2014, whereby, in a suit for declaration and perpetual injunction filed by the respondent no.1/plaintiff by allowing the application filed under some notification issued by the State of M.P. under Section 35 of the Court fees Act, he has been exempted to pay the requisite Court fees according to valuation of the suit.

3. Petitioner's counsel after taking me through the petition as well as the

papers placed on the record argued that on earlier occasion, the alleged sale deed regarding disputed property was executed by the respondent no.1 in favour of petitioner and subsequently, the respondent no.1 filed the impugned suit to declare him to be in possession of such property with a further prayer of declaration to declare the aforesaid sale deed to be ab-intio void. In such suit, according to existing provisions, the respondent no.1 was bound to value the suit and pay the advolerum (sic:ad valorem) Court fees on the valuation of the consideration of sale deed, the suit has been Rs.8,00,000/-, the valuation of the consideration of sale deed, but instead to pay the Court fees, accordingly the respondent no.1 has filed the aforesaid application under Section 35 of the Court fees Act for giving exemption from payment of Court fees on the ground that he being from the community of Scheduled Castes, having the income not more than 12,000/- per annum, is entitled for exemption to pay the Court fees under the notification issued under the aforesaid provision. In support of such contention, income certificate issued by the Tehsildar was also produced before the trial Court. On behalf of the petitioner instead to file any reply of such application, such prayer of respondent no.1 was opposed in the written statement, with the pleading that respondent is having huge property and income. As per case of petitioner, the trial Court without holding any enquiry on such question on the basis of Tehsildar certificate has allowed the impugned application and exempted the respondent no.1 from payment of requisite Court fees in the suit. With these submissions, he prayed to set aside the impugned order and dismiss the impugned application by admitting and allowing this petition.

4. Having heard the counsel, keeping in view his arguments, I have perused the aforesaid notification as well as the copy of the plaint and other documents placed on the record.

5. I have found that at the initial stage considering the prima facie circumstances regarding income of the respondent no.1 on the basis of certificate of Tehsildar by allowing the impugned application, he has been exempted from payment of the Court fees. It is true that impugned order allowing the aforesaid application has been passed without extending any opportunity to adduce the evidence to the petitioner in support of the contention stated in this regard in the written statement.

6. In the available factual circumstances as apprised by the petitioner's counsel stated above, at present prima facie I have not found any illegality,

irregularity or anything against the propriety of law in the impugned order, on the contrary, it appears that the same has been passed at the initial stage of the suit taking into consideration of aforesaid income certificate of the respondent no.1 issued by the Tehsildar under it's authority, and contrary to that, no any document has been placed on the record on behalf of the petitioner.

7. Simultaneously, I am of the considered view that if on the question of income of the respondent no.1, some objections have been taken on behalf of the petitioner in the written statement, then the petitioner has a right to adduce the evidence on such question during trial and the trial Court is also bound to consider such question again afresh after recording the evidence on appreciation of the same in the matter at final adjudication of the same. I am of the opinion that mere certificate of the Tehsildar cannot be considered to be a gospel truth regarding income of the respondent no.1, that document may be considered as prima facie circumstances at the initial stage of the case to permit the respondent no.1/plaintiff to prosecute the suit further on merit but on conclusion of trial the trial Court has to consider and decide such question of income on appreciation of the adduced evidence. With these observations at this stage, I do not want to interfere in the impugned order but in view of the existing procedure to decide all the questions of the impugned civil suit, this petition is hereby disposed of with a direction to the trial Court to frame the specific issue on the aforesaid question, besides the other issues, as the same is raised by the petitioner in the written statement as submitted by his counsel. Subsequent to from the opportunity to adduce the evidence be extended to both the parties, and thereafter, the same be decided afresh, without influencing from any findings or the observations made by such Court in the order impugned or by this Court in the present order. Such direction has been given keeping in view the proposition that Civil Court is bound to decide every disputed question raised in such suit by appreciation of evidence recorded in the same.

8. Before parting with the case it is also observed that if the respondent no.1/plaintiff is aggrieved by this order or any part of it, then he may approach to this Court with appropriate petition/proceedings for redressal of such grievance.

9. With the aforesaid observations and directions, this petition is disposed of.

Petition disposed of.

I.L.R. [2016] M.P., 983
WRIT PETITION
Before Mr. Justice Rohit Arya
W.P. No. 4449/2014 (Gwalior) decided on 6 August, 2014

VIJAY PRATAP SINGH PARIHAR ...Petitioner
Vs.
UNION OF INDIA & ors. ...Respondents

***Award of dealership of LPG - Judicial review* - Award of dealership - Administrative decision - It is a contract having commercial orientation - However, the decision making process is open for judicial review. (Paras 11 & 12)**

एल.पी.जी. की डीलरशिप प्रदान की जाना – न्यायिक पुनर्विलोकन – डीलरशिप प्रदान की जाना – प्रशासनिक निर्णय – यह एक वाणिज्योन्मुख संविदा है – तथापि, निर्णय करने की प्रक्रिया का न्यायिक पुनर्विलोकन किया जा सकता है।

Cases referred:

(2006) 5 SCC 353, AIR 1977 MP 108, 2011 (4) MPLJ 396, (2003) 10 SCC 681, AIR 1968 SC 956.

K.N. Gupta with *C.P. Singh*, for the petitioner.
N.K. Jain with *A.K. Jain* for the respondent Nos. 2 to 7.

(Supplied: Paragraph numbers)

ORDER

ROHIT ARYA, J. :- By this petition under Article 226 of the Constitution of India, challenge is made to impugned communication dated 20/6/2014 by which respondent-Indian Oil Corporation Limited has rejected the application of the petitioner for award of LPG Distributorship at Gwalior-E, District Gwalior under "OP" category, advertised on 15/11/2011 on the premise that the petitioner does not possess suitable land for godown as per the eligibility criteria as the lease deed of the godown land declared by him was found to be invalid.

2. It is contended by the petitioner that as required under clause VI of the guidelines framed by the respondents and also as per clause 9 of the General Instructions to the candidates, the petitioner has submitted the lease

deed. Lease deed in respect of land ad measuring 100 x 100 sq. ft. falling in Patwari Halka No. 23, Revenue Inspector Board Circle No. 1, Ghatigaon Development Board, Barai, Tahsil and District Gwalior executed in favour of plaintiff by one Bharat Singh on behalf of his minor son Kripal Singh dated 31/12/2011 is a validly executed lease deed fulfilling the requirement of IOCL.

3. It appears that respondents-Corporation has received a complaint as regards non-availability of land for godown with the petitioner. On verification of the lease deed submitted by the petitioner, it was brought to the notice of respondents-Corporation that on the date of lease deed i.e. 31/12/2011, Kripal Singh was major. The lease agreement was executed on 31/12/2011 by Bharat Singh as guardian stating that Kripal Singh as minor was found to be factually incorrect. Therefore, Bharat Singh was not competent to execute the lease deed. Resultantly, lease deed found to be *null and void* and consequently, the land for godown shown by the petitioner in his application form was not found to be fulfilling the required criteria. The aforesaid facts were brought to the notice of the petitioner vide communication dated 3/4/2014 (Annexure P/11) and an opportunity was afforded to him to submit representaion on the aforesaid issue within seven days. It appears that same was replied on 4/4/2014 by the petitioner vide Annexure P/12 with the submissions that due to inadvertence, the lease deed was executed on 31/12/2011 by Bharat Singh father of Kripal Singh (minor). Now Kripal Singh is already major and ready to ratify the lease deed dated 31/12/2011 by making necessary amendments wherever it is required. Thus, the legal infirmity will be cured and the same shall not affect the lease deed dated 31/12/2011. With the aforesaid submissions, petitioner sought permission to submit rectification deed/amendment lease deed with removal of defects. Petitioner also submitted consent documents of Kripal Singh on non-judicial papers in support of aforesaid submissions, however, respondents- Corporation was not convinced with the aforesaid submissions and resolved to reject the candidature of the petitioner by the impugned communication.

4. Senior Counsel for the petitioner submitted that respondents/ Corporation has acted arbitrarily having rejected the candidature on the premise that the lease deed dated 31/12/2011 was not legally tenable having been executed by Bharat Singh father of Kripal Singh (minor) which was on later date supplemented by a consent letter by Kripal Singh dated 15/4/2014. Learned counsel for the petitioner referred to meaning of "Own" as defined in

guidelines clause vi issued by the respondents/corporation and submits that petitioner is covered with the definition of word "Own". He further submitted that even if Kripal Singh had attained majority on the date of execution of lease deed dated 31/12/2011, lease deed executed on the said date by his father styling Kripal Singh as minor inadvertently, in favour of petitioner, the same could not have been rejected as Kripal Singh on 15/4/2014 had signed a consent letter in respect of aforesaid lease deed. It is submitted that the lease deed dated 31/12/2011, under such circumstances, could not have been said to be void-instrument. At the most, it may be voidable documents at the instance of Kripal Singh. Following judgments reported in *Premsingh and others Vs. Birbal and others*, (2006) 5 SCC 353, *Partap and another Vs. Smt. Puniya Bai and others*, AIR 1977 MP 108 and *Jinendra Kumar Jain Vs. Union of India and others*, 2011 (4) MPLJ 396 have been cited to support the contention advanced. It is submitted that there is a distinction between fraudulent misrepresentation as to the character of a document and as to its contents. Where the misrepresentation is merely in respect of the contents of the document, the transaction becomes voidable and where it relates also to the character of the transaction, then the transaction is void. He submits that in the instant case, the lease deed in question at the most could be said to be a misrepresentation of contents of the documents and therefore, voidable at the instance of Kripal Singh; however, the same cannot be said to be void. Hence, same ought to have been accepted. Moreover, when the same was supported by consent letter of Kripal Singh dated 15/4/2014.

5. On the other hand, respondents' senior counsel has submitted that rejection of candidature of the petitioner primarily was for the reason of fraud played by the petitioner while submitting the lease deed dated 31/12/2011 as the lessee Bharat Singh despite having full knowledge of the fact that his son Kripal Singh had attained majority on the alleged date of execution of lease deed still executed the lease deed showing Kripal Singh as minor to mislead the Corporation as regards alleged fulfillment of the requirement of availability of land for the godown purposes. Such information in fact runs contrary to the requirement of general instructions to the candidates applying for LPG distributorship clause 9, which contemplates as under:-

> *"Documents pertaining to land/Godown in the name of applicant or member of 'family unit'*

Registered sale deed/Registered Gift Deed/Registered Lease Deed (15 years minimum)/Mutation and government record etc.

The Date of the documents have to be on or before the date of application.

In case land is in the name of member of 'family unit', consent from the family member in form of Notarized Affidavit (Appendix 2) is required to be attached with the application."

6. Therefore, as on the date of submissions of application, the alleged lease deed dated 31/12/2011, the same was not legally valid document i.e. registered lease deed in favour of the petitioner. It is further submitted that the information submitted by the petitioner as regard availability of land for godown purposes was false. Therefore, candidature of the petitioner was liable to be rejected in terms of clause 22 of Guidelines on Selection of Regular LPG Distributorship (hereinafter referred to as the 'Guidelines'). For ready reference clause 22 is reproduced hereinbelow:-

"22. False Information:-

If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to have been suppressed/misrepresented/ incorrect or false affecting eligibility, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a distributor, the distributorship is liable to be terminated. In such cases the candidate/distributor shall have no claim whatsoever against the respective Oil Company."

(Emphasis supplied)

7. Learned senior counsel for the respondent/Corporation further submitted that as per brochure clause (vii), the status of the documents of the godown land can be considered only as on the last date of submission of the application. Requirement to that effect is well-explicit as per general instructions of the candidates applying for LPG distributorship. Clause 9 of the

advertisement is referred to in that behalf. Therefore, documents filed on or before the date of application shall be relevant for the purpose of consideration. As such, the consent letter (Sahmati Patra) of Kripal Singh dated 15/04/2014 cannot be considered. Learned senior counsel referred to an Order passed by a coordinate Bench of this Court dated 05/03/2012 in W.P.No.1310/2012 *(Atar Singh Dhakad Vs. Union of India and others)* to bolster his submissions.

8. Learned senior counsel for the respondent/Corporation further submits that if the alleged consent letter dated 15/04/2014 is perused in its internal page of paragraph 2, Kripal Singh has stated to the following effect:

> "यह कि, मैं वर्तमान में वालिग होकर शासकीय कागजात खसरा पांच साला भू–अधिकार ऋण पुस्तिका कमांक एफ–100916 नाबा. निरस्त होकर एवं सरपरस्ती निरस्त वालिग अंकित है अतः दिनांक 31.12.2011 को लिखी गई लिखतम लीज डीड को उप पंजीयक कार्यालय ग्वालियर में 31.12.2011 को पंजीयन कमांक 456 पर हुई है मैं सहमति देता हूँ और लिखे देता हूँ कि लिखतम लीजडीड 31.12.2011 से उसी प्रकार उसमें दी गई समस्त शर्तों सम्पत्ति का विवरण किराया, किरायेदारी की समय अवधि अर्थात लीज डीड के बिन्दु कमांक 1 लगायत 13 तक सभी मुझे मान्य हैं उक्त लिखतम लीजडीड का यह सहमति पत्र पूरक दस्तावेज होगा।"
>
> *(Emphasis supplied)*

9. As such, Kripal Singh claims to have become major on 15/04/2014 whereas in fact, he had already attained majority before the date of alleged leased deed executed by Bharat Singh father of Kripal Singh on 31/12/2011 as per date of birth shown in the X Class marks sheet, i.e., 28/05/1992.

10. Therefore, even Kripal Singh has made an incorrect statement in his aforesaid consent letter only to subserve the interest of the petitioner.

11. With the aforesaid submissions, learned senior counsel for the respondent/Corporation submits that rejection of the candidature of petitioner is based on misrepresentation of facts in the context of requirement of availability of land for godown to award LPG distributorship. It is submitted that adherence of the conditions stipulated in the advertisement and the brochure issued by the respondent/Corporation is mandatory by each candidate. Non-fulfilment of such conditions or supply of false information shall render cancellation of candidature of a candidate even after award of

distributorship, the LPG distributorship can be cancelled or withdrawn. This can be done as per clause 22 of the Guidelines quoted above. It is submitted that under such circumstance, the respondent/Corporation is well within its rights to hold re-draw to select eligible candidate after rejection of candidature of the petitioner. With the aforesaid submissions, petition is prayed to be dismissed.

12. Before adverting to the merits of submissions so advanced by rival parties, it is apposite to mention that the scope of interference in such matters is well-explained and circumscribed as settled by catena of judicial pronouncements. The process of selection for award of dealership by Oil Corporations is essentially an administrative decision which is required to be arrived at in fair manner. Inviting applications through advertisement from amongst the eligible candidates by an Oil Corporation for award of dealership in fact and in effect is in the process of business transaction for which detailed comprehensive terms and conditions are stipulated not only in the advertisement but also in the brochure issued by the Indian Oil Corporation Ltd.,. Fulfillment of those conditions are stated to be mandatory. Hence, before accepting invitation for award of dealership, a candidate is required to go through the terms and conditions subject whereto claim of a candidate is processed, examined and decided by IOCL. Non-adherence thereto or infraction/variance thereof by a candidate may result into vulnerability of the candidature and it is open for the IOCL to take a final decision as regards acceptance or rejection of a candidature. This is so because it is a contract between IOCL and the candidate having commercial orientation. The decisions taken by the IOCL in such matters are not pregnable though the decision making process by the IOCL is always open for judicial review. The fairness in decision making process is not only the requirement of Article 14 of the Constitution of India but also *sine qua non* of rule of law. *(K. Vinod Kumar Vs. S.Palanisamy and others,* (2003) 10 SCC 681 – para 11 is referred to which is quoted):

> "The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision-making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is

not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of BPCL to issue the letter of allotment to the appellant herein."

13. In the instant case, clause 7 of the Guidelines provides for eligibility criteria for individual applicants. Sub-clause iv of Clause 7.1 deals with ownership of adequate land and the word "Own" is further defined which provides that ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant/family member as defined in multiple distributorship norm of eligibility criteria.

14. Facts of the case in hand show that the petitioner himself has not submitted the documents as regards availability of land of his ownership. However, he has submitted a lease deed dated 31/12/2011 said to have been executed by one Bharat Singh on behalf of his minor son, Kripal Singh in favour of petitioner showing availability of land in favour of petitioner. On verification of facts, the respondent/Corporation has come to know that the alleged document in fact is a product of misrepresentation and otherwise is *null and void* in view of the fact that Kripal Singh's date of birth as per Class X marks sheet is 28/05/1992. Hence, Kripal Singh is major as on the date of execution of the lease deed, i.e., on 31/12/2011 and, therefore, he could not have been shown to be minor on the date of execution of the lease deed. As such, Kripal Singh's father, Bharat Singh is not competent to execute the lease deed in favour of the petitioner. This lease deed by no stretch of imagination could be said to be validly executed lease deed in conformity with the requirement of sub-clause vi of clause 7.1 of the Guidelines for individual applicants. As such, lease deed also does not fall within the meaning of word "Own" as explained in the aforesaid clause. On the contrary, alleged execution of lease deed in fact and in effect is misleading in nature and rights cannot be said to have been transferred in favour of the applicant/petitioner over the land in question. Respondent/IOCL is justified having treated the aforesaid instrument as misreprsentation tantamounting to false information as provided in clause 20 of the eligibility conditions and, therefore, the IOCL is well within its rights to reject the application under the said clause. The contention of respondent/IOCL, that the documents supplied alongwith the application must be of the date on or before the date of application in respect of details of land/godown as provided under clause 9 of General Instructions to the

candidates applying for LPG Distributorship (Annexure R/2) at page 15. The requirement to the aforesaid effect is also clear in the general conditions of the advertisement issued inviting applications by IOCL. Hence, any document subsequently executed even otherwise shall have no bearing on the candidature of a candidate. In the case in hand, the alleged consent letter submitted by Kripal Singh on 15/04/2014 much after the date of submission of application by the petitioner, at the first instance did not deserve any consideration. Besides, the fact that even this declaration itself is of no consequence in the context of requirement of sub-clause (vii) of clause 7.1 of the Guidelines as regards availability of land/ godown of the ownership or that of lease deed in his or her favour. Further, consent letter was contained false statement wherein it says that as on the date of alleged document/consent letter dated 15/04/2014, Kripal Singh attained majority whereas he attained majority much prior to the date of execution of the lease deed on 31/12/2011 by Bharat Singh styling his son, Kripal Singh is minor. Therefore, this document has rightly been rejected under clause 22 of the Guidelines.

15. Having thus, considered the submissions of learned senior counsel for the parties, this Court is of the view that the respondent/IOCL has not committed any illegality or acted contrary to the terms and conditions of the NIT or the General Guidelines issued while rejecting the candidature of the petitioner for award of distributorship of LPG.

16. The contention of learned senior counsel for the petitioner is that there is a clear distinction between the fraudulent misrepresentation as to character of a document and as to its contents where the misrepresentation is merely in respect of contents of the document, the transaction becomes *voidable*, where it is related to character of the transaction, that transaction is rendered *void,* may be a relevant proposition in the matter of *inter se* rights between the parties in an action of a party for declaration that in a given set of facts the alleged document is not binding upon him and construction of the document whether *void* or *voidable* may be addressed in such proceedings. However, the said proposition does not have any relevancy to the facts in hand inasmuch as the candidature of the petitioner is rejected on the ground that the alleged lease deed not duly executed by a competent person as on the date of its execution could not be accepted as a validly executed lease deed in terms of sub-clause (iv) of clause 7.1 of the Guidelines and where such information supplied falls within the net of clause 22 of the Guidelines referred to

hereinabove it provides justification for rejection of candidature of the petitioner. There is misrepresentation in the lease deed that Kripal Singh is a minor. Kripal Singh himself has not executed the lease deed. These two-fold facts tantamount to fraudulent misrepresentation of facts as regards character and contents of the instrument. Therefore, the respondent/IOCL has rightly found that the alleged lease deed as *null* and *void.* Guiding principles laid down by Supreme Court reported in AIR 1968 SC 956, *Ningawwa Vs. Byrappa Shiddappa Hirekurabar* supports the view taken by this Court.

17. The judgments cited by learned senior counsel are distinguishable on facts and in particular, *Partap and another* (supra), the question was as regards payment of fixed Court fee or ad velorem (sic:valorem) Court fee, looking to the nature of allegations made in the suit and, hence have no bearing to the controversy involved in this petition. There appears to be misplaced reliance thereon.

18. In view of the above, this Court is of the view that there is no illegality in the action of respondent/IOCL in rejecting the candidature of the petitioner for award of distributorship of LPG.

19. The petition sans merit and is hereby dismissed. No order as to cost.

Petition dismissed.

I.L.R. [2016] M.P., 991
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 4184/2011 (Gwalior) decided on 26 August, 2014

CROMPTON GREAVES LTD. ...Petitioner
Vs.
SHARAD MAHESHWARI & anr. ...Respondents

***Industrial Disputes Act (14 of 1947), Section 11-A - Workman was dismissed from service after due Departmental Enquiry on the charge for his misbehavior with his Superior Officer and Security Guard - Labour Court set aside the order and directed re-instatement with full back wages - Held - Scope of judicial interference in domestic enquiry is limited* - The court is not obliged to sit as an appellate authority to reassess the evidence led in domestic enquiry - The interference can be made in findings only when the same are based on**

no evidence or when they clearly perverse - Punishment can be interfered with only when it is shockingly disproportionate - Reinstatement can not be ordered where employee has abused his position and committed the act which resulted into forfeiting the confidence of employer - Employer has successfully established the allegation relating to incident dt. 1.12.2005 and objective facts on the basis of which loss of confidence is pleaded - Punishment can not be held to be harsh and excessive - Impugned order is set aside.

(Paras 23, 25 & 29)

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 11–ए – कर्मकार को अपने वरिष्ठ अधिकारी एवं सुरक्षा प्रहरी के साथ दुर्व्यवहार के आरोप पर से सम्यक् विभागीय जाँच उपरांत सेवा से पदच्युत किया गया – श्रम न्यायालय ने आदेश को अपास्त कर संपूर्ण पिछली मजदूरी सहित उसके पुनः स्थापन हेतु निदेशित किया – अभिनिर्धारित – आंतरिक जाँच में न्यायिक हस्तक्षेप की व्यापकता सीमित होती है – न्यायालय आंतरिक जाँच में प्रस्तुत साक्ष्य के पुनर्मूल्यांकन के लिए अपीलीय पाधिकारो के तौर पर बैठने हेतु बाध्य नहीं है – निष्कर्षों में हस्तक्षेप केवल तब किया जा सकता है जब वे साक्ष्य पर आधारित न हों अथवा वे स्पष्टतया अनुचित हों – दण्ड में भी केवल तभी हस्तक्षेप किया जा सकता है जबकि वह अनुचित रूप से अननुपातिक हो – जहाँ कर्मचारी ने अपने पद का दुरूपयोग किया है तथा ऐसा कृत्य किया हो जिसके परिणामस्वरूप नियोक्ता का विश्वास गंवा दिया, वहाँ पर पुनःस्थापन आदेशित नही किया जा सकता – नियोक्ता ने घटना दिनांक 1.12.2005 से संबंधित अभिकथन तथा वस्तुनिष्ठ तथ्यों, जिनके आधार पर विश्वास की हानि का अभिवाक् किया गया है, को सफलतापूर्वक सिद्ध किया है – दण्ड को कठोर तथा अतिशय होना नहीं ठहराया जा सकता – आक्षेपित आदेश अपास्त।

Cases referred:

(1996) 4 SCC 374, 2010 (3) LLJ 477, AIR 1973 SC 1227, (2008) 5 SCC 554, (2011) 4 SCC 584, AIR 1977 SC 146, AIR 1981 SC 864, (1980) 3 SCC 459, 1995 Supp (3) SCC 212, 1997 (I) LLJ 206, (1977) 2 SCC 491, 1960 (1) LLJ 518 (SC), (1996) 6 SCC 590, (2005) 3 SCC 134, (1972) 1 SCC 814, (1972) 4 SCC 569, (2001) 9 SCC 609, (1997) 6 SCC 271, (2005) 7 SCC 435, (1996) 9 SCC 69, (2012) 1 SCC 442.

Patwardhan with *B.S. Bais*, for the petitioner.
Vivek Jain, for the respondent No. 1.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 227 of the

Constitution challenges the impugned award of Labour Court dated 28.1.2011 passed in Case No. 6A/IDAct/09.(Ref) by Labour Court No.2, Gwalior. Brief facts necessary for adjudication of this matter are as under:-

2. The respondent workman was working as a Technician in the petitioner Industry at Malanpur. A charge sheet dated 13/12/2005 was served on the workman alleging that on 15.10.2005, the workman was on duty in shift "B". On the said date, he mis behaved with Shri Sanjay Goyal, maintenance incharge and with Shri A.N.GRao, a superior officer. It is alleged that workman has used filthy language against him. Besides the said charge, it is further alleged that on 1.12.2005 the workman joined his duty in shift "B" which was scheduled to be started at 3-30 PM but he forcefully entered the factory before the scheduled time and mis behaved with security guards. He involved himself in an agitation organized by technicians of "A" shift. The said agitation created nuisance in the factory premises. The workman used filthy language against superior officer, Rajvinder Singh. Because of the said incident, work of factory was stopped for a considerable long time.

3. The respondent workman denied the allegations mentioned in the charge sheet by filing reply (Annexure P-3). In turn, the employer appointed an enquiry officer to conduct a domestic enquiry. The enquiry started on 6.1.2006 and ended on 3.8.2007.

3. Shri Patwardhan, learned counsel for the petitioner submits that in the departmental enquiry, full, reasonable and effective opportunity of hearing was given to the workman. Thereafter, the enquiry report was supplied to the workman and after obtaining his response, by order dated 31.1.2008 the workman was dismissed from service. It is admitted between the parties that the said dismissal dated 31.1.2008 became the foundation of instant industrial dispute, which was ultimately decided by the Labour Court by impugned award dated 28.1.2011.

4. Shri Patwardhan submits that the Labour Court had framed various issues including issue No.1, which was regarding legality and validity of the departmental enquiry. It is submitted that the said issue was decided by Labour Court on 1.11.2010 (Annexure P-8). The Labour Court after examining the record opined that the departmental enquiry was legal and justified. Thereafter, the parties were heard on remaining issues and by impugned award, the Labour Court set aside the dismissal order and directed reinstatement of workman with full back wages.

5. Criticizing this order, Shri Patwardhan submits that once the legality, validity and correctness of domestic enquiry is upheld by the Labour Court, it was not open to the Labour Court to act as an appellate authority. He submits that the Labour Court has erred in interfering with the punishment of dismissal from service. It is contended that the Labour Court was not required to sit as an appellate authority to re-appreciate and re-weigh the evidence. If there was some evidence, it was sufficient to hold the workman as guilty. By taking this Court to the enquiry report, it is urged that there was enough evidence to punish the workman. It is further argued that the Labour Court has erred in applying the principles of criminal law/evidence Act in a matter of domestic enquiry. He further submits that in the enquiry even hearsay evidence is permissible.

6. Learned counsel for the employer further submits that once charges are established considering the gravity of allegations, no interference was warranted. He submits that if the findings of departmental enquiry was held to be perverse by the Labour Court, in that situation, the Labour Court should have permitted the employer to lead evidence. Heavy reliance is placed in this regard on (1996) 4 SCC 374 *(Bharat Forge Co. Ltd. Vs. A.B.Zodge and another)* and on a judgment of Punjab and Haryana High Court reported in 2010 (3) LLJ 477 *(Good Year India Ltd. v. D.N.Trikhja)*. He also relied on certain other judgments of the Supreme Court. Lastly, Shri Patwardhan submits that in view of allegations which are duly established in the enquiry, the employer has lost complete confidence on the workman and hence reinstatement should not have been ordered.

7. Per contra, Shri Vivek Jain, learned counsel for the workman supported the Labour Court's award. Shri Jain submits that the charge sheet shows that the incidents are of two different dates. So far the incident of 15.10.2005 is concerned, the workman had allegedly mis behaved with Shri Sanjay Goyal and A.N.G. Rao. None of these witnesses have entered the witness box. The document which is allegedly signed by the said two persons could not be proved by their deposition before the domestic enquiry or before the Labour Court. Thus, the allegations arising out of incident dated 15.10.2005 are not established. Shri Jain further submits that for the second incident of 1.12.2005 also the workman cannot be held guilty. At best he can be held guilty of entering the premises before his scheduled time of duty (3-30 PM). He submits that in the enquiry report there is no application of mind that the workman was an

office bearer of a registered trade union. On 1.12.2005 a worker of the petitioner-factory committed suicide in U.P. There was a condolence meeting in the premises and workers were agitated because of said incident. They were demanding a vehicle from the management to attend the funeral. The present workman being office bearer, joined the said workers. This is a legitimate trade union activity which cannot be called as mis conduct. In addition, it is submitted that the alleged strike of 1.12.2005 is held to be legal by the Labour Court. By drawing attention of this Court on the order of the Labour Court dated 3.11.2006 passed in Case No. 123A/MPIR/2005 (Annexure P-12), it is alleged that the Labour Court decided issue No.3 by holding that on 1.12.2005 the strike held in petitioner Industry is not illegal. Once strike is not held to be illegal, petitioner cannot be punished for the same.

8. By placing reliance on AIR 1973 SC 1227 *(The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and others)* and (2008) 5 SCC 554 *(Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited and another)*, it is submitted that no fresh evidence can be permitted to be adduced once enquiry is found to be valid by the Labour Court. In other words, it is argued that in the event the issue of legality of enquiry is decided in favour of employer, no fresh evidence can be permitted to be adduced by the employer.

9. Shri Patwardhan in his rejoinder arguments submits that various witnesses entered the witness box on behalf of the employer and supported the case of the prosecution, whereas it is only workman who entered the witness box. There was ample evidence to support the allegations. By taking this Court to the order of Additional District Judge, Gohad in Case No. 33A/2005 dated 17.7.2009, it is submitted that the said Court found that on 1.12.2005 the non-applicants therein (present workman is non-applicant No.5) have created hindrance and obstruction in the functioning and production of the industry. The parameters for holding the delinquent employee as guilty are different in a domestic enquiry and in a criminal case. No other point is pressed by parties.

10. I have heard the learned counsel for the parties and perused the record.

11. Before dealing with the rival contentions of the parties, it is apposite to mention that the scope of judicial interference in a domestic enquiry is

limited. The court is not obliged to sit as an appellate authority to reassess the evidence led in domestic enquiry. No interference can be made on the ground that another view is possible on the material on record. If enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of evidence or reliable nature of evidence cannot be a ground for interference in the findings of domestic enquiry. The interference can be made on findings only when the same are based on no evidence or where they are clearly perverse. (See, (2011) 4 SCC 584 *(State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya)*. In other words, the standards of proof required in departmental enquiry and in criminal cases are different. In the departmental enquiry, the principle of preponderance of probability is applicable and not that of the proof beyond reasonable doubt, which is applicable in criminal cases. Apart from this, under Section 11-A of Industrial Disputes Act, 1947, the Labour Court/Tribunal can interfere into the punishment when it is shockingly disproportionate. It is said that *"sledgehammer cannot be used to crack a nut"* or the *"sledgehammer cannot be used to kill a fly"*. As has been said many a time, *"where paring knife suffices, battle axe is precluded"*. In the light of this test, it is to be seen that if allegations are proved, whether punishment is shockingly disproportionate ?

12. As rightly pointed out by Shri Vivek Jain, learned counsel for the workman, the charge sheet is based on the misconducts allegedly taken place on two dates, (i) 15.10.2005 and (ii) 1.12.2005. Admittedly, the Labour Court by order dated 1.11.2010 opined that the departmental enquiry was legal and justified. The interference was made on the ground that the charges are not established against the workman. The Labour Court opined that it is a case of no evidence against the workman.

13. So far the incident dated 15.10.2005 is concerned, the Labour Court opined that the allegations relating to said date are concerned with two superior officers Shri Goyal and Shri A.N.G.Rao. The allegation against the workman is that he used filthy language against the said officers, forcibly entered the chamber of Shri Sanjay Goyal and organised a "Gherao" at the cabin of Shri Rao. The Labour Court opined that this allegation is not substantiated because Shri Goyal and Shri Rao have not entered the witness box in the domestic enquiry. The alleged report of the incident prepared by said officers was not proved as per the procedure mentioned in Criminal Law. The employer has not made any effort to bring those officers as prosecution witnesses in the

enquiry. Even if those officers have left the job, they could have been produced as prosecution witnesses. In addition, the Labour Court opined that the management sent a 'Diwali Greeting' to the workman on 10.11.2005. The Labour Court opined that if an incident of 15.10.2005 had taken place, there was no occasion for the employer to send such greeting to the workman. Labour Court further opined that from the date of incident (15.10.2005) to 13.12.2005, no explanation was sought from the workman which shows that no such incident had taken place.

14. In the opinion of this Court, it is difficult to uphold all the reasons aforesaid assigned by the Labour Court to hold the workman as not guilty. As per Standard Standing Orders (SSO), the employer can issue charge sheet to the workman for a major misconduct up to one year from the date of alleged misconduct. Thus, merely because no explanation was sought by the employer from 15.10.2005 to 13.12.2005, it cannot be presumed that the workman was not guilty. The Labour Court further erred in holding that the employer has failed to establish the charges as per the procedure laid down in Criminal Law. As noticed above, the strict principles of Evidence Act/Criminal Law are not applicable in domestic enquiry. Similarly, the finding of the Labour Court based on the greeting of the employer is clearly erroneous. A bare perusal of the said communication dated 10.11.2005 shows that the said communication is a reply to the workman's 'Diwali Greeting'. The Personal Manager reciprocated Diwali Greeting of the workman in a routine manner. By no stretch of imagination it can be presumed that because of such reply the misconduct is either waived or condoned by the employer. Thus, this reason is clearly erroneous. I am not in agreement with all the reasons assigned by the Labour Court for holding the workman as not guilty regarding incident of 15.10.2005. However, one reason for exonerating the workman from the said incident is in accordance with law, i.e., Shri Sanjay Goyal and Shri A.N.G.Rao did not enter the witness box and their alleged report, Ex. D/23 is not proved in the enquiry by producing the maker of the document. The Apex Court in AIR 1977 SC 146 *(Satyanarain Prasad v. Gadadhar Ram)*; AIR 1981 SC 864 *(P. Nagamuni vs. Govt. of A.P. and another);* (1980) 3 SCC 459 *(Managing Director, Uttar Pradesh Warehousing Corporation and another vs. Vijay Narayan Vajpayee)* and 1995 Supp (3) SCC 212 *(S.C.Girotra v. United Commercial Bank (UCO Bank)*, opined that unless maker of the document is produced in the enquiry to prove the document, the document cannot be relied upon. Same view is taken in 1997 (I) LLJ 206

(Chandrakumar Madhukar Deshmukh vs. The Board of Trustees of Port of Bombay). Apart from this, if the enquiry report (Annexure P-5) is minutely perused, it will be clear that the enquiry officer has merely reproduced the charges against the workman, which includes allegations of both the dates, i.e., 15.10.2005 and 1.12.2005. However, except reproducing the allegations of charge sheet, there is no discussion or finding against the workman regarding allegations of 15.10.2005. Thus, for different reasons stated above, the conclusion of Labour Court with regard to incident of 15.10.2005 is upheld.

15. The Labour Court interfered with the allegation relating to incident of 1.12.2005 on the ground that Shri Sanjeev Gaur, prosecution witness, entered the witness box but in the charge sheet, there is no allegation relating to Shri Gaur and, therefore, his evidence cannot be counted. The Labour Court further opined that Shri Acharya is not produced as a witness and only Shri Rajvinder Singh is produced as a witness. Shri Rajvinder Singh deposed that he is not aware whether on 1:12.2005, senior officer Shri Patil visited the petitioner-industry. In paras 17 and 18 of the award, the Labour Court has mentioned about the deposition of prosecution witnesses S/Shri Rajvinder Singh, Chatur Singh and Dinesh Singh. By referring a list of technicians in para 19, the Labour Court opined that the said list contains the names of striking workers. The present workman's name does not figure in the said list and, therefore, he cannot be held guilty of the allegations. In para 20, it is opined that *prima facie* the workman is not found involved in the strike. The Labour Court referred its earlier order passed in Case No. 123A/MPIR/2005 (Annexure P/12) dated 3.11.2006 and opined that the strike was held to be not illegal and, therefore, it cannot be held that the workman has committed any misconduct relating to illegal strike. The allegation against the workman regarding incident of 1.12.2005 is that he forcibly entered the factory premises before his scheduled duty-time. He used abusive and filthy language against the superior officers. He misbehaved with Shri Acharya and Shri Rajvinder Singh (Production Executives). He threatened Shri Rajvinder Singh by using filthy language and telling him to leave the place otherwise all will beat him to the extent his family members will not be able to recognize his face.

16. In relation to allegation of 1.12.2005, S/Shri Chatur Singh, Dinesh Singh, Rajvinder Singh, Sanjeev Gaur, Rajveer Singh and Vivek Mittal entered the witness box to substantiate the charges. The enquiry officer in its detailed report opined that the charges are established on the basis of statements of

aforesaid witnesses. Admittedly, Shri Rajvinder Singh was the person, who was present at the time of incident. The Labour Court has not assigned a single reason as to why the statement of Shri Rajvinder Singh is to be discarded. On the basis of aforesaid evidence, it cannot be said that it is a case of no evidence. The employer has produced sufficient evidence to substantiate the allegation relating to incident of 1.12.2005.

17. It is apt to remember that in (1977) 2 SCC 491 *(State of Haryana and another vs. Rattan Singh)*, the Apex Court opined that strict and sophisticated rules of evidence under the Evidence Act may not apply to domestic enquiries. All materials which are logically probative for a prudent mind are permissible. The Apex Court went to the extent holding that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The simple test pointed out by the Apex Court was whether this is a case of some evidence or was of no evidence. (Para 4).

18. The Labour Court was finally adjudicating the dispute and, therefore, it was required to give its final finding. The Labour Court has clearly erred in assigning reason in para 20 that *"prima facie, workmn's involvement in the strike is not established"*. The aforesaid finding of the Labour Court is clearly perverse. The document dated 1.12.2005 shows that a list of striking technicians was submitted before the Personal Manager. The Labour Court referred enclosure of this list to hold that name of present workman is not included. A bare perusal of this complaint dated 1.12.2005 shows that in the main body of the complaint, the name of present workman is mentioned. In addition, a list was enclosed with the said complaint. Thus, the Labour Court has not taken into account the relevant and complete material and, therefore, its findings are hit by Wednesbury Principle. Similarly, the finding of Labour Court relating to illegal strike is also liable to be interfered with. The order of Labour Court dated 3.11.2006 (Annexure P/12) shows that it had framed four issues. The first issue was regarding jurisdiction of the Labour Court about hearing of that industrial dispute. This issue is decided in negative by Labour Court by holding that the Labour Court did not have jurisdiction to hear the matter. In the opinion of this Court, once it is held that the Labour Court had no jurisdiction to hear the matter, there was no occasion for the Labour Court to give a finding on merits regarding validity of strike dated 1.12.2005. If the Court had no jurisdiction to try the matter, it had no jurisdiction to deal with merits of the matter. Thus, the finding regarding issue

No.3 by the Labour Court is of no assistance to the workman. Apart from this, the Additional District Judge, Gohad in his order dated 17.7.2009 decided the issue No.1 and 2 against the workman. In no uncertain terms, a finding is given that the workman has interrupted the functioning and production of the factory on 12.12.2005. The Labour Court has not considered this relevant material at all. Thus, the findings of the Labour Court are perverse in nature and based on irrelevant considerations.

19. So far the stand of the workman that he was officer bearer of trade union is concerned, in my opinion, this does not improve his case at all. Being an employee of the industry, the respondent-workman was also required to follow the discipline and conduct rules/SSO. In *Usha Breco Mazdoor Sangh* (supra), the Apex Court opined that "union leader does not enjoy immunity from being proceeded with in a case of misconduct". The evidence of Shri Rajvinder Singh and other prosecution witnesses make it clear that there is more than "some evidence" against respondent relating to allegation of 1.12.2005. The Labour Court has erred in holding that the allegations are not established and it is a case of no evidence.

20. The contention of Shri Patwardhan was that even in cases where finding of domestic enquiry is held to be perverse by the Labour Court, the employer must be given an opportunity to adduce evidence. The judgment of Supreme Court in the case of *Bharat Forge Co.Ltd.* (supra) is relied upon in this regard. The basic judgment of Supreme Court in this regard is *M/s. Fire Stone Tyre & Rubber Co.* (supra). The Apex Court culled out the broad principle in para 27 of the said judgment. The relevant portion reads as under:-

> *"(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*
>
> *(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification*

of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective."

21. No doubt, in *Bharat Forge Co.Ltd.* (supra), the Apex Court opined that the employer has a right to lead evidence in both the situations when enquiry is vitiated for non-compliance of rules of natural justice or for perversity. However, the judgment of *Bharat Forge Co.Ltd.* (supra) is based on the judgment in *M/s. Fire Stone Tyre & Rubber Co.* (supra). The Apex Court in *Usha Breco Mazdoor Sangh* (supra) reconsidered the law laid down in *M/s. Fire Stone Tyre & Rubber Co.* (supra). The law is restated by the Apex Court, which reads as under:-

"28. Firestone Tyre and Rubber Co. must be understood in the context in which it was rendered. Section 11-A of the Act as interpreted by Firestone Tyre and Rubber Co. must be applied at different stages. Firstly, when the validity or legality of the domestic enquiries is in question; secondly, in the event the issue is determined in favour of the management, no fresh evidence is required to be adduced by it whereas in the event it is determined in favour of the workmen, subject to the request which may be made by the management in an appropriate stage, it will be permitted to adduce fresh evidence before the Labour Court.

29. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the enquiry officer fall for reappreciation by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the enquiry officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the enquiry officer, it would

exercise appropriate restraint. It must bear in mind that the enquiry officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the enquiry officer can also summon witnesses to determine the truth. The enquiry officer can call for even other records. It must indisputably comply wit the basic principles of natural justice."

22. In the light of this judgment restating the entire legal position in this aspect, in my opinion, no permission can be granted to the employer to adduce evidence relating to perversity of finding with regard to incident of 15.10.2005. The second tests laid down in para 28 above are not satisfied by petitioner and therefore the question of permission to adduce evidence does not arise.

23. As analyzed above, the allegations relating to incident dated 1.12.2005 are established against the workman. The allegations are very serious and amounts to grave misconduct. In the considered opinion of this Court, even if allegation relating to 01.12.2005 is established, the punishment cannot be held to be harsh or excessive. The Apex Court in *Orissa Cement Ltd. vs. Adikanda Sahu,* 1960 (1) LLJ 518 (SC) opined as under :-

"Besides, the words used by the respondent in abusing the labour officer not once but twice without any provocation are absolutely indecent and vulgar and in such case, he could not keep in its employment a person who has capable of such indecent conduct, it would be justified in dismissing him."

In (1996) 6 SCC 590 *(New Shorrock Mills v. Maheshbhai T. Rao),* the Apex Court opined as under:-

"The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct,

ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record."

The same view is followed by the Apex Court in (2005) 3 SCC 134 *(Mahindra and Mahindra Ltd. vs. N.B.Narawade).*

24. Apart from this, the employer has pleaded loss of confidence against the workman. It is argued that the employer has lost complete faith on the workman. The kind of bitterness is developed because of alleged incident, it will not be in the interest of industrial harmony to reinstate the workman.

25. As analyzed above, the incident of 1.12.2005 is established against the workman. The question is whether the employer is justified in taking the plea of "loss of confidence". The law on this aspect is well settled. It is settled that once the employer has lost confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity and in a case of loss of confidence, reinstatement cannot be ordered. [See, (1972) 1 SCC 814 *(Air-India Corporation, Bombay vs. V.A.Rebellow and another)* and (1972) 4 SCC 569 *(M/s. Francis Klein & Co. (P) Ltd.-vs. Their Workmen and another)*].

26. In *Kanhaiyalal Agrawal and others vs. Factory Manager, Gwalior Sugar Company Ltd.*, reported in (2001) 9 SCC 609, the Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence. The test is - (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. *(See also Sudhir Vishnu Panvalkar v. Bank of India,* reported in (1997) 6 SCC 271).

27. In *State Bank of India vs. Bela Bagchi*, reported in (2005) 7 SCC 435, the Apex Court rejected the contention that even if the misconduct is established and employer has not suffered any financial loss, it does not attract "loss of confidence". The Apex Court relied on (1996) 9 SCC 69 *(Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik).*

28. In *Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao*, reported in (2012) 1 SCC 442, the Apex Court opined as under:-

> *"28. An employer is not bound to keep an employee in service with whom relations have reached te point of complete loss of confidence/faith between the two. [Vide Binny Ltd. v. Workmen, (1972) 3 SCC 806, Binny Ltd. v. Workmen, (1974) 3 SCC 152, Anil American World Airways Inc., (1985) 2 SCC 727, Kamal Kishore Lakshman vl Pan American World Airways Inc., (1987) 1 SCC 146, and Pearlite Liners (P) Ltd. v. Manorama Sirsi (2004) 3 SCC 172.]*
>
> *29. In Indian Airlines Ltd. v. Prabha D. Kanan, (2006) 11 SCC 67, while dealing with the similar issue this Court held that :*
>
> *"56..... loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."*

29. As per the aforesaid test/principles laid down, it is clear that reinstatement cannot be ordered in cases where the employer has established the bona fide loss of confidence. The employee has abused his position and committed the act which resulted into forfeiting the confidence of employer. Continuance of such employee in service would be embarrassing and inconvenient to the employer. It will be detrimental to the discipline and security of the establishment. In *Indian Air-line* (supra) the Apex Court went to the extent of dealing with the apprehension in the mind of the employer and opined that when the objective facts are available, employer's apprehension is justified.

30. In the present case, the employer has successfully established the objective facts on the basis of which "loss of confidence" is pleaded. For this reason also, the award of the Labour Court is liable to be interfered with. The Labour Court has not dealt with the stand of the employer regarding loss of confidence.

31. In nutshell, the award of the Labour Court cannot be upheld. The award is accordingly set aside. Petition is allowed to the extent indicated above. No costs.

Petition allowed.

I.L.R. [2016] M.P., 1005
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 8176/2013 (Gwalior) decided on 17 December, 2014

RAJARAM & ors. ...Petitioners
Vs.
STATE OF M.P. & ors. ...Respondents

A. Land Acquisition Act (1 of 1894), Section 4 - **Notification u/s 4 of Act, 1894 - Thereafter, Act, 2013 came into force - In view of Section 114 of Act, 2013, proceedings of Act 1894 which are pending are saved - It cannot be held that with commencement of Act 2013, notification u/s 4 of Act 1894 would stand lapsed. (Para 20)**

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 4 – अधिनियम, 1894 की धारा 4 के अंतर्गत अधिसूचना – तद्पश्चात अधिनियम, 2013 प्रभावी हुआ – अधिनियम 2013 की धारा 114 को दृष्टिगत रखते हुए, अधिनियम 1894 के अंतर्गत लंबित कार्यवाहियों को सुरक्षित रखा गया है – यह अभिनिर्धारित नहीं किया जा सकता कि अधिनियम 2013 के प्रारंभ होने के साथ अधिनियम 1894 की धारा 4 के अंतर्गत अधिसूचना व्यपगत हो जायेगी।

B. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(1) - Applicability - **As no award has been passed in proceedings initiated under Act 1894, therefore, all provisions of Act, 2013 would apply for determination of compensation. (Para 21)**

ख. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और

पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(1) – प्रयोज्यता – चूंकि अधिनियम, 1894 के अंतर्गत प्रारंभ की गई कार्यवाहियों में कोई अधिनिर्णय पारित नहीं किया गया है, अतएव, प्रतिकर के निर्धारण हेतु अधिनियम 2013 के समस्त उपबंध लागू होंगे।

Cases referred :

AIR 1980 SC 72, AIR 1989 SC 1614, AIR 1991 SC 2156, AIR 1993 SC 1188, (2014) 3 SCC 183. (2011) 5 SCC 553, 2013 (1) MPLJ 652, AIR 1959 SC 648, AIR 1980 SC 77, AIR 1964 SC 1284, (1972) 4 SCC 174, (2000) 2 SCC 536, AIR 1955 SC 84, 1989(2) SCC 557, (2000) 3 SCC 548, 2006 (3) SCC 354, 1997 (1) SCC 650, (1897) 2 Ch. 306, AIR 1992 SC 180, AIR 1960 SC 794, (1992) 2 SCC 168.

Arvind Dudawat, for the petitioners.
Praveen Newaskar, Dy. G.A. for the respondents/State.

ORDER

Sujoy Paul, J. :- In this petition filed under Article 226 of the Constitution of India, the petitioners, villagers of Village Badora, Tehsil Karera, District Shivpuri have called in question the legality, validity and propriety of the notification dated 23.8.2013 issued under Section 4 of the Land Acquisition Act, 1984 (sic:1894) (Act). The petitioners have also prayed that the respondents be restrained from encroaching the land over which they intend to construct a water pond.

2. Shri Arvind Dudawat, learned counsel for the petitioner submits that petitioners are owners of agricultural land bearing Survey No. 683, 696, 694 and 700 of Village Badora, Tehsil Karera, District Shivpuri. Their only source of livelihood is agriculture. It is contended that earlier for the benefit of resident of village Teela, a decision was taken to construct Teela tank on the land of said village which was duly identified. An order dated 17.1.2012 was passed for the purpose of construction of Teela tank. Thereafter, the State Government by order dated 12.3.2013 issued administrative sanction for disbursement of funds.

3. It is contended that because of pressure mounted by villagers of Gram Teela, the decision was changed and the impugned notification was issued in order to acquire the land in village Badora. He submits that the total agriculture land as per Government record in village Bodora is 243.90 hectares, out of

which by impugned notification under Section 4, the respondents intend to acquire a land to the tune of 194.300 hectares. It is submitted that the petitioners are rustic villagers and are residing in remote area. There is no circulation of daily news papers in the said area. They never came to know about any Gazette notification published Section 4. However, by way of objection in 'Jan Sunwai' (Annexure P-4) dated 18.6.2013, they raised objection about proposed construction of tank at the land of their village. The petitioners actually came to know about such construction when the officers of the State Government equipped with JCB machine came to dig their valuable land. At this stage, on the basis of documents available with them, they filed this petition.

4. It is submitted that pursuant to interim order passed by this Court, the respondents could not proceed beyond the notice issued under Section 9 of the Act. It is also canvassed that the Gram Panchayat and Gram Sabha, Badora have also passed resolution against acquisition of the land in their village.

5. Shri Dudawat, learned counsel for the petitioner submits that The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the new Act, 2013) came into being w.e.f. 1.1.2014. After commencement of the new Act, the earlier notification issued under Section 4 and Section 6 became a nullity. He relied on Section 114 of the new Act to submit that the entire Act of 1894 is repealed. The saving clause is to the extent of general application of Section 6 of the General Clauses Act, 1897. By taking this Court to Section 6 of the General Clauses Act, it is contended that Section 6 (a), (b), and (d) have no application in the facts and circumstances of the case. So far Clause (c) and (e) of Section 6 are concerned, it is urged that a conjoint and microscopic reading of these clauses will make it clear that only such proceedings under 1894 Act can be treated as saved in which any right has already been acquired or accrued. The said clause (c) and (e) are not applicable when mere proceedings were initiated in order to acquire the right but no right is actually accrued and acquired. Reliance is placed on AIR 1980 SC 72 *(M.S.Shivananda Vs. The Karnataka State Road Transport Corpn. & Ors.)*, AIR 1989 SC 1614 *(Bansidhar & Ors. Vs. State of Rajasthan & Ors.)*, AIR 1991 SC 2156 *(Vinon Gurudas Raikar Vs. National Insurance Co. Ltd. & Ors.)* and AIR 1993 SC 1188 *(M/s. P.V. Mohammad Barmay Sons Vs. Director of Enforcement)*. To elaborate, Shri Dudawat, learned counsel for the petitioner submits that in view of these judgments, it is clear like noon day that merely because Section 4 notification

was issued, no right on the petitioners' land is accrued in favour of the State Government. In absence thereof, the notification under Section 4 is not saved and, therefore, it should be treated as null and void. Shri Dudawat has taken pains to submit that as per the scheme and object of the new Act, it is clear that it is a very scientific and progressive Act. Sufficient care is taken by the Parliament to ensure that the land is not acquired in arbitrary manner which may result into deficiency of agricultural land. The new Act intends to ensure food security and availability of multiple crop irrigated land and prescribes a transparent procedure for acquiring the land. Shri Dudawat further submits that as per Section 24 (2) of the new Act, the respondents cannot be permitted to proceed with Section 4 notification. He submits that sub-section 2 of section 24 has an overriding effect on sub-section 1 and as per this provision, since admittedly neither compensation has been paid to the petitioners, nor their land has been actually acquired, the earlier notification has lost its complete shine and force. Reliance is also placed on (2014) 3 SCC 183 *(Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Ors.)*.

6. In addition, Shri Dudawat submits that section 4 notification does not provide adequate particulars of the land sought to be acquired by the respondents. By taking this Court to Annxure R-1 (section 4 notification), it is contended that it shows that out of huge chunk of land, a limited area is sought to be acquired. However, it is not clear as to which portion of the entire survey number is sought to be acquired by the respondents. To clarify this, he drew the attention of this Court on Annexure P-5. Annexure P-5 is divided into various columns. Column 5 deals with the total area in hectares, whereas column 6 deals with the area sought to be acquired. For example, he submits that in item 1 (khasra No. 409), the total areas is 1.580 hectare, out of which only 0.420 hectare is sought to be acquired. The rustic villagers, by no stretch of imagination, can gather as to which piece of the land, out of entire Khasra would be acquired. Reliance is placed on the judgment of Supreme Court in *Radhy Shyam (Dead) through LRs and others Vs. State of U.P. and Ors)* reported in (2011) 5 SCC 553 and judgment of this Court in *(Raju Sharma Vs. State of M.P.)* reported in 2013 (1) M.P.L.J. 652. It is submitted that the impugned notification under Section 4 is liable to be set aside on this score alone.

7. Shri Praveen Newaskar, learned Dy.G.A., on the other hand, opposed the relief. He submits that it is factually incorrect that news papers do not have

any circulation in the villages where petitioners reside. He submits that the notification was published in the Gazette as well as in two prominent news papers, viz., Swadesh and Madhyaraj. He further submits that certain other villagers came forward and submitted their objections. The award has been passed under new Act in other cases and it could not be passed in the present case only because of the ad-interim order.

8. By taking this Court to Section 24(1) of the new Act, it is submitted that as per this provision, the reliance on Section 114 (1) of the new Act and Section 6 (c) (d) (e) of the general provisions Act is mis conceived. He submits that the respondents have not committed any error in issuing the notification under Section 4 of the Act. He submits that adequate information about the location of the land is available in S.4 notification against which petitioners could have submitted their objection.

9. No other point is pressed by the learned counsel for the parties.

10. I have bestowed my anxious consideration on the rival contentions and perused the record.

11. Argument of Shri Arvind Dudawat is of two fold. Firstly, he submits that on commencement of new Act, the earlier proceedings initiated pursuant to 1894 Act are not saved and are lapsed. In other words, he submits that Section 4 notification was issued prior to commence of new Act. As per Section 114 of the new Act and as per Section (6) of General Clauses Act, Section 4 notification and subsequent proceedings under the repealed Act do not survive. He contended that new Act prescribes a different methodology for acquisition. The respondents are now required to initiate the action since inception as per the new Act.

12. His second limb of argument is that Section 4 notification is also bad in law and is not inconformity with requirement and mandate of Section 4 of repealed Act. Before dealing with the contentions, I deem it proper to reproduce Section 24 and Section 114 of the New Act. The same reads as under :-

> **"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases-** (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under the said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

114. Repeal and saving- (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

(Emphasis supplied)

13. The argument of Shri Dudawat is based on certain Supreme Court judgments cited by him. Most of the judgments are based on interpretation of Section 6(c)(d)(e) of the General Clauses Act. In *(Deep Chand Vs. The State of U.P. and Ors)* reported in (AIR 1959 SC 648) the question was whether a scheme framed before repeal is saved under Section 6 of the General

Clauses Act. The Apex Court opined that one has to look to the plain words of Section 6 and ascertain whether those words are comprehensive enough to take in a scheme already framed. It was held that the scheme framed is a thing done under the repealed Act. In *(M.S. Shivnanda Vs. The Karnataka State Road Transport Corpn. and Ors)* reported in (AIR 1980 SC 77) the Apex Court again opined that it depends on the construction of the statute whether a proceeding or a right is saved or not.

14. In *Bansidhar* (Supra) the Apex Court considered various judgments on the point and in the factual matrix of the said case opined that there is a distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act. However, in the said case the Apex Court was dealing with the question whether a right accrued within the meaning of Section 6(c) of Rajasthan General Clauses Act, 1955 in relation to liability of the landowner to surrender the excess land as on 01.04.1966. In the present case, question is whether the notification under Section 4 of the repealed Act is saved or not on commencement of the new Act. Section 6(b) of General Clauses Act makes it clear that it is wide enough to save any previous operation of any enactment so repealed or anything duly done or suffered thereunder. The words used in clause (b) -"affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder" are very wide. The Supreme Court in AIR 1964 SC 1284 *(State of Orissa and another Vs. M/s. M.A. Tulloch and Co. and Anr.)* (five Judges Bench) held as under:-

> "Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in S.6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted. If this were the true the true position about the effect of the Central Act 67 of 1957 as the liability to pay the fee which was the subject of the notices of the demand had accrued prior to June 1, 1958 it would follow that these notices were valid and amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by Virtue of the superior legislation by the Union Parliament."

In (1972) 4 SCC 174 *(Jayantilal Amrathlal Vs. The union of India)* the Apex Court opined as under:-

"8. The above contention is untenable. There are no provision in the Gold (Control) Act, 1968 which are inconsistent with Rule 126(I)(10) of the "Rules". That being so, action under that rule must be deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. It is true that Gold (Control) Act, 1968 does not purport to incorporate into that Act the provisions of Section 6 of the General Clauses Act. But the provisions therein are not inconsistent with the provisions in Section 6 of the General Clauses Act are attracted in view of the repeal of the Gold (Control) Ordinance, 1968. As the Gold (Control) Act does not exhibit a different or contrary intention, proceedings initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, the "Rules" were deemed as an act of Parliament. Hence on the repeal of the "Rules" and the Gold (Control) Ordinance, 1968, the consequences mentioned in Section 6 of the General Clauses Act, follow. For ascertaining whether there is a contrary intention, one has to look to the provisions of the Gold (Control) Act, 1968. In order to see whether the rights and liabilities under the repealed Law have been put an end to by the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question (See: *State of Punjab Vs. Mohar Singh* reported in Air 1955 SC 84; (*T.S. Baliah Vs. Income Tax Officer Central Circle VI, Madras*) reported in AIR 1969 SC 701)

(Emphasis supplied)

15. In para 9 of the judgment of *Jayantilal* (Supra) the Apex Court agreed with the finding of the High Court that the proceedings commenced under the repealed Act must be deemed to be continued.

16. A five judges Bench of the Apex court in (2000) 2 SCC 536 *(Kolhapur Canesugar Works Ltd. and another Vs. Union of India and Ors.)* considered the scope of Section 6 of General Clauses Act. In para 34, the Apex Court opined as under :-

"34..... It is out considered view that in such a case the Court is to look to the provision in the rule which has been introduced after omission

of the previous rule to determine whether pending proceedings will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such proceedings will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari materia provision in the statute under which the rule has been framed, in that case also the pending proceedings will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted / omitted...."

(Emphasis supplied)

As per this judgment, it is to be seen whether as per the repealing Act pending proceeding under the repealed Act would continue or would be treated as deleted or omitted. In other words, when the repeal is accompanied by fresh legislation on the same subject, the provisions of the new Act will be looked into to determine whether and how far the new act evinces a contrary intention affecting the operation of Section 6 of General Clauses Act (See: AIR 1955 SC 84 *(State of Punjab Vs. Mohar Singh Pratap Singh)*, 1989(2) SCC 557 *(Bansidhar and Ors. Vs. State of Rajasthan and Ors)*, (2000) 3 SCC 548 *(D. Srinivasan Vs. Commissioner and Ors.)*.

Section 114(2) of new act makes it clear that repeal of 1894 Act under sub-section (1) shall not prejudice or affect the general application of Section 6 of General Clauses Act. Thus, the effect of Section (6) of said Act is specifically saved by inserting sub-section (2) of Section 114 in the statute book.

17. Section (6)(b) of General Clauses Act, in my view, is wide enough to save the earlier notification issued under Section 4 notification under 1894 Act. In 2006 (3) SCC 354 *(Gammon India Ltd. Vs. Special Chief Secretary and Ors.)* the Apex Court considered the effect of Section 8 of A.P. General Clauses Act, 1891. The Apex Court opined that it is analogous to Section 6 of General Clauses Act. The Apex Court considered the earlier judgment reported in 1997 (1) SCC 650 *(Gajraj Singh Vs. STAT)* wherein question was whether renewal of the permit of the appellant granted under the repealed Act is a permit under the Act and its operation was saved or not. The Apex

Court in *Gajraj Singh* (Supra) held that the proceedings under the repealed Act would be continued and concluded under the Act.

18. Justice G.P.Singh in Principles of Statutory Interpretation (12th Edition, 2010) at page 704 referred the judgment of *Heston and Isleworth Urban District Council vs. Grout,* (1897) 2 Ch 306. It reads as under :-

> "Provisions contained in a Public Health Act, which entitled a local authority to give notice to the frontagers in a street to execute certain works within a certain period and empowered the local authority, in the event of default of the frontagers, to execute the work themselves and to recover the expenses from the frontagers, were construed as conferring a right on the local authority on default of the frontagers after notice, which would be preserved even in the enactment was repealed after default of the frontagers and before any work was done by the local authority"
>
> *(Emphasis supplied)*

19. In AIR 1992 SC 180 *(Gurcharan Singh Baldev Singh Vs. Yeshwant Singh)* the Apex court opined that in a case where an application for renewal was pending under Section 58 of 1939 Act when it was repealed by the 1988 act, it would be treated to be application for enforcement of accrued right for preferential consideration for renewal and will be considered according to the provisions of the repealed Act. In AIR 1960 SC 794 *(Brihan Maharashtra Syndicate Vs. Janardan)* it was held that the Companies Act, 1956, which repealed the earlier Act of 1913, did not evince an intention to destroy the rights created under section 153C of the repealed Act and a proceeding pending at the time of repeal in respect thereof could be continued as if the new Act had not been passed.

20. In the light of aforesaid judgments and language employed in Section 114 of the new Act, in my view, the pending proceedings of 1894 Act are saved and therefore, it cannot be held that on commencement of new act, Section 4 notification is lapsed. Thus, argument of Shri Dudawat to this extent is rejected.

21. Section 24(2) of new Act of 2013, on which heavy reliance is placed by Shri Dudawat, has no application in the present case. A plain reading of the said provision makes it clear that it will be applicable only when an award is

passed and pursuant to the award, either compensation is not paid or land is not acquired. Thus, passing of award is *sine qua non* for applicability of Section 24(2). In the opinion of this Court, in the present case, Section 24(1)(a) will be applicable. A bare reading of this provision will make it clear that when no award under Section 11 of 1894 Act has been made, then all provisions of this Act (new Act) relating to determination of compensation would apply. Admittedly, in the cases of the petitioners, no award has been made. Thus, by application of Section 24(1)(a), the provisions of new Act relating to determination of compensation shall apply. As per Section 24 of the new Act, the earlier proceedings would be lapsed only when the conditions mentioned in sub-section (2) are satisfied. In the present case, in absence of passing of award, conditions for applicability of sub-section (2) are not satisfied. As analyzed above, the notification issued under Section 4 of the repealed Act cannot be treated as lapsed. The compensation for the petitioners will be determined as per the provision of new Act. The judgment of *Pune Municipal Corpn.* (Supra) shows that in the said case award was passed and therefore, Apex Court applied Section 24(2) of New Act. Since Award is not made in present case, said judgment is not applicable.

22. Now coming to the second contention of Shri Dudawat, wherein he stated that Section (4) notification is not in consonance with the requirement of the Act, in my opinion, the contention is not correct. As per Section 4, the respondents were required to publish the notice in the Gazette and simultaneously publish the same in two newspapers of local language. They have complied with the said provision.

23. Apart from this, the principles laid down in *Radhy Shyam (Dead) through LRs and others Vs. State of U.P. and Ors)* reported in (2011) 5 SCC 553 and *(Raju Sharma Vs. State of M.P.)* reported in 2013 (1) M.P.L.J. 652 cannot be doubted. However, the principle flowing from the said judgments cannot be made applicable mechanically. In *Raju Sharma* (Supra) the minimum description of land was not there which deprived the petitioners therein to submit effective objection. In section 4 notification of the said case, it was mentioned that the list of proposed land sought to be acquired is described and enclosed. No such description was given in the notification nor the notification was pregnant with any such list. In these circumstances, this Court opined that Section 4 notification does not fulfill the minimum requirement of law and is not in consonance with the requirement of Section 4 of the Act. In

Section 4 notification of present case, the Khasra number of the land is mentioned which makes it clear that the land of a particular Khasra number is sought to be acquired. All villagers preferred a representation dated 18.06.2013 raising their objection about construction of tank in their village. Thus, representation Annexure P/4 makes it clear that even before issuance of Section 4 notification, the petitioners were aware that Government intends to construct a tank in their village . Same is followed by their objection in "Jansunwai". Thereafter they preferred representation through counsel. Interestingly, Gram Panchayat and Gram Sabha passed resolutions on 17.06.2013 against proposed acquisition of land. This shows that petitioners were well aware about the action of respondents. In this background I am unable to hold that they had no knowledge about Section 4 notification and its publication in the said newspapers. In other words, by no stretch of imagination it can be said that petitioners were not aware about the proposed acquisition.

24. In *(M.P. Housing Board Vs. Mohd. Safi and Ors)* reported in [(1992) 2 SCC 168] also the necessary description of the land was absent. This deprived the interested person to know as to which land is being acquired and for what purpose. The Khasra number of the land and locality of the land was not mentioned in the said case, whereas, in the present case the Khasra number is mentioned. Petitioners / villagers were well aware about the intention of the Government to acquire their land. Their protests on various occasions mentioned above show that they were keeping eye on the entire action. In the aforesaid factual backdrop, I am unable to hold that petitioners were not aware about the notification of Section 4 published in the Gazette and in the local newspapers. No prejudice could be established by the petitioners in this regard. Other judgments cited by Shri Dudawat have no application in the facts and circumstances of the present case.

25. In view of aforesaid analysis, it is clear that Section 4 notification is in accordance with law. The respondents have admittedly not passed any award. Thus, as per Section 24(1)(a) of the new Act, the provisions relating to determination of compensation of new Act will apply. To this extent, petitioners are entitled to succeed. No fault could be found in the earlier notification dated 23.08.2013 and 13.12.2013.

26. Petition is disposed of in terms of aforesaid findings. No costs.

Petition disposed of.

I.L.R. [2016] M.P., 1017
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 5273/2014 (Gwalior) decided on 19 December, 2014

REGISTERED DISTRICT CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK MARYADIT & ors. ...Petitioners
Vs.
STATE OF M.P. & ors. ...Respondents

A. ***Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 48-AA & 50A - Disqualification - Implied Repeal*** **- Legislature while enacting provisions has complete knowledge of existing provision - When it does not provide a repealing provision, it gives out an intention not to repeal existing legislation - Such presumption can be rebutted when later provision is so inconsistent with or repugnant to earlier provision that two cannot stand together. (Para 13)**

क. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराऐं 48–एए व 50ए – निरर्हता – विवक्षित निरसन – उपबंधों को अधिनियमित करते समय विधान– मण्डल को मौजूदा उपबंध की पूर्ण जानकारी होती है – जब वह निरसन उपबंध का प्रावधान नहीं करता है तब मौजूदा विधान को निरसित न किए जाने का आशय प्रकट होता है – ऐसी उपधारणा को खंडित किया जा सकता है जब पश्चातवर्ती उपबंध, पूर्व उपबंध से इतना असंगत अथवा प्रतिकूल हो कि दोनों एक साथ मौजूद नहीं रह सकते।

B. ***Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 48-AA & 50A - Disqualification*** **- Both the provisions can stand together - Principle of Natural Justice is presumptive unless and until excluded by express words - As society has already initiated action u/s 48-AA, therefore, Registrar has no power to pass order u/s 50-A - Order passed by Registrar disqualifying the petitioners set aside. (Para 14)**

ख. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराऐं 48–एए व 50ए – निरर्हता – दोनों ही उपबंध एक साथ विद्यमान रह सकते हैं – नैसर्गिक न्याय का सिद्धांत प्रकल्पित है जब तक कि उसे साफ–साफ शब्दों द्वारा अपवर्जित न किया गया हो – चूंकि सोसाइटी ने धारा 48–एए के अंतर्गत कार्यवाही पूर्व में ही प्रारंभ कर दी है, अतः रजिस्ट्रार को धारा 50-ए के अंतर्गत आदेश पारित करने की शक्ति नहीं है – रजिस्ट्रार द्वारा याचीगण को निरर्ह करने बावत् पारित

आदेश अपास्त।

Cases referred :

AIR 1987 SC 1015, (2014) 1 SCC 603, 1969 JLJ 1016, 2012 (2) MPLJ 237, (2009) 9 SCC 173, AIR 1963 SC 1561, (2003) 7 SCC 389, (1997) 1 SCC 450, (1981) 1 SCC 664, (1994) 4 SCC 328, AIR 1987 SC 57, (1991) 4 SCC 258.

H.D. Gupta with *Santosh Agarwal*, for the petitioners.
Raghvendra Dixit, G.A. for the respondents No. 1 to 3.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 226 of the Constitution is directed against the order dated 19.8.2014, whereby the petitioners were held to be disqualified for membership of the committee. The consequential order of the same date, Annexure P-1, is also called in question, whereby it was held that the elected Board of Directors has ceased to function for want of quorum. Accordingly, in place of Board of Directors, an Administrator is appointed.

2. The case of the petitioners is that the petitioner-Board was constituted for five years pursuant to an election held on 4.4.2008. The term of the Board was five years, i.e., up to 3.4.2013. Before the Board could complete its tenure, it was suspended on 9.12.2009. This suspension order was challenged before this Court in WP No. 4536/2011. The Division Bench by order dated 30.1.2014 (Annexure P/4) set aside the said suspension order. The said order of this Court was unsuccessfully put to test before the Apex Court in SLP No.10826/2014. The Apex Court dismissed the appeal on 30.6.2014 by observing that it would be open to the petitioners to take appropriate action in accordance with law.

3. The respondents issued notices to petitioners No.4,5,8,9 and 11 on 6.8.2014. These notices were issued under rule 44 (1) (h) of M.P. Co-operative Societies Rules, 1962 (for brevity, the "1962 Rules"). The case of the petitioners is that before issuance of said notices dated 6.8.2014, the action under Section 48-AA of the M.P.Co-operative Societies Act, 1960 (for brevity, the "Act") was already initiated by the society under section 48-AA of the Act. In addition, it is contended by Shri H.D.Gupta, learned senior counsel that the aforesaid notices (Annexure P/6) were not served on the petitioners No.4,5 and 8. The

attention is drawn on Annexure P-7 to submit that notices were returned and were not actually served on the said petitioners. It is further contended that President of the Board appeared and submitted objection in respect to the action taken by the Joint Registrar. The specific objection was that once an action has already been initiated by the Board/Society, it is not open to the respondents to issue notices (Annexure P/6). Registrar could have taken action only after completion of two months period as per Section 48-AA.

4. The petitioners argued that the total number of Directors of Board is 23, out of which 15 are elected members, 5 are official members and 3 are nominated members. As per Rule 44 (1) (h) of 1962 Rules, the action can be taken only when there is a deficiency of repayment of loan. Rule 44 (1)(h) does not include non payment of "advance". It is, therefore, urged that the action for non-payment of advance is beyond the ambit of said rules and, therefore, action is without authority of law. Shri Gupta relied on Section 86 of the Act and Rules 75 (3)(c) of 1962 Rules to submit that notices are required to be issued and served in consonance with the said provisions. The notices were not served as per the said statutory procedure and, therefore, the entire action based on such notices is vitiated. It is also submitted that the registered notices were not issued with acknowledgment due. Reliance is also placed on Order 5 Rule 9 CPC to bolster the submission regarding mode of service of notice.

5. It is also urged that Annexure P/9 is the no-dues certificate issued by the concerned society manager in favour of petitioners No.4, 5 and 8. This certificate makes it clear that there were no dues against these petitioners. If notices would have been received, the petitioners could have put forth their defence before the respondents.

6. It is further urged by Shri H.D.Gupta that on the date fixed for appearance, i.e., 19.8.2014, the order Annexure P/2 has been passed. The order is passed by invoking Section 50-A (1) and (2) of the Act and Rule 44(1) of 1962 Rules. The authority has not taken pains to verify whether notices were served. This action runs contrary to the principles of natural justice and requirement of the law. It is submitted that the aforesaid action is totally unknown to law and caused serious prejudice to the petitioners. It is contended that the order dated 19.8.2014 (Annexure P/1) is based on illegal order (Annexure P/2) and, therefore, this order is also required to be set aside. It is submitted that in the facts and circumstances of this case, it is clear

that the action of the respondents is arbitrary in nature. They violated principles of natural justice and, therefore, in view of Division Bench judgment of this Court in Writ Appeal No. 1065/2011 *(Sanjay Nagaich vs. State of MP)*, which is upheld by Supreme Court, the petitioners may not be compelled to avail the alternative remedy.

7. Shri H.D.Gupta, learned senior counsel further submits that section 48-AA (i) of the Act makes it clear that any action to disqualify an elected member can be taken only after giving him a reasonable opportunity of being heard. The said provision makes it clear that if the Board failed to take action within two months then only the Registrar may take action relating to disqualification of the membership. In the present case, since the action was already taken by the Board, unless the statutory period of two months was over, it was not open to the Registrar to take action. It is further contended that Section 48-AA was inserted in the statute book subsequent to insertion of Section 50-A, therefore, Section 50-A must be treated as impliedly repealed. Reliance is placed on AIR 1987 SC 1015 *(Yogendra Pal Singh vs. Union of India)*. Lastly, it is submitted that section 28 of General Clauses Act has no application in the present case because admittedly, the respondents have not issued notices by registered post with acknowledgment due. The petitioners have not advanced any argument on the point of malafide. In addition to oral submissions, written synopsis is also filed by the petitioners.

8. The respondents, on the other hand, contended that the petitioners have an alternative statutory remedy and, therefore, this petition be not entertained. Reliance is placed on (2014) 1 SCC 603 *(Commissioner of Income Tax vs. Chhabil Dass Agarwal)*.

9. Shri Raghvendra Dixit, learned counsel for the respondents submits that out of 23 Directors of the Board, 15 were elected members, two of them have died and 6 were declared disqualified. Because of aforesaid disqualification, they ceased to hold their office in view of Section 50-A (2) of the Act. It is urged that as per Rule 43 (6) of 1962 Rules, quorum of the Board of Directors would be more than 50 per cent out of total 15 elected Directors. Since certain Directors were declared as disqualified and ceased to be the members, for want of quorum, administrator was rightly appointed by Annexure P/1. It is submitted that the registered notices were legally served on the petitioners. Reliance is placed on Section 27 of the General Clauses Act. It is contended that full reasonable and effective opportunity of hearing

was given to the petitioners. Petitioners S/Shri Mukut Singh and Suresh Kumar did not pay the loan and said amount was outstanding for more than twelve months. For this reason they incurred automatic disqualification and ceased to hold their office. Remaining Directors S/Shri Dillu Ram, Shri Pragilal Dangi, Pooran Singh and Smt. Kamla took advance and did not pay it for more than last twelve months. They suffered disqualification in terms of Section 50-A (2) of the Act. It is contended that there is no illegality in the action of the respondents, which warrants interference by this Court. Reliance is also placed on 1969 JLJ 1016 *(Basant Kumar vs. Assistant Registrar, Co-operative Societies, Jabalpur)*, 2012 (2) MPLJ 237 *(Rajiv Kumar Jain vs. Veerendra Narain Mishra (Elected Representative) and others)* and (2009) 9 SCC 173 *(P.K.Palanisamy vs. N.Arumugham)*. Lastly, it is contended that as per section 50-A(2) of the Act, principles of natural justice need not be followed. Shri Raghvendra Dixit contended that a plain reading of section 50-A (2) makes it clear that the Legislature has not chosen to include principles of natural justice in the said provision and, therefore, no fault can be found in the action of the respondents. He also urged that although notices were issued by relying on Rule 44 (1)(h) and Section 48-AA, fact remains that the Registrar has power to declare the seat vacant under section 50(2). If source of power is traceable/otherwise available, wrong quoting of provision will not make the order vulnerable. Respondents also filed their written submissions.

10. No other point is pressed by learned counsel for the parties.

11. I have heard the parties at length and perused the record.

12. Section 50-A was inserted in the statute book w.e.f. 13.12.2007 (published in MP Gazette (Extraordinary) dated 13th December, 2007). Section 48-AA was inserted on 4.1.2010 (published in MP Gazette (Extraordinary) dated 4th January, 2010). Sections 48-AA and 50-A of the Act are reproduced as under for ready reference :-

48-AA. Disqualification for membership of Board of Directors and for representation —No person shall be eligible for election as a member of the Board of Directors of a society and shall cease to hold his office as such, if	**50A. Disqualification for being candidate or voter for election to Board of Director or representative or delegate of Society:-** (1) no person shall be qualified to be a candidate for election as

he suffers from any disqualification specified in this Act or the rules made thereunder and no society shall elect any member as its representative to the Board of Directors of any other society or to represent the society in other society, if he suffers from any disqualifications specified in this Act or the rules made thereunder : Provided that if a member suffers from any of the disqualifications specified in the Act or the rules made thereunder-- (i) it shall be lawful for the Board of Directors of the society to disqualify such members where he is elected as a Director, being a member of that society, after giving him a reasonable opportunity of being heard, within two months from the date of coming to the notice of the society from holding the post and if the society fails to take action within two months, the Registrar shall disqualify such member from holding such post, by any order in writing after giving him reasonable opportunity of being heard; (ii) if the member incurs a disqualification in the higher level society, for his actions as a representative, such higher level society shall take action to disqualify him for holding the post in the higher level society and if the society fails to take action within two months, the Registrar shall disqualify such member from holding such posts by an order in	member of the Board of Directors, representative or delegate of the society, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him. (2) A person elected to an office of a society shall cease to hold such office, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him, and the registrar shall declare his seat vacant. Provided that a person elected to an office of a cooperative bank from a society other then co-operative credit structure, shall cease to hold such office, if such society commits default for any loan or advance for a period exceeding three months, and registrar shall declare his seat vacant.

writing after giving him reasonable opportunity of being heard. Explanation—For the purpose of this section, the expression "disqualification" shall not include the disqualification specified in Section 50-A for election as a member of the Board of Directors or a representative of a society. (Emphasis Supplied)	

13. It is argued by the petitioners that section 48-AA is a later provision dealing with the same aspect and, therefore, earlier provision (Section 50-A) must be treated as impliedly repealed. This is settled in law that there is a presumption against a repeal by implication and the reason of this rule is based on the theory that the Legislature while enacting a provision has complete knowledge of existing provision on the same subject matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. [See, AIR 1963 SC 1561 *(Municipal Council, Palai vs. P.J.Joseph)* and (2003) 7 SCC 389 *(State of MP vs. Kedia Leather and Liquor Ltd.)*]. This presumption can be rebutted and repeal can be inferred by necessary implication when the later provision is so inconsistent with or repugnant to the earlier provision that "two cannot stand together". [See, AIR 1963 SC 1561 *(Municipal Council, Palai vs. P.J.Joseph)* and (1997) 1 SCC 450 *(Cantonment Board, Mhow vs. M.P.State Road Transport Corporation)*. Justice G.P.Singh in Principles of Statutory Interpretation (12th Edition), page 681, opined as under :-

> *"The general principle that there is a strong presumption against implied repeal recently came up for consideration before the High Court of Australia in Shergold Vs. Tanner reported in (2002) 76 ALJR 808. In a joint judgment the court (GLEESON, C.J. McHUGH, GUMMOW, KIRBY and Hayane JJ.) quoted with approval the following observations of GAUDRON J. in Saraswati Vs. the Queen reported in (1991) 172 CLR1 " it is a basic rule of construction that in the absence of express words, an earlier statutory provision is not repealed, altered or derogated from by a later provision unless an intention to*

that effect is necessarily to be implied. There must be very strong grounds to support that implication, for there is a general presumption that the legislature intended that both provisions should operate and that, to the extent that they would otherwise overlap, one should be read as subject to the other."

(Emphasis Supplied)

14. If in the light of aforesaid principle, Sections 48-AA and 50-A are examined, it will be clear that Section 50-A only provides that if a person elected to an office of a society is in default of payment of loan or advance for more than twelve months to the society, he shall cease to hold such office. The Registrar is empowered under sub-section (2) of section 50-A to declare his post vacant. However, no methodology is prescribed in section 50-A. In other words, section 50-A is silent regarding the applicability of principle of natural justice. This point need not detain this Court for a longer time. This is settled in law that "Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statue, unless there is a clear mandate to the contrary. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words to statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it." [See, *Swadeshi Cotton Mills vs. Union of India* (1981) 1 SCC 664]. This view is consistently followed by the Courts. In (1994) 4 SCC 328 *(Dr. Umrao Singh Chaudhary vs. State of MP)*, the Apex Court took the same view. In the light of this legal position, in my opinion, the principles of natural justice are implicit and are required to be read into Section 50-A of the Act. Section 48-AA also deals with the same subject matter, which relates with disqualification of membership of Board of Directors and representatives of the candidates. Undoubtedly, Section 48-AA was inserted later on. Section 48-AA (1) makes it clear that the Legislature intended to provide reasonable

opportunity of hearing to the person concerned. This section makes it clear that if a member suffers from any of disqualifications specified in the Act or Rules, it is the duty of the Board of Directors of the society to disqualify such member. However, proviso makes it clear that this can be done after giving him a reasonable opportunity of being heard. If the society fails to take action within two months, the power is vested with the Registrar to disqualify such member by passing an order in writing after giving him reasonable opportunity of being heard. Thus, the principles of natural justice are embodied in Section 48-AA.

15. In view of aforesaid, I am unable to agree with the contention of Shri Raghvendra Dixit that the principles of natural justice are excluded in section 50-A(2) of the Act. In my view, a simple reading of both the provisions in juxtaposition will make it clear that it cannot be said that two cannot stand together. Section 50-A enables the Registrar to declare that seat has fallen vacant. The parameters/ingredient on which such declaration can be based is enumerated in the said provision. The procedure is mentioned in section 48-AA. The principles of natural justice need to be read into section 50-A(2). Thus, both the sections can co-exist and they are required to be harmoniously construed. This is trite that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. It is the duty of the courts to avoid "a head on clash" between two sections of the same Act and "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise". [AIR 1987 SC 57 *(University of Allahabad vs. Amritchand Tripathi)* and (1991) 4 SCC 258 *(Sultana Begum v. Premchand Jain)*]. In view of *Saraswati Vs. the Queen* (supra) (referred by Justice G.P.Singh and quoted in para 13 above), section 50-A (2) must be read subject to section 48-AA of the Act. Thus, the contention of Shri Gupta that section 50-A is impliedly repealed cannot be accepted. The judgment of *Yogendra Pal Singh* (supra) has no application in the facts and circumstances of the case.

16. In view of aforesaid analysis, it is clear that the Registrar was required to follow the principles of natural justice before declaring the seat as vacant. The case of the respondents is that the show cause notices were issued to the petitioners which were legally served on them and, therefore, reasonable opportunity has been extended. The petitioners have stated that the action on the part of Registrar is bad because by Annexure P-10 dated 25.7.2014, the

society had already initiated the action. The Registrar could have taken action only when society failed to take action within two months. This objection of the society goes to the root of the matter and needs serious consideration. Section 48-AA (i) is inserted by Amendment Act 2009 (No.2 of 2010). In statement of objections and reasons of said Amendment Act, it is mentioned that "(10) Section 48-AA is being amended to empower the Registrar to take action if the cooperative society fails to fulfill its obligations". The obligation flowing from section 48-AA is to take action against such person who suffered any disqualification under the Act and Rules within the stipulated time. Section 48-AA (I), in no uncertain terms makes it clear that *"if the society fails to take action within two months"*, the Registrar shall disqualify such members from holding such post by passing an order in writing. In the present case, the society had already initiated action by issuing notices to the defaulting member. This fact was brought to the notice of the respondents. Petitioners have filed those notices issued by the society, Annexure P-10 dated 25.7.2014. A plain reading of these notices makes it clear that action was initiated under section 48-AA of the Act. One such notice reads as under :-

"सूचना

आपके द्वारा प्राथमिक कृषि साख सहकारी संस्था मर्या. तातारपुर से ऋण लिया गया था जो आपके द्वारा देय तिथि दिनांक 05.06.2014 तक जमा नहीं किया गया है जिससे आप 12 माह से अधिक के कालातीत ऋणी हो गये है। इस कारण आप संचालक मण्डल की सदस्यता के लिये म.प्र. राज्य सहकारी अधिनियम 1960 की धारा 48 ए ए के अनुसार अयोग्य हो गये ह। क्यों न आपकी संचालक मण्डल की सदस्यता समाप्त कर दी जावे? उपरोक्त संबंध में आप दिनांक 02.08.2014 को कार्यालयीन समय प्रातः 11:30 बजे सुनवाई हेतु उपस्थित होवें।

महाप्रबंधक
जिला सहकारी कृषि और ग्रामीण विकास बैंक मर्या. जिला
दतिया (म0प्र0)"

17. President of the society brought it to the notice of the respondents that action has already been initiated. It is not the case of the respondents that either such action was actually not initiated or it was not initiated within the stipulated time. In this factual backdrop, it is to be seen whether Registrar was justified in initiating action by issuing show cause notice, Annexure P/6 dated 6.8.2014. In the opinion of this Court, once action has been taken by the society under section

48-AA, it was not open to the Registrar to initiate parallel action. Any other interpretation of this provision will make the words "if the society fails to take action".... as redundant. The Registrar can take action and disqualify a member only when society fails to take action within two months. It is made clear that in cases where the society has not initiated any action within two months, the action on the part of the Registrar is permissible. Thereafter, Registrar need not to wait for the action to be initiated by the society. In other words, if the society fails to take action within two months as prescribed in Section 48-AA (i), the Registrar may take action to disqualify such member. In the present case, the Registrar has erred in initiating parallel action which is against the mandate of section 48-AA (i) of the Act. To sum up, it is suffice to say that section 50-A(2) is an enabling provision which gives power to Registrar to declare the seat vacant if certain conditions are fulfilled. In view of section 48-AA, it is clear that such action can be taken if cooperative society fails to fulfill its obligation. I find support in my view from Aims and Objects of the Amendment Act reproduced herein above. Thus, the action of the Registrar in initiating action by issuance of show cause notice is clearly impermissible. The impugned order, Annexure P-2, based on such proceedings needs to be interfered with. However, I will be failing in my duty if the judgment cited by Shri Raghvendra Dixit on this point is not considered. He placed reliance on the Division Bench judgment in *Rajiv Kumar Jain* (supra) in which *Basant Kumar* (supra) was considered. In para 14 of the said judgment, the Division Bench opined that "admittedly, in the present case, the society, from which the respondent No.1 was elected as representative of the co-operative bank and thereafter he was elected as Board of Director, became defaulter". In this factual matrix, this Court upheld the order of the Joint Registrar. Same finding is given by the Division Bench in para 15 of the judgment. In the case of *Rajiv Kumar Jain* (supra), it was not in dispute that the society became disqualified to send a representative to the bank and, therefore, the respondents ceased to become a representative and member of the Board of Directors. No such admitted facts are available here. Thus, the said judgment has no application in the facts and circumstances of the present case. In the present case, the stand of the petitioner is that they are not defaulters and did not suffer any disqualification specified under the Act or Rules. In this view of the matter, the judgment of *Rajiv Kumar Jain* (supra) is of no assistance to the respondents.

18. As analyzed above, it is clear that this Court has interfered on the root of the matter, i.e., action of Registrar in issuing notices and passing the orders, Annexure P/2. It is held that the said action was impermissible in view of the

fact that action has already been taken by the society.

19. The above mentioned finding goes to the question of jurisdiction of the authority. Since it goes to the question of competence/jurisdiction, it is not necessary to relegate the petitioners to avail the alternative remedy. In *Sanjay Nagaich* (supra), the Apex Court opined that "there can be situations where the Registrar is expected to act in the best interest of the society and its members, but in such situation he has to act bonafide and within the fourcorners of the statute. (Para 37). At the cost of repetition, in my view, the Registrar has erred in initiating parallel action. The other judgments cited by Shri Raghvendra Dixit have no application in the facts and circumstances of the case.

20. In view of aforesaid analysis, in my view, it is not necessary now to deal with the aspect whether the notices (Annexure P/6) can be treated as served or not. Other points raised by the parties have also lost significance.

21. Resultantly, the impugned order, Annexure P-2, cannot be permitted to stand. The orders dated 19.8.2014 (Annexure P/2) are, therefore, set aside. The order, Annexure P-1 dated 19.8.2014, is solely based on Annexure P-2. For this reason, Annexure P-1, is also set aside.

22. Petition is allowed. No cost.

Petition allowed.

I.L.R. [2016] M.P., 1028
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 9661/2008 (Jabalpur) decided on 20 January, 2015

MATUWARRAM CHAURASIYA ...Petitioner
Vs.
NORTHERN COALFIELDS LIMITED & ors. ...Respondents

***Service Law - Correctness of the Matriculation Certificate* - ADC (Age Determination Committee) is required to first look into the certificate of matriculation and then to proceed to decide the dispute about the date of birth - Petition allowed. (Paras 8 & 10)**

सेवा विधि – मैट्रिकुलेशन प्रमाण पत्र की यथार्थता – एडीसी (आयु निर्धारण समिति) द्वारा पहले मैट्रिकुलेशन प्रमाण पत्र पर गौर किया जाना एवं तत्पश्चात्

जन्मतिथि के विवाद को विनिश्चित करने हेतु अग्रसर होना अपेक्षित है – याचिका मंजूर।

Cases referred :

ILR (2009) MP 3053, W.P. No. 10261/2013(S) decided on 27.11.2013, W.P. No. 4614/2003 decided on 06.01.2011.

P.R. Bhave with *D.C. Gupta* for the petitioner.
Vivek Rusia, for the respondents.

ORDER

K.K. Trivedi, J. :- This writ petition under Article 226 of the Constitution of India, is filed by the petitioner seeking a direction against the respondents for accepting the date of birth of the petitioner to be 15.7.1959 and to correct the entry in the service roll where the wrong date of birth of the petitioner is recorded as 13.3.1955. It is contended by the petitioner that he came in the employment in the year 1981. He passed the High School Board Examination from the State of Uttar Pradesh in the year 1976. His name was recorded in the employment exchange in the year 1980. In the records of the employment exchange, the right date of birth of the petitioner was recorded. However, by some error the date of birth of the petitioner was wrongly recorded in the service roll. Despite this recording of the wrong date of birth, when the petitioner was declared as Mining Sardar and a certificate was issued to him in the year 1986, the right date of birth was mentioned in the said certificate. The petitioner was under the bonafide belief that his right date of birth is mentioned in relevant documents, and he was not required to make any complaint in that respect for correction of his date of birth. The fact remains that such recording of date of birth was not intimated to the petitioner and, therefore, there was no occasion for him to make any representation for correction of the date of birth.

2. In the year 1991, when the petitioner was issued a certificate under the Mining Act as Overman, his right date of birth was mentioned in the said certificate. In the year 1999, the petitioner was promoted as senior Overman, but at that time also it was not pointed out to him that any error was committed in recording of his date of birth. The petitioner thereafter when made the application for adding surname with his name, he mentioned the date of birth as reflected in the High School Certificate, which affidavit too was accepted

by the respondents-employer, but no error in mentioning the date of birth was pointed out to the petitioner. When he came to know that the wrong date of birth is recorded in the service roll, for correction in it, he made a representation before the higher authorities. Since the representation earlier made was not being considered after getting the High School Certificate verified from the Council of Secondary Education, Uttar Pradesh, again the representation was made by the petitioner in the year 2003 and such a representation is rejected by the impugned order, therefore, the petitioner is left with no option but to knock the doors of this Court seeking a direction against the respondents to make correction in the date of birth.

3. Upon service of the notice of the writ petition, the respondents have filed their return, contending *inter alia* that all such allegations made by the petitioner are misconceived and misleading. It is contended by the respondents that Form-B was prepared under the provisions of Section 48, 51, 77 and 77-A(2) of the Mining Act and in that statutory document, the correct age on the date of appointment of the petitioner is specifically mentioned. It is contended that in all other relevant documents, the date of birth of the petitioner is specifically mentioned and such fact was well within the knowledge of the petitioner right from the date of appointment. The petitioner was issued the relevant certificate and information in respect of entries made in the service roll and in that information it was categorically pointed out that the date of birth of the petitioner was 13.3.1955. Certain information the petitioner was required to furnish about the family members, who are the dependents of the petitioner and while furnishing such information, the petitioner has signed the same. At that time also, no dispute was raised by the petitioner that his date of birth was wrongly recorded. In fact, the petitioner came on transfer from the other colliery and he was required to bring with him all the relevant documents such as CMPF pass book, identity card, attested photographs and Form-B register. From the said documents, the entries were made in the present establishment of the petitioner and, therefore, when the representation was made by the petitioner, it was already decided by the respondents on 15.1.1999. In view of this, since there was no error committed in mentioning the date of birth of the petitioner, there was no occasion for the respondents to refer the representation of the petitioner to the Age Determination Committee (hereinafter referred to as the ADC for brevity), in terms of the National Coal Wage Implementation Instruction No.76. This being so, the claim made by

the petitioner in the present petition is wholly misconceived and as such, the petition is liable to be dismissed.

4. Though a rejoinder is filed by the petitioner and later the application is also filed for amendment in the writ petition, challenging the retirement notice as well, but the said application is not pressed by learned Senior counsel for the petitioner stating that if the dispute is decided in terms of the law laid down by the Division Bench of this Court, there would be no necessity of challenging the notice of retirement.

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

6. Undisputedly, the petitioner is an educated person, who has obtained at least a certificate of High School Examination in the year, 1976, from a competent Council of State of Uttar Pradesh. It is also not in dispute that date of birth of the petitioner is written in the said certificate in words and figures both. The other relevant documents produced by the petitioner to show the date of birth are the certificate of his registration as unemployed person wherein also the age of the petitioner is reflected and the date of birth of the petitioner is categorically recorded. This being so, if there was a valid document available with the petitioner to prove his date of birth, what was the reason of not disclosing the said document before the employer at the time of initial appointment ? Whether on the basis of date of birth declared in the said certificate, still the petitioner was eligible to be appointed, in the service ? This has to be examined to find out whether petitioner had any reason to suppress such a document at the time of initial appointment. Even if, the date of birth mentioned in the certificate of High School Examination is taken into consideration, on the date of initial appointment i.e. 13.3.1981, the petitioner was eligible to be appointed in the service and for him there was no occasion to conceal the correct date of birth. Rather, it was disadvantageous to the petitioner.

7. As against this, if the entries made in Form-B certificate are seen, in Column No.4, where the age and sex are required to be mentioned only, the age of petitioner as 26 years, has been mentioned. For referring the age as 26 years, a note is made that this has been done as per medical examination held on 13.3.1981. It appears that from this, the date of birth of the petitioner was assessed to be 13.3.1955. However, mere certificate of the Medical Board

was not enough to mention the date of birth of the petitioner. From this itself, it is clear that when the matter was represented by the petitioner on the strength of a High School Examination Certificate, a dispute regarding the date of birth has occurred, which according to the provisions of Implementation Instructions No.76 of the National Coal Wage Agreement was required to be referred to the ADC. The said ADC was required to verify the correctness of the High School Examination Certificate from the competent authority and was required to reach to the conclusion whether such date of birth mentioned in the certificate was correct or not.

8. Precisely, this was the issue raised before this Court on earlier occasion and the matter travelled up to the Division Bench of this Court in writ appeal. In the case of *South Eastern Coalfields Limited and others Vs. Nijammuddin and another* [I.L.R. (2009) MP 3053], the Division Bench of this Court has referred several decisions of the Apex Court and came to the conclusion that the ADC is required to first look into the certificate of matriculation and then to proceed to decide the dispute about the date of birth. The Division Bench in para 15 and 16 has held thus :-

> "15. We have referred to these decisions only to highlight that when the order passed by the authorities suffers from procedural irregularity, it is legally vulnerable. The said procedural irregularity would include where relevant factors have not been considered. In the case at hand, the Age Determination Committee has not addressed at all with regard to the relevance of the mark sheet issued by the Board of Secondary Education while determining the age. It is worth nothing that the consideration of mark sheet and such other documents do find mention in the Implementation Instruction No.76. In this context, we may profitably reproduce the relevant portion of the Implementation Instruction No.76 :
>
> *"(B). Review/determination of date of birth in respect of existing employees.*
>
> *(I) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the Universities or Board or Middle pass certificate issued by*

the Board of Education and/or Department of Public Instructions and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Board/ Instructions prior to the date of employment.

As is evincible the said facet has not been adverted to at all by the Age Determination Committee. Thus, indubitably, the relevant factors have not been considered and when relevant factors have not been considered, the decision of the Age Determination Committee is irrefragably subject to judicial review as the decision making process is legally unsustainable. At this juncture, it is worth nothing that keeping in view the stance of the appellants, we got the documents produced by the writ petitioner before the employer verified by the Board of Secondary Education and an affidavit has been filed by the competent authority of the Board of Secondary Education stating that the documents are absolutely genuine.

16. In view of the aforesaid premises, we are of the considered opinion that an error has crept in the decision of the Age Determination Committee as it has ignored the mark sheet issued by the Board of Secondary Education which reflects the date of birth and, therefore, we concur with the view expressed by the learned single Judge."

In view of those instructions and after examining the law laid down by the Division Bench, in several cases, this Court has held that the ADC is required to act in terms of the Implementation Instructions No.76.

9. Learned counsel for the respondents has contended that in various cases, this Court has held that such a dispute would be depending on the evidence of correctness of the certificate and, therefore, it would be appropriate for the employee to raise the dispute before the Labour Court where the evidence can be recorded in respect of correctness of the certificate of Board of Secondary Education or Matriculation Certificate. For the said purpose, learned counsel for respondents has placed his reliance in the case of *Purushottam Vs. South Eastern Coalfields Limited and others*

[W.P.No.10261/2013(S), decided on 27.11.2013] and *Ramlal Mehra Vs. State of M.P. and others* [W.P.No.4614/2003, decided on 6.1.2011]. The cases relied on by the learned counsel for the respondents are distinguishable in as much as there was a dispute with respect to the correctness of the Matriculation Certificate and considering such a dispute the ADC has rejected the representation for correction in the date of birth on the basis of such Matriculation Certificate. Here in the case in hand, ADC has not even looked into that Matriculation Certificate produced by the petitioner nor has tested the correctness of the certificate issued by the statutory Council in respect of the validity of the Matriculation Certificate obtained by the petitioner. There was no adjudication on the said representation of the petitioner that the Matriculation Certificate produced by the petitioner was not found to be correct. Therefore, still the claim of the petitioner is to be considered in terms of the law laid down by the Division Bench of this Court in the case of *Nijamuddin* (supra). Nothing has been placed on record to show that such a consideration was done by the respondents and, therefore, it would be appropriate to direct the ADC to look into such claim of the petitioner afresh and to decide whether the certificate of Matriculation produced by the petitioner is valid or not. If the said certificate is found to be valid the respondents would be obliged to correct the date of birth of the petitioner, in terms of the law laid down by the Division Bench of this Court in the case of *Nijamuddin* (supra).

10. Consequently, the writ petition is allowed. The impugned order dated 15.1.1999 and 2/3.8.2007 are hereby quashed. The respondents are directed to refer the case of the petitioner to the ADC for consideration of the correctness of the Matriculation certificate of the year 1976, get it verified from the Secondary Education Council of Uttar Pradesh and if it is found to be correct, to make necessary corrections in accordance to law in the date of birth of the petitioner. Let this be done well before 31.3.2015 and not to retire the petitioner only because of not completing the proceedings as directed by this Court. If any decision is taken against the petitioner, the same be communicated to him well within time, so as to provide an opportunity to the petitionerr to assail the said decision in appropriate forum, in accordance to law.

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

Petition allowed.

I.L.R. [2016] M.P., 1035
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 3304/2008 (Jabalpur) decided on 12 February, 2015

R.K. VISHWAKARMA ...Petitioner
Vs.
THE M.P. STATE ELECTRICITY BOARD & ors. ...Respondents

A. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10, 15 & 27 - Dismissal from Service - Imposition of severest penalty - **Vague charge - Charge framed against petitioner was not indicative of grave misconduct of embezzlement by himself or by his collaboration with main culprit - Charge framed against petitioner was vague in nature and was not constituting a misconduct sufficient for imposing severest penalty - Held - Charges as framed against the petitioner were not definite and vague in nature, therefore, not constituting a misconduct sufficient for imposing the penalty of dismissal from service - Defence was also not considered - Impugned order is not sustainable. (Para 12)**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10, 15 व 27 – सेवा से पदच्युति – कठोरतम शास्ति का अधिरोपण – अस्पष्ट आरोप – याची के विरुद्ध विरचित आरोप से उसके द्वारा स्वयं अथवा मुख्य आरोपी के सहयोग से गबन का गंभीर कदाचरण किया जाना दर्शित नहीं – याची के विरुद्ध विरचित आरोप अस्पष्ट प्रकृति का था एवं कठोरतम शास्ति अधिरोपित करने हेतु पर्याप्त कदाचरण का गठन नहीं करता था – अभिनिर्धारित – याची के विरुद्ध विरचित आरोप अनिश्चित एवं अस्पष्ट प्रकृति के थे, अतः, सेवा से पदच्युति की शास्ति अधिरोपित करने हेतु पर्याप्त कदाचरण का गठन नहीं करते – बचाव पर भी विचार नहीं किया गया – आक्षेपित आदेश कायम रखे जाने योग्य नहीं।

B. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10 & 15 - Imposition of penalty - Dismissal from Service - Vague charge - **Disciplinary authority is required to apply its mind while recording findings on article of charge levelled against the delinquent employee - Disciplinary authority has not recorded its own finding on all or any article of charge levelled against the delinquent employee and has also not framed its own opinion as to which penalty under Rule 10 is to be imposed. (Paras 13)**

ख. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 व 15 – शास्ति का अधिरोपण – सेवा से पदच्युति – अस्पष्ट आरोप – अपचारी कर्मचारी के विरुद्ध लगाये गये आरोप की विषयवस्तु के संबंध में निष्कर्ष अभिलिखित करते समय अनुशासनिक प्राधिकारी द्वारा अपनी बुद्धि का प्रयोग किया जाना अपेक्षित है – अनुशासनिक प्राधिकारी ने अपचारी कर्मचारी के विरुद्ध लगाये गये किसी भी आरोप की विषयवस्तु के संबंध में अपने निष्कर्ष अभिलिखित नहीं किए हैं तथा अपना मत भी प्रकट नहीं किया है कि नियम 10 के अंतर्गत कौन सी शास्ति अधिरोपित की जाना है।

C. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10 & 27 - Imposition of penalty - Dismissal from Service - Vague charge - **Appellate Authority has also not decided that whether on the basis of charge so levelled against the petitioner, penalty of dismissal from service could be imposed - Impugned order is not sustainable - Petition is allowed. (Paras 14 & 15)**

ग. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 व 27 – शास्ति का अधिरोपण – सेवा से पदच्युति – अस्पष्ट आरोप – अपील प्राधिकारी ने यह भी विनिश्चित नहीं किया है कि क्या याची के विरुद्ध लगाए गए आरोपों के आधार पर सेवा से पदच्युति की शास्ति अधिरोपित की जा सकती है – आक्षेपित आदेश कायम रखे जाने योग्य नहीं – याचिका मंजूर।

Cases referred :

1991 SCC Online Bom 218 = 1992 (1) Bom CR 197, 1994 SCC Online Bom 427 = 1995 (2) Bom CR 253, (2009) 12 SCC 78, (2013) 6 SCC 515.

K.C. Ghildiyal, for the petitioner.
Anoop Nair & Sharad Punj, for the respondents.

O R D E R

K.K. Trivedi, J. :- The writ petition is essentially directed against the order dated 31.01.2007 (Annexure P-12) by which the penalty of dismissal from service is imposed on the petitioner after a departmental enquiry by the respondents. In terms of the liberty granted by this Court in W.P. No.16382/2007(S) vide order dated 07.12.2007, an appeal was preferred by the petitioner against the order of penalty which too has been dismissed vide order dated 16.02.2008. Hence this petition is filed.

2. The petitioner was working at the relevant time on the post of Revenue Accountant in the establishment of respondents and was posted in the office of Executive Engineer (City), Division West, Jabalpur up to 15.07.2005. A charge-sheet was issued to the petitioner on 15.07.2005 making the allegation of committing serious misconduct. The petitioner filed his reply to the charge-sheet denying the allegations. An Enquiry Officer was appointed, who conducted the departmental enquiry and gave a report holding that the charges against the petitioner were proved. The said report was communicated to the petitioner through second show cause notice and his reply was obtained. After completing the formality of hearing, the Disciplinary Authority vide order dated 31.01.2007 imposed the penalty of dismissal on the petitioner. As stated herein above, earlier a writ petition was filed but thereafter with liberty of the court, the appeal was filed by the petitioner against the order of penalty, which has been dismissed. It is contended in the writ petition that the enquiry was properly conducted inasmuch as the Disciplinary Authority has not recorded its own finding with respect to the proof of charge and has imposed severest penalty on the petitioner. It is contended that the Appellate Authority has also not applied its mind while deciding the appeal of the petitioner.

3. Upon service of notice of this writ petition, the respondents have filed their return contending inter alia that enquiry was rightly conducted against the petitioner in terms of the provisions of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (herein after referred to as 'Rules'), which rules have been adopted by the respondents and as such the allegations that the enquiry was not properly conducted, are not correct. It is further contended that the appeal of the petitioner was also decided in accordance to law and, therefore, interference in the order of penalty was not called for.

4. Though rejoinder and additional documents have been filed, additional returns have also been filed by the respondents but reference to such pleadings are not necessary as this petition is being considered on the questions, whether the Disciplinary Authority has rightly passed the order in terms of the provisions of Rule 15 of the Rules or not and whether the charge framed against the petitioner was the one constituting a serious misconduct for which a severest penalty of dismissal from service could be imposed on the petitioner.

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

6. First and foremost question is framing of the charge against the petitioner as during the course of hearing of the writ petition it is found that the charge framed against the petitioner was vague in nature. The petitioner was issued a show cause notice on 06.05.2005/04.06.2005 by the competent authority asking him to file a reply as to why the action be not taken against the petitioner for committing serious misconduct. The allegations made in the show cause notice were that upon investigation a report was submitted by the Executive Engineer (City), West Division, Jabalpur, that the concerned Revenue Collector against whom the complaint has been received from MPERC has deposited Rs.230/- out of consumer bill amount of Rs.253/- in Board's account on 14.09.2004 and Rs.253/- was again deposited in the account of consumer through CACMT-01 dated 07.10.2004, which amount was adjusted in the consumer's bill of September, 2004. The findings were given that the amount was paid regularly by the consumer, which was received by the Collector, who passed a receipt of the same but this amount was not credited in the Treasury of the Board, as a result the amount of bill was treated to be outstanding against the consumer and he was issued a consolidated bill for the next month including the amount of previous bill and the surcharge for delayed payment. This was objected by the consumer, who contacted one of the Section Officer and the bill was corrected accordingly after verifying the records. This indicates that the Collector has not credited the amount in the Board's account. The petitioner was thus called upon to explain such facts.

7. A reply to the show cause notice was filed by the petitioner indicating that the consumer has contacted the petitioner and showed him the receipt for payment of the previous electricity bill. The petitioner has verified this fact from the Cash Collection Clerk. It was found in the computer record that the amount already paid by the said consumer was shown in the account of the Board. Therefore, the amount already deposited by the said consumer was deducted from the bill and rest of the amount was asked to be deposited. The accounts were looked after by the Accountant and on the relevant date when the amount was deposited by the consumer, the other Revenue Accountant was looking after that work. In case the cash deposit from the receipt was not checked by the said person, the petitioner was not responsible for any such misconduct. It was thus contended by the petitioner that no enquiry whatsoever was to be conducted against him.

8. The charge-sheet was issued to the petitioner on 11.10.2005 levelling a singular charge, which reads thus :

"Shri RK Vishwakarma, RA (Under Suspension) while posted as RA in O/o EE(City) Dn. West Jabalpur upto 15/07/05 allowed to manipulate the entries by depositing the amount on 7/10/04 by Shri Vivek Pandya, Revenue Collector, and also allowed adjustment of amount of Rs.263/- from the bill of Rs.520/- issued in favour of Shri RG Oka on 12.10.04 by neglecting the duties of Revenue Accountant/Revenue Auditor indicated in the Revenue Manual. Thus, Shri Vishwakarma acted in deceptive manner showing involvement in the matter.

Thus this act on his part is against M.P. Civil Services (Conduct) Rules, 1965, thereby rendered himself liable for disciplinary action."

The charge was explained in statement of imputation. The entire narration of fact in the said statement nowhere indicates that the petitioner was also held responsible for the aforesaid embezzlement if made by any person, by name Vivek Pandya, who was the cashier incharge and who admitted that though the amount was received from the consumer, by name Shri R.G. Okha, but the counterfoil of the receipt was not available. He further admitted the fact that Shri R.G. Okha, the consumer, had not made any deposit on 07.10.2004 but said amount was said to be deposited in his account. Who deposited the said amount, whether the petitioner had any role to play or not in such deposit, was not clearly stated in the statement. A bare reading of the charge itself will make it clear that allegation of embezzlement by the petitioner was not made. Even this much was not said that he was an allie to said misconduct of embezzlement of the cashier or that the cashier within his knowledge has embezzled the amount. Thus only allegation made against the petitioner was that of not properly checking the accounts on the date of incident whereas according to the petitioner he was not performing the said work in that particular Section on that day.

9. This is how the charge was levelled against the petitioner. The Enquiry Officer after recording the evidence gave his finding that the charge levelled against the petitioner was found proved. The enquiry report is placed on record as Annexure P-10. From the perusal of the enquiry report it appears that some of the witnesses were examined and those witnesses have deposed that the petitioner was responsible to shield the misconduct of the cashier, who has not credited the amount in the account of the Board. However, the

statement so recorded and appreciated, indicates only this much that the consumer has contacted the petitioner with respect to the excessive bill complaining that he has already paid the previous bill. This fact was also stated that the matter was looked into by the petitioner. However, this itself was not enough to show that the petitioner was in any way associated with the misconduct of embezzlement of the amount of bill, said to be committed by the Cashier. This fact was explained by the petitioner in his reply to the second show cause notice issued after the departmental enquiry. Despite this, the findings given by the Enquiry Officer were accepted and the Disciplinary Authority simply said that the charge against the petitioner is proved, therefore, looking to the gravity of the misconduct, severest penalty was to be imposed on the petitioner.

10. In fact the charge was such as it could not be said to be a serious charge of defalcation or misappropriation of the funds of the respondents. The charge indicated herein above will disclose that certain manipulations in the record were alleged against the petitioner but again it was not said that manipulation was done only with a view to extend a helping hand to the person, who has embezzled the amount. The allegation as set forth indicates that the amount was to be collected by someone else and a receipt was required to be issued by him to the consumer regarding the electricity charges. After furnishing that information, the responsibility of the petitioner was to examine the correctness of the amount deposited before him to be transmitted to the treasury of the respondents. However, it is nowhere alleged that on a particular date the amount was not deposited by the Collector and any manipulation was done in the record by the petitioner to assist him in embezzling the amount. On the other hand, from the reading of the charge it appears as if the manipulation was done only when the amount was deposited by the person concerned in the treasury of the respondents. If that was the situation, specific allegation of misappropriation or defalcation or even participation in the said act of defalcation of somebody else should have been levelled in the charge, which after reading the whole charge is not made out.

11. First of all it has to be examined whether on such a vague charge a severest penalty could be imposed on the petitioner or not. The occasions have come before the High Courts in such disciplinary matters. In the case of *Nabish Hussain Shaikh vs. K.K. Uppal and others,* 1991 SCC Online Bom 218=1992 (1) BomCR 197, the Bombay High Court has tested the vagueness

of the charges and the impact of it in the matter of penalty. It was held by the Court that in case definite charge is not made, mere proving of such a vague charge will not be sufficient to impose a severest penalty. In the case of *Sundar Dhanraj Kasliwal vs. Karamveer Kakasaheb Wagh Sakhar Karkhana Ltd. and others,* 1994 SCC Online Bom 427=1995 (2) BomCR 253, again the Division Bench of the Bombay High Court has tested the correctness of the charges levelled against a delinquent employee and impact of its vagueness on the quantum of penalty. The opinion expressed by the Division Bench was that unless there is a definite charge and conclusive proof of the same against an employee, the severest penalty is not to be imposed on the basis of the findings recorded on a vague charge. In the case of *Union of India and others vs. Gyan Chand Chattar,* (2009) 12 SCC 78, the Apex Court has looked into such aspects and has held that on flimsy or vague charges the penalties are not to be imposed. Again in the case of *Anant R. Kulkarni vs. Y.P. Education Society,* (2013) 6 SCC 515, the Apex Court has held that though the procedure laid-down for conducting a criminal trial or even a civil suit by framing definite charges or issues are not applicable strictly in the domestic enquiry but charges of misconduct, if alleged are to be definite, indicative of a serious misconduct and there must be a reasonable finding of holding the charge proved, then only the severest penalty can be imposed.

12. In view of the law laid-down by the Courts aforesaid, if the charge levelled against the petitioner is examined, it would be amply clear that the charge framed against the petitioner was not indicative of the grave misconduct of embezzlement by himself or by his collaboration with the main culprit. It was not the definite charge that the petitioner was aware that the amount is received by the Cashier from the consumer towards the electricity charges but is not credited in the account of the Board. In absence of the definite charge, only alleging that by such act the petitioner has showed involvement in the matter, it would not itself be enough to say that petitioner was also guilty of the act of embezzlement. Thus, it has to be held that the charge framed against the petitioner was vague in nature and was not constituting a misconduct sufficient for imposing the severest penalty. In the enquiry report there was no discussion in respect of the defence taken by the petitioner.

13. Now the second question is whether the Disciplinary Authority has acted in terms of the provisions of Rule 15 of the Rules while accepting the findings of the Enquiry Officer. For the purpose of appreciation and elaborate

consideration of the effect of the provisions of Rule 15 of the Rules, the same is reproduced hereunder, which reads thus :

> "15. **Action on the inquiry report.**- (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.
>
> (2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.
>
> (3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing:
>
> Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant."

The provisions of Rule 15 of the Rules make it clear that Disciplinary Authority is required to apply its mind while recording the findings on article of charge levelled against the delinquent employee. The provisions of Sub-rule (3) of Rule 15 of the Rules enable the Disciplinary Authority to record its own finding on all or any of the article of charge and then to form opinion as to which penalty under Rule 10 is to be imposed on the employee concerned, if the misconduct is said to be proved. Reading as a whole if the order impugned is examined, it would be clear that finding in that respect were not recorded

by the Disciplinary Authority and only a satisfaction was recorded with respect to the conduct of the enquiry and giving finding by the Enquiry Officer. In fact the Disciplinary Authority has given his opinion in the following manner :

> "AND WHEREAS, in view of the above misconduct proven in the departmental enquiry and considering the gravity of the misconduct, the total fact and circumstances of the case, it has been finally decided by the competent authority to impose the penalty of DISMISSAL from the MPSEB Services against Shri R.K. Vishwakarma, O.A.Gr.I(U/s)..
>
> NOW THEREFORE, the services of Shri R.K. Vishwakarma, O.A.Gr.I(U/s) stands DISMISSED from the MPSEB Services with immediate effect."

14. By no stretch of imagination, such recording of fact can be treated as recording of reasons for holding a misconduct proved by the Disciplinary Authority. It is not clear whether such a ground was raised by the petitioner in his appeal or not, yet it was the requirement of the Appellate Authority to consider all these aspects as an appeal is required to be considered under Rule 27 of the Rules and this has to be examined by the Appellate Authority whether the procedure laid-down under the Rules has been followed or not. The order issued by the Appellate Authority do not indicate any such finding. As such, the issue whether the penalty could be imposed on the charge so levelled against the petitioner or not was not decided by the Appellate Authority. The appeal of the petitioner was also not decided in accordance to law.

15. In view of the aforesaid reasoning, the order impugned dated 31.01.2007 cannot be sustained. Resultantly, the writ petition is allowed. The order dated 31.01.2007 is quashed. The petitioner be reinstated in the service immediately with all consequential benefit. However, the respondents would be at liberty to initiate appropriate proceedings against the petitioner afresh in case any misconduct of the petitioner is prima facie made out. This order will not come in the way of conducting fresh enquiry.

16. The writ petition stands allowed and disposed of. There shall be no order as to costs.

Petition allowed.

I.L.R. [2016] M.P., 1044
WRIT PETITION
Before Mr. Justice P.K. Jaiswal & Mr. Justice Alok Verma
W.P. No. 5644/2014 (Indore) decided on 16 March, 2015

YASHPAL RAY ...Petitioner
Vs.
DEAN M.G.M. MEDICAL COLLEGE & anr. ...Respondents

Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 37 - Rule 26(A)(3), 26(B)(3) of Ordinance **- Petitioner, MBBS student seeking re-examination of practical answer sheet - Held - In Viva, long case, short case and spot case, no answer sheets are provided thus revaluation and issuance of mandamus is not permissible - As per proviso to Rule 26(A)(3), no revaluation is allowed in case of scripts of practical, field work, sessional work, test and thesis - As per proviso to Rule 26(B)(3), no inspection of answer book in case of script of practical, field works, sessional work, test and thesis and no photocopy of answer books, foil counter foil/marks will be provided to the examinee - Petition dismissed. (Paras 17 & 19)**

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 37 – अध्यादेश के नियम 26(ए)(3), 26(बी)(3) – याची, एम.बी.बी.एस. छात्र द्वारा प्रायोगिक उत्तरपुस्तिका का पुनर्मूल्यांकन चाहा गया – अभिनिर्धारित – मौखिक परीक्षा में लांग केस, शार्ट केस एवं स्पॉट केस की उत्तरपुस्तिकाएं प्रदाय नहीं की जाती हैं अतः पुनर्मूल्यांकन एवं परमादेश जारी किया जाना अनुज्ञेय नहीं – नियम 26(ए)(3) के परन्तुक के अनुसार प्रायोगिक परीक्षा क्षेत्रीय कार्य, सत्रीय कार्य, परीक्षण एवं शोध कार्य के आलेखों के मामलों में पुनर्मूल्यांकन की अनुमति नहीं है – नियम 26(बी)(3) के परन्तुक के अनुसार प्रायोगिक परीक्षा, क्षेत्रीय कार्य, सत्रीय कार्य, परीक्षण एवं शोध कार्य के आलेखों के मामले में उत्तरपुस्तिका का निरीक्षण नहीं होगा तथा उत्तरपुस्तिकाओं पर्ण प्रतिपर्ण / अंकों की छायाप्रति भी परीक्षार्थी को प्रदाय नहीं की जावेगी – याचिका खारिज।

Cases referred :

(2011) 8 SCC 497, 2014 (3) MPHT 136.

V.K. Jain, for the petitioner.
Mini Ravindran, Dy. G.A. for the respondent/State.
Vivek Sharan, for the respondent No.2.

JUDGMENT

The Judgment of the Court was delivered by :

P.K. JAISWAL, J. :- The petitioner was a regular student of Third Profession MBBS (Part II) from M.G.M. Medical College, Indore and had given examination held in February – March 2014. In theory, he has cleared all the subjects of final year MBBS (part II) viz; General Medicine, General Surgery, Obstetrics and Gynecology and Paediatrics with good marks, except practical examination of Medicine. The petitioner obtained 60% marks (72 out of 120) in theory examination of General Medicine, but in practical examination, he has been declared fail. It is the case of the petitioner, he has bright past and in all the examinations previously conducted, he has received good marks.

3. It is apprehended that no marks were given by the examiner in the long case, short case and spot case. In practical examination he has received 37 marks out of 100 marks, making an allegation that his answer sheets of long case, two short case and spot case have not been properly valued. He sought re-examination of practical answer sheet and award him appropriate marks.

4. Learned counsel for the petitioner submits that in the 20 years history of M.G.M. Medical College, Indore, he is the only student who has been declared fail in the practical examination. His contention is that no marks were given by the examination in the answer sheet of long case, two short case and spot case. The tabulation sheet of the examination was also not prepared and submitted to the respondent No.2 – University. The contention of the learned counsel for the petitioner is that the petitioner has done very well in all answer sheets (long case, short case and spot case) and the relevant matter is written on the answer sheet. The respondent has not put any remark on the answer sheet of the petitioner and no where mentioned that candidate has wrong approach towards the patient and do not respond to the discussion and viva. The apprehension of the petitioner is that the respondent has not examined the answer sheet and no tabulation sheet was prepared by the respondents for submission to the University. Learned counsel for the petitioner has drawn our attention to Rule 3 (ii) and Rule 11 (5) (iii) (vi) (vii) and 16 of the Ordinance, Rule 15, Rule 16 and Rule 26 (B) of Ordinance filed so also the decision of the Apex Court in the case of *Central Board of Secondary Education and Anr. v/s. Aditya Bandopadhyay and Ors.*, reported as (2011) 8 SCC 497 and the decision of Division Bench of Principal Seat of M.P. High

Court in the case of *Dheeraj Pandey & Anr. v/s. State of M.P. & Ors.*, reported in 2014 (3) MPHT 136 (D.B) and submitted that the respondents be directed to evaluate the answer sheet properly.

5. As per return filed by the respondent No.1 the medicine subject consist of examination in two parts which are as follows :-

a. Theory Examination

b. Practical Examination.

Theory examination consists of theory papers, where written question paper is given to the students and answer sheet is provided by the University on which answers are to be written. The questions are written on the question paper and same set of questions are provided to the students. Each and every student then writes the answers on the answer sheet provided by the University under the seal of University. The answers are written on to these answer sheets and after completion of the examination the same are submitted to the examining authority. Later on these theory answer sheets are evaluated and the marks are allotted on these answer sheets. The practical examination consists of :-

(i) Spotting (Chakri Examination) (maximum 20 marks)

(ii) Viva (maximum 20 marks).

(iii) Long case (maximum 30 marks).

(iv) Short cases 2 in number (each of maximum 20 marks).

(v) Spot case (maximum 10 marks).

6. In spotting there are 10 different written questions (spots) which are common to all the students; hence, the answer sheets are provided and each student is to write a brief description of each spot within a stipulated time of two minutes. The answers are written on the answer sheets that are provided and finally the answer sheets are submitted. These answers are evaluated and marks are given on these answer sheets. According to the petitioner he has received 10 marks out of 20.

7. In Viva the student is to answer verbally the questions asked by the examiner orally. Since there are no written questions, therefore, no answer sheets are provided in Viva but on the contrary the student answers the question of the examiner verbally and marks are given on the tabulation sheet which is

with the examiner. The marks of viva are added to theory marks. Whereas the marks of spotting, long case, short case and spot case are added in the practical examination which makes it to be of 100 marks.

8. Long case in fact is a case study of a particular patient which is alloted to the students and the student is allowed one hour to examine and analyze and communicating with the patients, their problems and the student is asked to arrive at a tentative diagnosis for that particular patient. As this part of examination is a case study of a particular patient, therefore, a student is given a copy to write down notes regarding the tentative analyses after talking and examination which student may have done and thereafter, after examination is done the student is subjected to the bed side questions which the examiner asks the student and evaluates with respect to the clinical examination skills of the student regarding that particular case. The student in this long case is asked to demonstrate as to how he reached to a particular interpretation of the examination done by him on the patient. It is purely a practical examination where the clinical skills of the student is examined and analyzed in that particular case where the student is being examined. The answer sheet which the petitioner is referring to, is not a answer sheet and no marks are given on this answer sheet but the marks are purely given on the basis of the case presentation of the students and the oral answers given by the student during the cross questioning done by the examiner.

9. In short case there are two short cases provided to each of the students wherein the student is made to evaluate specific problem and make specific diagnoses. In this practical examination of a short duration, approximately 15 minutes for each short case is given. The student is asked to evaluate, and examine the short case within the specific time and thereafter to answer to the oral questions put forwarded by the examiner. This is purely oral and demonstrative examination.

10. Spot case is very short practical examination wherein the student is asked to see a patient and to come to an conclusion as to what type disease the patient is suffering. This examination is infact a bird's eye view to the problem which a patient may be suffering.

11. According to the respondents in the practical examination apart from spotting, no answer sheet are provided for other practical examination. All other such examinations are infact oral examination wherein a student is required to answer the questions put forward by examiner orally. The practical

examination is totally oral and demonstrative, which contains different set of questions put by the different examiners to the different students, therefore, the answer sheets are not given in such type of examination. Viva, long case, short case, spot case, etc., these are all practical in nature wherein the identical demonstrative analytical, clinical, demonstration analyses of a student is evaluated, therefore, the answer sheet for such examination are not provided, and on the basis of the oral answer and demonstrative skill of the student, the marks are given on the evaluation sheet which later on is taken down in the tabulation sheet and signed by the examining committee consisting of 3 internal or 2 external examiners.

12. In the case of the petitioner he has been granted marks in the practical examination as per the foil and counter foil sheets and the record of the same has been produced during the course of the hearing. It is also contended by the respondent No.1 that the examiner has not given any marks on the reference sheet (paper) which was given to any of the students for noting down points during the analysis of their long case, and therefore, it cannot by any stretch of imagination be said that the non grant of marks on these papers during the long case examination is malicious or in any way high handed action which can be complained by the petitioner and prayed for dismissal of the writ petition.

13. In rejoinder, it has been stated that the examination was conducted in haphazard manner and the examiners have violated the rules and regulation laid down by D.A.V.V. for conducting the examination. The petitioner has done very well in all the answer sheets and relevant matter is written on the answer sheet. After examination answer sheet is signed by internal and external examiner with date and then submitted to the D.A.V.V. along with the result of practical examination.

14. The respondent No.1 refuted the allegation made in the rejoinder and filed additional reply wherein it has been stated that no answer sheet provided in these practical examination because these are the cases wherein the candidate in the prescribed time is to study the case allotted to him, evaluate it thereafter illustrate history and demonstrate physical signs and conduct the clinical analyses of the case and thereafter answer the questions.

15. The petitioner was given 10 marks out of 20 marks in the answer sheet itself in the spotting examination for which the answer sheet is provided. In other practical examination like long case, short case and spot case examination, etc. no answer sheets are provided. It is also contended that the

long case, short case and spot case are conducted by different set of examiners for a particular student and each examiner conducting a particular component of the practical exam enters the marks of his evaluation of the performance of the student in the tabulation sheet after the completion of each of the components of the practical examination. These marks are totaled and are transferred to a final sheet which is known as foil and counter foil evaluation sheet and these marks are said to be the final marks of a particular student in the practical examination. The stand of the respondent No.1 is that after entry of marks in the foil and counter foil sheet the marks entered into by the various examiners in the tabulation sheet is destroyed by the examiners themselves and the foil and counter foil sheet is the final sheet which has the marks of a particular student secured by him in the practical examination and these are the final marks of a particular student. Thus 3rd components of practical exam ie., long case, short case and spot case examination are purely viva voce based exam where the student is to submit the case and answer the questions of examiner orally. Therefore, the marks are only given in the tabulation sheet of the examiner which are thereafter transferred to foil and counter foil sheet signed by all examiners and sent to the University.

16. It is submitted by the learned counsel for the respondent No.1 that in the absence of there being any statutory rules for revaluation of practical examination no mandamus can be issued and prayed for dismissal of the writ petition.

17. We have heard the learned counsel for the parties at length and we do not have any hesitation in holding that Viva, long case, short case and spot case no answer sheets are provided and thus, revaluation so called answer sheet and issuance of mandamus is not permissible. Merely, on the basis of vague allegation not support by cogent material rowing enquiry cannot be conducted by directing for revaluation when the same is not possible for practical examination. The provisions of ordinance cited by the learned counsel for the petitioner will not applicable in practical examination. As per proviso to Rule 26 (A) (3) no revaluation shall be allowed in case of scripts of practicals, field work, sessional work, test and thesis submitted in lieu of a paper at the examination. As far as "inspection of practical answer books etc" is concerned, according to proviso to Rule 26(B) (3) no inspection of answer books shall be allowed in case of scripts of practicals, field works, sessional work, test and thesis submitted in lieu of a paper at the examination. As per proviso of Rule 26 (B) (3) no photo copy of answer books, foil counter

foil/marks awarded will be provided to the examinee. The decision cited in the case of *Dheeraj Pandey & Anr. v/s. State of M.P. & Ors.* (supra) and *Central Board of Secondary Education and Anr. v/s. Aditya Bandopadhyay and Ors.* (supra) are in respect of written theory paper examination and, therefore, those decisions are distinguishable on facts.

18. In compliance to order dated 18.2.2015 the respondent No.2 University produced the foil and counter foil, so also the answer sheet of 10 students for comparison. On perusal of the aforesaid, we find that there is no infirmity in awarding the marks.

19. For the ongoing reasons, no case for issuance of writ of mandamus as prayed by the petitioner is made out. The writ petition filed by the petitioner has no merit and is accordingly, dismissed. No costs.

Petition dismissed.

I.L.R. [2016] M.P., 1050
WRIT PETITION
Before Mrs. Justice S.R. Waghmare
W.P. No. 5811/2014 (Indore) decided on 8 May, 2015

BHRAMDUTT & anr. ... Petitioners
Vs.
STATE OF M.P. & ors. ... Respondents

Criminal Procedure Code, 1973 (2 of 1974), Sections 24(8) & 25(1) - Appointment of Special Public Prosecutor **- Principal Secretary of Law Department received a complaint, which was duly sanctioned at various high levels - Order appointing Special Public Prosecutor was passed - It's a policy decision of the State Government after getting sanction from high levels - Impugned order cannot be found any fault with - No prejudice is caused to accused/petitioner by appointment of Special Public Prosecutor - Petition dismissed. (Para 8)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 24(8) व 25(1) – विशेष लोक अभियोजक की नियुक्ति – विधि विभाग के प्रमुख सचिव को एक शिकायत प्राप्त हुई जो कि विभिन्न उच्च स्तरों पर सम्यक् रुप से मंजूर हुई थी – विशेष लोक अभियोजक नियुक्त करने का आदेश पारित किया गया – उच्च स्तरों से मंजूरी मिलने के पश्चात यह राज्य शासन का नीतिगत निर्णय होता है – आक्षेपित आदेश में कोई भी त्रुटि नहीं पाई जा सकती – विशेष लोक अभियोजक की नियुक्ति से अभियुक्त/याची को कोई प्रतिकूल प्रभाव कारित नहीं हुआ है – याचिका खारिज।

Cases referred :

(1988) 3 SCC 144, 2001 (5) MPHT 579, 2010(3) MPLJ 473, AIR 2010 SC 463.

Rajat Raghuvanshi, for the petitioners.
Amit Singh Sisodiya, for the respondents/State.

ORDER

S.R. WHAGMARE, J. :- By this writ petition under Article 226 of the Constitution of India, petitioners Bhramdutt and Sembar have challenged the order dated 22/5/2014 passed by the respondent No.1 Principal Secretary, Law and Legislative Department, Vallabh Bhawan, Bhopal whereby the respondents have appointed the Special Prosecutor in connection with the trial S.T. No.599/2013 pending before the A.S.J., Indore.

2. Brief facts of the case are that the accused petitioners have been proceeded for offence under Section 302/34 of the IPC in connection with regards to the death of one Pramod Sisodiya. It was contended that the father of the petitioner No.1 late Shri Shyamlal was the member of the Mahawar Nagar Grah Nirman Society and he was allotted the plot No.178/1, but the president of the said society, who is also the deceased Pramod Sisodiya did not agree the registration of the said plot in the name of Shyamlal and it was alleged that there were serious irregularities in the working of the said society at the instance of Pramod Sisodiya and the said plot has been resold after the allotment to Shyamlal to various other persons in several times due to which various litigations are pending between the parties. On the date of incident i.e. on 13/6/2013the father of the petitioner No.1 Bhrahmdutt had gone to the office of Mahawar Nagar Grah Nirman Society for obtaining the certified copy of the allotment of the plot to him and moved an application under Section 28 (3) of the M.P. Co-operative Societies Act. Similarly various receipts of payment made by Shyamlal as the same was required to be filed in the Civil Suit pending between the parties before the Civil Judge, Class-I, Indore and the next date of hearing in the matter was 19/6/2013. However, it was contended that there were heated argument between the father of the petitioner No.1 and the deceased Pramod Sisodiya and he refused to accept the said application and during the heat of argument Pramod Sisodiya fell from the chair in the office of the Society and he was rushed to the hospital where he was declared to be dead.

Thereafter the Police Station Annapurna has registered the merg and arrested Shyamlal, Bhramdutt and Sembar as accused persons in crime No.400/13 for offence under Section 302/34 of the IPC. However, the postmortem report did not indicate any injury on the body of the deceased and it was stated by the son and other relative of the deceased that Pramod Sisodiya died due to anxiety. However, the challan papers have been put up by the Police Station Annapurna and the trial commenced.

After submission of the charge sheet the Trial Court has framed the charges followed by submission of the trial programme by the public prosecutor on 14/8/13. The trial was continued up to 29/5/2014 and the said trial was numbered as S.T. No.599/13. However, all of a sudden the respondent No.1 on 22/5/2014 exercising the powers under Section 24(8) of the Cr.P.C. has appointed a Special Prosecutor for conducting of the said trial vide order Annexure P/1. And hence, the present petition by the accused petitioners.

3. Counsel for the petitioners has vehemently urged that the trial was proceeding normally and suddenly the Special Prosecutor was thrust on the prosecution without assigning any reason. Counsel submitted that there is no material available on record to indicate that what the necessity to appoint such a Special Prosecutor to conduct the trial. Counsel submitted that the petitioners are innocent persons, whereas deceased Pramod Sisodiya was an anti social element and having 8 criminal cases registered against him pertaining to offence under Section 307, 420, 467, 468 of the IPC. Counsel submitted that the evidence is likely to be tampered with and no reasons have been assigned for the appointment of Special Prosecutor. Hence, Counsel prayed that the impugned order be set aside.

To bolster his submissions, Counsel relied on *Mukul Dalal and others vs. Union of India and others* (1988)3 SCC 144, whereby the Apex Court had held that under Section 24(8) and 25(1) of the Cr.P.C. appointment of an advocate as Special Prosecutor cannot be made on mere asking by private complainant. Request of the private complainant for such appointment must be examined by Legal Remembrancer on the basis of guidelines prescribed or to be prescribed and decision taken accordingly. Counsel also placed reliance on *Poonamchand Jain vs. State of M.P.* 2001 (5) MPHT 579 , whereby this Court has also held that it is not found on record that the Public Prosecutor, who is incharge of the case is incompetent to conduct the trial. Merely because the crime is heinous is not a special ground for appointment of a Special Public

Prosecutor. The Court had also held that tension and pressure of media are also not germane to the issue. No justifiable and reasonable ground for appointment of a Special Public Prosecutor and his appointment is quashed. However, it is also directed that the Special Public Prosecutor may assist the prosecution under the direction of the duly appointed public prosecutor with the permission of the Court.

4. Per Contra, respondent No.1/the Principal Secretary, Law Department, Govt.of M.P., Bhopal has filed reply and opposed the contentions of the Counsel for the petitioners and Counsel for the respondent/State submitted that the order was passed on administrative side and it is a matter of policy decision of the State Government and the order has been passed as per the powers available to the authority under the provisions of Section 24(8) of the Cr.P.C. and there are no malafides in the order impugned nor any violation of the statutory provisions of law as alleged and then the scope of interference by this Court was not called for at all. In fact the complainant i.e. the relatives of the deceased have submitted an application wherein it was explicitly submitted that accused was having clout and they were continuously threatening the complainant party and other witnesses. And hence, it is necessary to appoint a Special Prosecutor so that the applicant may get justice in the matter. In this regard the Collector vide his letter dated 5/10/13 sent his recommendation for appointment of the Special Public Prosecutor along the application of the complainant. The Superintendent of Police concerned also by his letter has opined that in the fitness of circumstances the appointment of Special Public Prosecutor was desirable. The Law Department also took up the matter and after obtaining the sanction from the Minister concerned also the order of appointment of Special Public Prosecutor was passed.

5. Counsel for the respondent/State has vehemently opposed the submissions put forth by the Counsel for the petitioners and submitted that there is no merit in the petition. He placed reliance on *Mayuresh s/o Sharad Vyas vs. State of M.P. and others* 2010 (3) MPLJ 473, whereby under similar circumstances the appointment of a Special Public Prosecutor was considered and it was held that judicial review was permissible Hence, he prayed for dismissal of the petition. Decision to appoint had been taken at various levels on the basis of application under Section 24(8) filed by father of deceased victim. It was held that there was no exercise of powers in the decision making process nor it is a case that the State Government has acted

beyond its jurisdiction causing miscarriage of justice. Petitioner had not made any averment or allegation about mala fides nor he had made any averment about prejudice that will cause to him then under the circumstances the Court held that decision of appointment cannot be interfered with.

6. Counsel also placed reliance on *State of Maharashtra and others vs. Prakas Prahlad Patil and others* AIR 2010 SC 463 , whereby the Apex had held that judicial review about a policy decision of the State Government the Courts should not ordinarily interfered in exercise of powers of judicial review. Moreover, the Apex Court had also held that decision of appointment of a Special Public Prosecutor by the State Government is taken at various levels. Petition against by close relatives of victim and picking up stray sentences from records by High Court to conclude that there was non-application of mind is not proper and the Court held that the petition was wholly misconceived.

7. On considering the above submissions and placing reliance on *State of Maharashtra* (supra), I find that the Apex Court had categorically observed that the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice in the accused. And in this sense the present writ petition is misconceived. There is no allegation of malafides, besides, on perusing the postmortem report, in fact it is found that there were several injuries on internal part of the body, which were recorded thus :

(1) Both side lower sterno cleido mastoid musceles – upper stunum soft tissues are ecchymosed.

(2) Right side of chest mid and lower ribs musceles are ecchymosed 14 x 12 cm.area; and

(3) Right lobe of liver lacerated 10x2x2 cm.upper aspect and upper bowels are contused, mysentry contains large haemotoma abdominal cavity contains blood clotting.

And the postmortem certified that the cause of death was due to shock and haemorrhage as a result of abdominal injuries.

8. Also considering the fact that it was alleged that there was a heated argument between the father of petitioner No.1 Shyamlal and deceased Pramod Sisodiya in the office at the time of the incident and it would be a matter of evidence whether the offence under Section 302/34 of the IPC is made out or

not. Therefore, it cannot be said that the petitioners have been falsely implicated in the matter. As stated in the reply the respondent No.1 the Principal Secretary, Law Department, Bhopal received a complaint, which was duly sanctioned at various high levels and there is application of mind in passing such an order for appointment of a Special Prosecutor and it cannot be said that the order was passed without granting proper reasons. Besides, admittedly it is a policy decision of the State Government after getting sanction from high levels. And in this light also the impugned order cannot be found any fault with and the petitioner is, therefore, dismissed accordingly. Besides, no adverse effect as already mentioned above would be caused to the petitioners merely because a Special Prosecutor has been appointed.

9. With the aforesaid observations, the present petition is dismissed.

No order as to costs.

C.c. as per rules.

Petition dismissed.

I.L.R. [2016] M.P., 1055
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 9301/2015 (Jabalpur) decided on 13 July, 2015

M.P. POWER GENERATION CO. ...Petitioner
Vs.
ANSALDO ENERGIC ...Respondent

***Civil Procedure Code (5 of 1908), Section 47, Order 21 Rule 17, 23(2) and Civil Court Rules, M.P. 1961, Rule 186 - Correct Decreetal Amount* - Arbitration Award was passed and two different sums were granted in favor of respondent with interest from different dates - In application for execution, the respondent has mentioned the principal amount together and the interest together - Required particulars are not distinctly and completely set down as required under Rule 186 of Rules, 1961 - Executing Court directed to proceed with execution bearing in mind the provisions contained in Order 21 Rule 17, 23(2) of C.P.C. and Rule 186 of Rules, 1961. (Paras 6 to 9)**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 47, आदेश 21 नियम 17, 23(2)

एवं सिविल न्यायालय नियम, म.प्र., 1961, नियम 186 – सही डिक्रीत राशि – माध्यस्थम् अधिनिर्णय पारित किया गया और प्रत्यर्थी के पक्ष में दो भिन्न धनराशियां भिन्न तिथियों से देय ब्याज के साथ स्वीकृत की गई थी – निष्पादन हेतु आवेदन में प्रत्यर्थी ने मूल रकमों को एक साथ एवं ब्याज को एक साथ उल्लिखित किया – नियम 1961 के नियम 186 के अंतर्गत अपेक्षानुसार आवश्यक विशिष्टियों को स्पष्टतः एवं पूर्णतः उपवर्णित नहीं किया गया – निष्पादन न्यायालय को सि.प्र.सं. के आदेश 21 नियम 17, 23(2) व नियम 1961 के नियम 186 में अंतर्विष्ट उपबंधों को ध्यान में रखते हुए निष्पादन कार्यवाहियां चलाने हेतु निदेशित किया गया।

Cases referred :

(2010) 8 SCC 329, (2010) 9 SCC 385.

Ravish Agrawal with *Akshay Pawar*, for the petitioner.
Nahaush Shah with *Manoj Sharma*, for the respondent.

(Supplied: Paragraph numbers)

ORDER

ALOK ARADHE, J. :- With consent of the parties, the matter is heard finally.

In this writ petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 19.6.2015 passed by the Executing Court.

2. Facts giving rise to filing of the writ petition briefly stated are that an Award dated 23.9.2004 was passed by the Arbitral Tribunal in favour of the respondent. Being aggrieved, the petitioners filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act') which was allowed by the trial Court vide order dated 4.10.2008. Being aggrieved by the aforesaid order, the respondent preferred an appeal under Section 37 of the Act, which was allowed vide order dated 20.8.2013. Against the said order, the petitioners preferred an appeal before the Supreme Court in which notices have been issued vide order dated 17.2.2014. The respondents filed an application for execution of the Award before the District Judge, Jabalpur in which a sum of Rs.1,25,28,44,907/- was claimed. The notices were issued to the petitioners for their appearance before the Executing Court on 13.1.2015. The petitioners preferred an application before the Executing Court under Section 47 of the Code of Civil Procedure read with

proviso to Rule 17 of Order 21 and Order 21 Rule 23(2) of the Code of Civil Procedure in which inter-alia it was pleaded that the Executing Court is obliged to ascertain the correct decreetal amount as required under Rule 186 of the M.P. Civil Court Rules. 1961. The petitioners also filed an application under Section 151 of the Code of Civil Procedure seeking stay of execution proceeding during the pendency of the Special Leave Petition before the Supreme Court. The respondent did not file any reply to the applications submitted by the petitioners. The Executing Court vide order dated 19.6.2015 inter-alia directed the decree holder that in case the objection preferred by the judgment debtor i.e. the petitioners is justified, the respondent can file an application for amendment. The respondent was directed to furnish the details of the bank account of the petitioners. In the aforesaid factual background, the petitioners have approached this Court.

3. Learned senior counsel for the petitioners while inviting the attention of this Court to the provisions of proviso to Rule 17 of Order 21 and Order 21 Rule 23(2) of the Code of Civil Procedure as well as Rules 186, 188, 189 and 190 of the M.P. Civil Court Rules, 1961, has submitted that the impugned order has been passed by the Executing Court in violation of the aforesaid provisions. It is further submitted that two sums awarded by the Arbitrator carry interest from different dates, however, same have not been specified in the application for execution. It is also submitted that under Rule 186 of the M.P. Civil Court Rules, 1961, the Court should see that required particulars are distinctly and completely set down.

4. On the other hand, learned counsel for the respondent while inviting the attention of this Court to the Award passed by the Arbitrator, submitted that the respondent has mentioned the particulars of sums together and interest component separately. It is further submitted that the order passed by the Executing Court does not suffer from any error apparent on the fact of record warranting interference of this Court in exercise of power under Article 227 of the Constitution of India.

5. I have considered the respective submissions made by learned counsel for the parties. Proviso to Rule 17(1-A) of Order 21 contemplates that where in the opinion of the Court there is some inaccuracy as to the amount referred to in Clause (g) and (h) of sub-rule (2) of Rule 11, the Court shall decide provisionally without prejudice to the right of parties to have the amount finally decided and make an order for execution of the decree for the amount so

provisionally decided. Order 23 Rule (2) mandates that where a person to whom notice is issued under Rule 22, offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Rule 186 of M.P. Civil Court Rules 1961 reads as under:-

> "186. In dealing with application for execution the attention of the Courts is invited Rules 11 (2), 12 and 13 of Order XXI, Civil Procedure Code, which lay down the particulars to be included in such applications. The Courts should see that the required particulars are distinctly and completely set down and should not grant any relief not specifically mentioned in the application. In particular, interest, if any subsequent to the decree should be correctly calculated and the total amount for which execution is prayed should be clearly stated. If possession is sought the kind of possession desired should appear; and if actual possession is sought it should appear that the judgment debtor or some one bound by the decree is in actual possession".

6. Thus Rule 186 requires the Court to ensure that required particulars are distinctly and completely set down and interest if any subsequent to the decree should be correctly calculated and total amount for which execution is prayed should be clearly stated. Rule 190 of the rules requires the Court to adjudicate the amount.

7. In the backdrop of aforesaid provisions, facts of the case may be seen. In the instant case, from perusal of the Award, it is evident that two different sums have been granted in favor of respondent with interest from different dates. In the application for execution, the respondent has mentioned the principal amount together and the interest together. In other words required particulars are not distinctly and completely set down as required under Rule 186 of the Rules.

8. The petitioners in their application under Order 21 Rule 27 and Order 21 Rule 23(2) have disputed the decreetal amount mentioned by the respondent in the application, and have clearly stated that it requires adjudication. As stated *supra* the executing Court in the instant case did not appreciate that application for execution was not in conformity with Rule 186 and failed to

consider and decide the objection as mandated under Order 21 Rule 23(2) of the Code of Civil Procedure and even has failed to decide the amount provisionally as required under proviso to Rule 17(1-A) of Order 21 of the Code while passing the impugned order. The impugned order passed by the executing Court suffers from patent perversity and while passing the impugned order, the executing Court has failed to exercise the jurisdiction vested in it by law. The impugned order passed by executing Court thus suffers from not only error apparent on the face of record, but jurisdictional infirmity as well. See: *Shalini Shyam Shetty and another Vs. Rajendra S. Patil,* (2010) 8 SCC 329 and *Jai Singh and others Vs. Municipal Corporation of Delhi and others*, (2010) 9 SCC 385.

9. In view of the preceding analysis, impugned order cannot be sustained in the eye of law. It is accordingly quashed. The executing Court is directed to proceed with the execution bearing in mind the provisions contained in Order 21 Rule 17(1-A), Order 21 Rule 23(2) and Order 21 Rule 27 of the Code of Civil Procedure as well as Rules 186,189 and 190 of M.P. Civil Court Rules 1961.

With the aforesaid direction the writ petition stands disposed of.

C.C. as per rules.

Petition disposed of.

I.L.R. [2016] M.P., 1059
WRIT PETITION
Before Mr. Justice J.K. Maheshwari
W.P. No. 6207/2010 (Jabalpur) decided on 16 July, 2015

RAMSWAROOP & ors. ...Petitioners
Vs.
NATIONAL HIGHWAY AUTHORITY OF INDIA & ors. ...Respondents

National Highways Act (48 of 1956), Section 3H - Deposit and payment of amount **- Land acquired was jointly recorded in the names of petitioners and respondents No. 4 to 6 - Petitioners submitted memorandum before competent authority to pay the amount of compensation after apportioning the same regarding their share - Respondents No. 4 to 6 raised objection that the land has already been partitioned - Respondents directed to pay the compensation amount to the respondents No. 4 to 6 -**

Held - Dispute means assertion of claim by one party and its denial by other - Therefore, when the dispute had arose that whether respondents No. 4 to 6 are entitled for compensation or whether petitioners are also entitled for the same, the same should have been referred to Original Civil Court for adjudication - Decision of respondents to pay the compensation to respondents No. 4 to 6 quashed - Authorities directed to refer the dispute to Original Civil Court and as the amount has already been paid to respondents No. 4 to 6 they shall furnish an undertaking and surety before Civil Court that in case they lose from Civil Court and the amount of compensation determined by Competent Authority is payable to petitioners also, then they shall pay such amount to the petitioners as per judgment of Civil Court. (Paras 7 to 12)

राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धारा 3एच – राशि का जमा एवं भुगतान – अर्जित की गई भूमि याचीगण एवं प्रत्यर्थीगण क्र. 4 से 6 के संयुक्त नाम से अभिलिखित थी – याचीगण ने सक्षम प्राधिकारी के समक्ष प्रतिकर की राशि का उनके हिस्से के अनुरुप संविभाजन पश्चात् भुगतान किये जाने हेतु ज्ञापन प्रस्तुत किया – प्रत्यर्थीगण क्र. 4 से 6 ने यह आपत्ति उठाई कि भूमि का बंटवारा पहले ही किया जा चुका है – प्रतिप्रार्थीगण ने प्रतिकर की राशि प्रत्यर्थीगण क्र. 4 से 6 को अदा करने हेतु निदेश दिया – अभिनिर्धारित – 'विवाद' का अर्थ है एक पक्षकार द्वारा किसी दावे का प्राख्यान एवं दूसरे पक्ष द्वारा उसका प्रत्याख्यान – अतएव, जब यह विवाद उत्पन्न हुआ कि क्या प्रत्यर्थीगण क्र. 4 से 6 प्रतिकर के हकदार हैं एवं क्या याचीगण भी प्रतिकर के हकदार हैं, तब मामला न्याय निर्णयन हेतु मूल सिविल न्यायालय की ओर निर्दिष्ट किया जाना चाहिए था – प्रतिप्रार्थीगण द्वारा प्रत्यर्थीगण क्र. 4 से 6 को प्रतिकर की राशि अदा करने का निर्णय अभिखण्डित – प्राधिकारियों को मामला मूल सिविल न्यायालय की ओर निर्दिष्ट किये जाने हेतु निदेशित किया गया एवं चूंकि प्रतिकर की राशि पहले ही प्रत्यर्थीगण क्र. 4 से 6 को अदा की जा चुकी है, इसलिए वे सिविल न्यायालय के समक्ष इस आशय का वचनबंध एवं प्रतिभूति प्रस्तुत करेंगे कि सिविल न्यायालय में उनके हारने की दशा में एवं सक्षम प्राधिकारी द्वारा निर्धारित प्रतिकर की राशि याचीगण को भी देय होने पर वे सिविल न्यायालय के निर्णयानुसार प्रतिकर की राशि याचीगण को अदा करेंगे।

Hare Krishna Upadhyay, for the petitioners.

K.N. Pethia, for the respondent No.1/National Highway Authority of India.

Divya Kirti Bohrey, G.A. for the respondents No. 2 & 3/State.

R.K. Verma with *Saurabh Shrivastava*, for the respondents No. 4 to 6.

ORDER

J.K. MAHESHWARI, J. :- The petitioners have filed this petition invoking the jurisdiction under Article 226 of the Constitution of India seeking the writ in the nature of *certiorari* challenging the orders Annexure P/4 dated 7.7.2008, Annexure P/9 dated 13.4.2010, Annexure P/10 16.4.2010, seeking further direction to refer the dispute for decision to the Principal Civil Court in whose local jurisdiction the land situated has been acquisitioned, and further prayed to hold the respondent No.3 liable for the loss caused to the petitioners on account of paying the amount of compensation only to respondent Nos.4 to 6, exceeding to the jurisdiction which is not conferred on him under the law.

2. The facts, which are not in dispute, are that land in question is situated in Patwari Halka No.9 of Khasra No.169 area 1.335 hectare at Village Lolri, Tahsil Tendukhedra, District Narsinghpur. It is also not in dispute that the said land is jointly recorded in the name of the petitioners as well as respondent Nos.4 to 6. The documents indicating the same are available on record vide Annexures P/1 & P/8. Out of the said land, approximately 20 decimal of the land was acquired for the National Highway No.26 as per the notification issued under Sections 3A and 3D of the National Highways Act, 1956 (hereinafter shall be referred to as the 'Act'). After acquisition of the said land, the compensation was determined to the tune of Rs.7,08,000/- and a cheque in the joint name of petitioners as well as respondent Nos.4 to 6 were prepared. The petitioners submitted a memorandum before the competent authority as per Annexure P/2 on 3.6.2008, requesting to pay the amount of compensation, after apportioning the same regarding their share. The respondent Nos.4 to 6 have also submitted their objection vide Annexure P/3 dated 24.6.2008 interalia contending that the land of said khasra number has already been partitioned, and the acquired land fallen into their share. It is also stated that the application seeking partition and correction in the revenue entries has been filed by them before the Tahsildar Tendukheda, which is pending for decision. However, the amount of compensation may not be disbursed to any other co-owner except the respondent Nos.4 to 6. On receiving the said objection, the competent authority vide letter Annexure P/4 dated 7.7.2008 asked the detail of partition from Tahsildar Tendukheda, whereupon an enquiry was conducted as reveals vide Annexure P/5 dated 25.3.2010. On receiving the said enquiry report, the objection was submitted by the petitioners vide Annexure P/6. However, vide Annexure P/7 dated

29.3.2010, the competent authority further sought clarification regarding *Batankan* of the land in question, which were replied, interalia contending that in the revenue entries, no such *Batankan* has been made, which reflects from Annexure P/8 dated 1.4.2010. Even thereafter, vide Annexure P/9 dated 13.4.2010, request was sent to the Project Director to issue cheque in the name of respondent Nos.4 to 6 as per the said decision, and accordingly vide Annexure P/10 dated 16.4.2010, compensation was paid to respondent Nos.4 to 6, deciding the objection filed by the petitioners.

3. Shri Hare Krishna Upadhyay, learned counsel for the petitioners submits that under Section 3G of the Act, the determination of compensation ought to be made by the competent authority as per the procedure prescribed, and after determination of the amount, it ought to be deposited and the payments be made as per Section 3H of the Act. It is his contention that if any dispute arises with respect to disbursement of the amount of compensation, raised by any person, who is entitled to receive the same, the competent authority shall refer the dispute for decision to the Principal Civil Court of original jurisdiction within whose limits, the land situated. In the case in hand, on determining the compensation, the memorandum was submitted by the petitioners as well as respondent Nos.4 to 6 setting forth their entitlement, but without referring the said dispute to the Principal Civil Court, the authority competent vide orders Annexure P/9 and P/10 dated 13.4.2010 and 16.4.2010 held that respondent Nos.4 to 6 are only entitled to receive the amount of compensation and accordingly the cheques were issued through the Project Director in their names, thus, committed an error of jurisdiction in deciding the entitlement, which is not conferred on such authority as per Sub-sections (3) & (4) of Section 3H of the Act. In view of the aforesaid, prayer is made to set aside the order Annexure P/4 dated 7.7.2008, order Annexure P/9 dated 13.4.2010, order delivering amount of compensation Annexure P/10 dated 16.4.2010 and the dispute may be referred to the competent Civil Court for adjudication.

4. Shri K.N.Pethia, learned counsel for respondent No.1/National Highways Authority, on the other hand, by filing reply has interalia contended that their role is limited to the extent of paying the amount of compensation, as directed by the competent authority. However, in case of any dispute regarding receiving and non-payment of the amount, it ought to be decided by the competent authority or by the Civil Court.

5. Smt.Divya Kirti Bohrey, learned Government Advocate for respondent

Nos.2 and 3 submits that in exercise of the power conferred on them under Sub-section (3) of Section 3H of the Act, the competent authority has rightly decided, the entitlement of respondent Nos.4 to 6 to receive the amount of compensation, as they were found in possession of the land as per the enquiry. Thus, the order impugned Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 16.4.2010 have rightly been passed, which do not warrant any interference in the facts of this case.

6. Shri R.K.Verma, learned Senior Advocate assisted by Shri Saurabh Shrivastava, Advocate for respondent Nos.4 to 6 submits that the competent authority has rightly exercised the jurisdiction under Sub-section (3) of Section 3H of the Act and accordingly paid the amount of compensation to respondent Nos.4 to 6. However, in case if petitioners feel aggrieved of not receiving the amount of compensation, they may take recourse as permissible, before the Principal Civil Court joining respondent Nos.4 to 6 as party in the suit. In view of the aforesaid, the petition filed by the petitioners is devoid of any merit, hence it may be dismissed.

7. After hearing the rival contentions of counsels for the parties and in the facts of this case, to adjudicate the issue as involved in the present case, first of all, the provisions as contained under the National Highways Act, 1956 are required to be looked into. As per Section 3A of the Act, if the Central Government is satisfied that for a public purpose, any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may be notified in the official gazette declaring its intention to acquire such land. The objections be invited, and after affording an opportunity of hearing, final notification be issued under Section 3D of the Act. After the final notification, the land so acquired, shall be vested in the Central Government under Sub-section (2) of Section 3D of the Act and the amount of compensation be determined by the competent authority as per Section 3G, and it be deposited under Sub-section (1) of Section 3H of the Act. It is further apparent that the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver the possession thereof, to him or to any person duly authorised to receive possession, and accordingly the possession shall be obtained acquiring the right to enter on the land vested in Central Government. Thereafter, the amount of compensation determined, as per Section 3G of the Act, and deposited under Sub-section (1) of Section 3H of the Act shall be

disbursed. In case any dispute regarding right of user or the right of easement, the determination of compensation may be made by the competent authority. After determination and depositing the amount, how the payment be made, it is specified under Section 3H of the Act, which is being reproduced as under for ready reference:-

> **"3H. Deposit and payment of amount-**(1) The amount determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.
>
> (2) As soon as may be after the amount has been deposited under Sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.
>
> (3) Where several persons claim to be interested in the amount deposited under Sub-section (1), the competent authority shall determine the person who in its opinion are entitled to receive the amount payable to each of them.
>
> (4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated."

8. A bare reading of the aforesaid provisions of law makes it clear that the amount determined under Section 3G of the Act shall be deposited by the Central Government in such manner as may be laid down by the rules made in this behalf, with the competent authority before taking possession of the land. On depositing the said amount, the competent authority shall on behalf of the Central Government pay the amount to the person or the persons entitled thereto. It is further clarified that where the several persons claim interest in the amount so deposited under Sub-section (1), the competent authority under Sub-section (3) shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. If any dispute of apportionment of the amount or any part thereof arises, the competent authority shall refer

the dispute as per Sub-section (4) for decision to the Principal Civil Court of the original jurisdiction within the limits of whose jurisdiction the land situated has been acquisitioned. Meaning thereby on depositing the amount, the competent authority at the stage of payment, where several persons claim their interest, it shall determine the entitlement of the persons interested, or each of them. In case of any dispute of apportionment or any part thereof or to any person to whom the same or any part is payable, the competent authority is required to refer such dispute for decision of the Principal Civil Court within the limits of whose jurisdiction, the land situated has been aquisitioned.

9. In view of the aforesaid legal position, in the facts of the present case, it is clear that the land was acquired in exercise of the power under Sections 3A,3B,3C,3D of the Act by issuing the notification. After acquisition, the competent authority has determined the compensation by passing an award and thereafter the possession of 20 decimal of the land of Patwari Halka No.9 of Khasra No.169 of area 1.335 hectare situated in Village Lolri of Tahsil Tendukhedra , District Narsinghpur has been taken. The compensation to the tune of Rs.7,08,000/- has been determined, however, for payment of the said amount, the memorandum was raised by the petitioners to pay the amount of compensation as per their respective shares, and also by the respondent Nos.4 to 6 interalia contending that after partition the land has fallen in their share and they are in possession thereof, therefore, the amount so deposited be not disbursed to anyone except them.

10. In the aforesaid legal and factual context, it is required to understand the meaning of dispute. In this regard if a claim is asserted by one party and denied by the other would fall within the purview of the word "dispute" in the context of the facts of this case in absence of any definition specified under the Act; meaning thereby it postulates the assertion of claim by one party and its denial by the other. Looking to the provisions as contained hereinabove, the term "dispute" has been used in a narrower sense limited to the contested claim and required to be adjudicated by the Civil Court. In such circumstances, for the purpose of Sub-section (4) of Section 3H of the Act, the dispute arose before the competent authority either for apportionment of the amount, or to the effect that whether the petitioners are also entitled to claim the compensation, or it is only the respondent Nos.4 to 6.

11. In the aforesaid backdrop, the entitlement to receive the amount by both the parties as raised by them is a dispute and the only option was

with the competent authority to refer it for decision to the Principal Civil Court of original jurisdiction in whose limits the land situated has been acquisitioned. But the competent authority has not exercised the said power and by holding an enquiry as per Annexure P/5 and receiving the objection of the petitioner, decided the entitlement to pay compensation only to the respondent Nos.4 to 6. Though the document of partition in favour of respondent Nos.4 to 6 sought from Tahsildar or the *Batankan* of the said survey number in favour of respondent Nos.4 to 6 is not available on record. In my considered opinion, the power as exercised by the competent authority, on having a dispute of apportionment and to claim the compensation by the petitioners as well as respondent Nos.4 to 6, was not conferred on him under the law, therefore, the impugned order Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 16.4.2010 passed by the respondents are hereby quashed. In view of the foregoing, it is further directed that the competent authority shall refer the dispute as per Sub-section (4) of Section 3H of the Act to the Civil Court of original jurisdiction. As the amount of compensation has already been paid to respondent Nos.4 to 6, however, it is also directed that the respondents Nos.4 to 6 shall furnish an undertaking & surety before the Civil Court that in case they lose from the Civil Court and the amount of compensation determined by the competent authority is payable to the petitioners also, then they shall pay such amount to the petitioners as per judgment of Civil Court.

12. Accordingly, this petition stands allowed. The impugned order Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 16.4.2010 are hereby quashed. The competent authority is directed to refer the dispute to the original Civil Court within a period of two months from the date of receipt of certified copy of this order. It is also directed that respondent Nos.4 to 6 shall comply the observations made hereinabove, within one month from the first date fixed before the Civil Court. It is made clear here that this Court has not expressed any opinion with respect to entitlement of the petitioners or respondent Nos.4 to 6 to receive the amount of compensation. However, the Civil Court on receiving the dispute shall decide the same on the basis of the material brought before him applying its mind independently without influencing any of the observations made by this Court and to take final decision not later than six months from the first date fixed before him. In

the facts and circumstances of the case, the parties shall bear their own costs.

Petition allowed.

I.L.R. [2016] M.P., 1067
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 14065/2013 (Indore) decided on 31 July, 2015

VIJAY KUMAR ... Petitioner
Vs.
VINAY KUMAR ...Respondent

Court Fees Act (7 of 1870), Section 7(iv)(c) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Ad valorem Court Fee - Rejection of plaint **- Suit for declaration of a decree and consequential relief - When the sale deed is challenged by the plaintiff in possession of the suit property as void and the plaintiff is not a party to the sale deed, no ad valorem court fees are required. (Para 12)**

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(सी) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – मूल्यानुसार न्यायालय फीस – वादपत्र को नामंजूर किया जाना – डिक्री की घोषणा एवं पारिणामिक अनुतोष हेतु वाद – जब वाद संपत्ति का कब्जा धारक होकर वादी द्वारा विक्रय विलेख को शून्य मानते हुए चुनौती दी जाती है तथा जिस विक्रय विलेख मे वादी पक्षकार नहीं है, तब मूल्यानुसार न्यायालय फीस अपेक्षित नहीं।

Cases referred :

AIR 2010 SC 2807, 1970 JLJ 290, 2010 (4) MPLJ 431, 2009 (4) MPHT 347, 2013 (2) MPLJ 602, AIR 2010 MP 36.

Yashpal Rathore, for the petitioner.
M.M. Bohra, for the respondent.

(Supplied: Paragraph numbers)

ORDER

PRAKASH SHRIVASTAVA, J. :- This writ petition under Article 227 of the Constitution of India is at the instance of plaintiff in the suit challenging the order of trial court dated 13/2/2013 requiring the petitioner to pay the

advalorem court fee on the value of the suit property disclosed in the sale deed.

2. In brief, the petitioner has filed the suit for declaration and injunction in which the respondent had filed an application under Order 7 Rule 11 CPC and trial court while deciding the said application has directed the petitioner to pay the advalorem court fee.

3. Learned counsel for petitioner submits that the trial court has committed an error in directing the petitioner to pay the advalorem court fee ignoring that petitioner is not a party to the sale deed.

4. As against this learned counsel for respondent has supported the impugned order.

5. Having heard the learned counsel for parties and on perusal of the record, it is noted that petitioner has pleaded in the plaint that suit property being house No. 53 situated at Shastri Marg Sailana District Ratlam is ancestral property and that it was received by petitioner in partition and he is in possession of the same and is residing therein. It is further pleaded that respondent No. 1(brother of petitioner) had got the sale deed dated 8/5/12 executed from Satyanarayan (father of petitioner) in his favour without payment of consideration amount and by committing fraud. In the suit a prayer has been made to declare the suit property as ancestral property and also declaring the petitioner as owner on the basis of partition and declaring sale deed dated 8/5/12 as void and restraining respondent by way of injunction from dispossessing the petitioner from the suit property.

6. The impugned order of the trial court reveals that trial court has directed the petitioner to pay advalorem court fee on the ground that main relief in the plaint is not for declaring the sale deed as void but it is the consequential relief, therefore, the petitioner is liable to pay the advalorem court fee but while holding so, the trial court has failed to consider the correct position in law in this regard.

7. The Supreme court in the matter of *Suhrdi Singh @ Sardool Singh Vs. Randhir Singh & others* reported in AIR 2010 SC 2807 in similar circumstances has held as under:

> 6. Where the executant of a deed wants to be annulled, he has to seek cancellation of the deed. But if a non-executant

seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or nonest, or illegal or that it is not biding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' – two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and nonest/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court-fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court-fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court-fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court-fee as provided under Section 7(iv) (c) of the Act. Section 7 (iv) (c) provides that in suits for a declaratory decree with consequential relief, that court-fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less that the value of the property calculated in the manner provided for by clause (v) of Section 7.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court-fee was computable under Section 7(iv)(c) of the Act. The trial Court and the High Court were, therefore,

not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that, therefore, court-fee had to be paid on the sale consideration mentioned in the sale deeds.

8. In the present case also the petitioner is claiming the suit property to be ancestral property having been received by him in partition and challenging the sale deed which has not been executed by him but by his father who said to have no right to execute the same.

9. The Full Bench of this court in the matter of *Santosh Chandra & others Vs. Gyan Sunder Bai & others* reported in 1970 JLJ 290 has settled that where a plaintiff is not a party to the instrument and he cannot be deemed to be a representative in interest of the person who is bound by that instrument, he can sue for a declaration simpliciter provided he is also in possession of the property. The Full Bench has held as under:

> 14. Thus, all these cases lay down the proposition that where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simpliciter. In such cases the question of court-fees has to be determined under Section 7 (iv) (c) of the Act, But, however, where a plaintiff is not a party to such a decree, agreement, instrument or a liability, and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or a liability, he can sue for a declaration simpliciter, provided he is also in possession of the property. In that event, the proviso to Section 42 of the Specific Relief Act might be a bar to the tenability of a suit framed for the relief of declaration simpliciter. But, that would be a different aspect. All the same, if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay court-fees under any of the sub-clauses of Article 17, Schedule II of the Court-fees Act.

10. The another Full Bench of this court in the matter of *Sunil S/o Dev Kumar Radhelia and others Vs. Awadh Narayan & others*, reported in

2010 (4) MPLJ 431 has held that when the plaintiff makes an allegation that the instrument is void and hence not binding on him and a declaration simiplcitor is sought then he is not required to pay the advalorem court fee. Considering the earlier judgment on the point Full Bench of this court has held as under:-

> 8. The Apex Court considering the distinction and meaning of void and voidable in *Government of Orissa Vs. Ashok Transport Agency and others*. (2002) 9 SCC 28 held that the expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary. Law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act e.g. May be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided e.g. if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.
>
> 9. The Apex Court in *Prem Singh Vs. Birbal*, 2007(1) MPLJ (S.C.) 1 = (2006) 5 SCC 353 considering the question

held that when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is not est in the eye of the law and it would be nullity.

10. A similar view has been taken by the Apex Court in *Ranganayakamma Vs. K.S.Prakash,* (2008) 15 SCC 673 wherein the Apex Court held that voidable transaction are required to be avoided while void transaction are not required to be avoided. When a contract is said to be voidable by reason of any coercion, misrepresentation or fraud particulars thereof are required to be pleaded. That void document is not required to be avoided whereas voidable document must be. The position may have been different in respect of orders, judgments and decrees of the Courts.

11. The Apex Court considering similar question in *Sneh Gupta Vs. Devi Sarup,* 2010(1) MPLJ (SC) 70 = (2009) 6 SCC 194 held that if an order is void or voidable, the same must be set aside. Thus, the compromise/consent decree, which is as good as a contested decree even if void was required to be set aside. If the compromise has been accepted in absence of all the parties, the same would be void and the decree based thereupon must be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. A consent/compromise decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable.

12. A Division Bench of this Court in *Manzoor Ahmed Vs. Jaggi Bair and others,* 2009 (4) MPLJ 182, considering the question held that the question of payment of ad valorem court fee depends upon the averments made in the plaint. The Court has to find out whether transaction is alleged to be void or voidable. It depends upon the averments made, in each case, in the plaint whether ad valorem court-fee is payable or not. The Court is to find out whether transaction is alleged to be void or voidable. In case of void document, it is not necessary to seek the relief of cancellation of the document. In

that case, plaintiff filed a suit for declaration of title and confirmation of possession. She had not claimed the relief for possession, so it was held that ad valorem court-fee was not required to be paid. The averments made in the plaint had indicated that the document in question was shown to be void not voidable, so ad valorem court-fee was not required. In case the document is voidable at the instance of executant, ad valorem court-fee is required to be paid but not in the case of void document. In such case, injunction which was prayed, flows from the relief of declaration.

13. Now in the light of aforesaid settled position by the Apex Court and Full Bench of this Court, the first question referred by the Division Bench may be examined. When the plaintiff makes an allegation that the instrument is void and hence not binding upon him, and if a declaration simplicitor is prayed then he is not required to pay ad valorem court fee and a fixed court-fee under Article 17, Schedule-II of the Court Fees Act will be payable. This position is well settled by the Apex Court in *Ningawwa* (Supra) and continued till the decision in *Sneh Gupta* (Supra). The void document which is not binding upon the plaintiff needs to be avoided and in this regard a declaration is sufficient. The Full Bench of this Court in *Santoshchandra* (supra) has clarified the position and we respectfully agree with the law laid down by the Full Bench in *Santoshchandra* (Supra).

14. In view of the aforesaid discussions, there is no doubt that if plaintiff makes an allegation that the instrument is void and hence not binding upon him then ad valorem court-fee is not payable and he can claim declaration simplicitor for which court-fee under Article 17(iii) of Schedule-II would be sufficient. The question No.1 is answered accordingly.

11. The Division Bench of this court also in the matter of *Manzoor Ahmed Vs. Jaggi Bai and others* reported in 2009(4) MPHT 347 has reiterated the same position in law.

12. This court again in the matter of *Ajay Pratap Singh and others Vs.*

Kuldeep Singh & others reported in 2013(2) MPLJ 602 in a case where the plaintiff had sought declaration of sale deed executed between some of the defendants in favour of other defendants as void and ineffective qua the plaintiff, where the plaintiff was not executant of the sale deed, has held that no advalorem court fee is payable. Thus, the position in law is clear that when the sale deed is challenged by the plaintiff in possession of the suit property as void and the plaintiff is not a party to the sale deed nor he is the representative-in-interest of the person bound by the sale deed then Section 7(iv)(c) of the Court Fees Act will not be attracted and plaintiff is not required to pay the advalorem court fee.

13. Learned counsel for respondent has placed reliance upon the Division Bench judgment of this court in the matter of *Smt. Israt Jahan Vs. Rajia Begum & others*, reported in AIR 2010 MP 36 but that was a case where the court had found that executant of the sale deed was competent to execute the sale deed and plaintiffs were bound by sale deed unless same is avoided. Thus the said judgment is distinguishable on its own facts.

14. In view of the above factual and legal position the impugned order passed by the trial court cannot be sustained and is hereby set aside by holding that petitioners are not liable to pay the advalorem court fee.

Writ petition is accordingly disposed of.

C.c. As per rules.

Petition disposed of.

I.L.R. [2016] M.P., 1074
WRIT PETITION
Before Mr. Justice A. M. Khanwilkar, Chief Justice &
Mr. Justice Sanjay Yadav
W.P. No. 4617/2015 (Jabalpur) decided on 23 September, 2015

PAWAN KUMAR AHLUWALIA ...Petitioner
Vs.
UNION OF INDIA & anr. ...Respondents

A. Mines & Minerals (Development & Regulation) Act, 1957 [Amendment Act (10 of 2015) w.e.f. 12.01.2015], Section 8A and Mineral Concession Rules, 1960, Rule 24A(1) - Application for renewal of

Mining lease and for removing curable defects **- Lease expired on 18.11.1998 - Application for renewal moved on 13.11.1997 was rejected on the ground that defect in the application was not cured - Revision filed before Tribunal, Ministry of Mines was also dismissed - In interregnum Mines and Minerals (Development & Regulation) amendment Act came into force w.e.f. 12/01/2015 - Amendment of Mines & Minerals (Development & Regulation) Act, 1957 - Section 8A of Amendment Act - Applicability of Rule 24A of Rules of 1960 - Extension of lease period by operation of Law - Held - No valid and subsisting lease was there when amended provisions came into force, so extension of lease period as per Section 8A or Rule 24A does not apply, so by virtue of amended provisions of 2015 Act, State Authority is bound to deal with the matter by way of public auction and cannot entertain application for renewal of lease - Petition dismissed. (Paras 23 to 27)**

क. खान और खनिज (विकास और विनियमन) अधिनियम, 1957 [संशोधन अधिनियम, (2015 का 10) दिनांक 12.01.2015 से प्रभावी], धारा 8ए एवं खनिज छूट नियम, 1960, नियम 24ए(1) – खनन पट्टे के नवीनीकरण एवं साध्य किये जा सकने वाले दोषों को दूर करने हेतु आवेदन पत्र – पट्टे की अवधि दिनांक 18.11.1998 को समाप्त – दिनांक 13.11.1997 को नवीनीकरण हेतु प्रस्तुत आवेदन पत्र इस आधार पर अस्वीकार किया गया कि आवेदन के दोष को सुधारा नहीं गया था – अधिकरण, खनन मंत्रालय के समक्ष प्रस्तुत पुनरीक्षण भी खारिज – इसी अवधि के दौरान दिनांक 12.01.2015 से प्रभावी खान एवं खनिज (विकास एवं विनियमन) संशोधन अधिनियम लागू हुआ – खान एवं खनिज (विकास एवं विनियमन) अधिनियम, 1957 में संशोधन – संशोधन अधिनियम की धारा 8ए – नियम 1960 के नियम 24ए की प्रयोज्यता – विधि के प्रवर्तन द्वारा पट्टे की अवधि का विस्तार – अभिनिर्धारित – जब संशोधित उपबंध प्रभावी हुए, तब कोई भी वैध पट्टा अस्तित्व में नहीं था, इसलिए धारा 8ए अथवा नियम 24ए के अनुसार पट्टे की अवधि में विस्तार प्रयोज्य नहीं होगा, अतएव अधिनियम 2015 के संशोधित उपबंधों के आधार पर राज्य प्राधिकारी प्रकरण में सार्वजनिक नीलामी द्वारा कार्यवाही करने हेतु बाध्य है तथा पट्टे के नवीनीकरण हेतु प्रस्तुत आवेदन ग्रहण नहीं किया जा सकता – याचिका खारिज।

B. Mineral Concession Rules, 1960, Rule 24A - Renewal of Mining Lease - Rule 26(3) **- Instead of notice for curing defects , notice issued u/s 12 - Effect - Held - No prejudice has been caused to the petitioner because of mis-description of the notice received by petitioner as the substance of the notice clearly disclosed the**

requirement of notice u/s 26(3). (Para 15)

ख. खनिज छूट नियम, 1960, नियम 24ए – खनन पट्टे का नवीनीकरण – नियम 26(3) – दोषों को दूर किये जाने हेतु नोटिस के स्थान पर धारा 12 के अंतर्गत नोटिस जारी किया गया – प्रभाव – अभिनिर्धारित – याची द्वारा प्राप्त किऐ गए नोटिस में मिथ्याविवरण के कारण उसे कोई हानि नहीं हुई है, क्योंकि नोटिस के सार में धारा 26(3) के अंतर्गत नोटिस की अपेक्षा स्पष्ट रूप से प्रकट की गई थी।

***C. Mineral Concession Rules, 1960, Rule 24A - Renewal of Mining Lease* - Lease expired on 18.11.1998 - Application for renewal of lease moved on 13.11.1997 - Renewal application pending till 09.04.2007 - Petitioner continued to enjoy minerals over 9 years without compensating the revenue in form of fair royalty amount - Held - In all pending renewal applications authorities must act with utmost dispatch and if any official shows inertia in deciding such applications in a time bound manner then Secretary, Mines & Minerals Department must proceed against him by way of departmental action including recovery of loss caused to the public exchequer. (Para 32)**

ग. खनिज छूट नियम, 1960, नियम 24ए – खनन पट्टे का नवीनीकरण – पट्टे की अवधि दिनांक 18.11.98 को समाप्त – पट्टे के नवीनीकरण हेतु आवेदन दिनांक 13.11.1997 को प्रस्तुत – नवीनीकरण आवेदन दिनांक 09.04.2007 तक लंबित रहा – याची द्वारा उचित स्वामित्व राशि के रूप में राजस्व का भुगतान किए बगैर नौ वर्ष से अधिक अवधि तक निरंतर खनिजों का उपभोग किया गया – अभिनिर्धारित – समस्त लंबित नवीनीकरण आवेदन पत्रों के मामले में प्राधिकारियों को परम तीव्रता से कार्य करना चाहिए एवं यदि कोई शासकीय सेवक ऐसे आवेदन पत्रों को समयावधि में विनिश्चित करने में निष्क्रियता दर्शाता है तब सचिव, खान एवं खनन विभाग को उसके विरुद्ध, राजकोष को पहुंचाई गई क्षति की वसूली सहित, विभागीय कार्यवाही करना चाहिए।

***D. Interpretation of Statute* - Grant of Renewal of mining lease is a fresh grant and must be consistent with law. (Para 22)**

घ. कानून का निर्वचन – खनन पट्टे का नवीनीकरण एक नवीन अनुदान है एवं यह विधि सम्मत होना चाहिए।

Cases referred :

AIR 2004 SC 4016, AP 2000 (1) ALD 388, (1977) 2 SCC 5.

Naman Nagrath with *Siddharth Singh,* for the petitioner.

Sandeep K. Shukla, on behalf of *J.K. Jain,* Assistant Solicitor General for the respondent No.1/Union of India.

A.A. Barnad, G.A. for the respondent No.2/State.

JUDGMENT

The Judgment of the Court was delivered by :

A.M. KHANWILKAR, C.J. :- This writ petition, filed under Article 226 of the Constitution of India, takes exception to the order dated 09.03.2011 (Annexure P-10) and dated 10.05.2007 (Annexure P-5). Further relief is claimed against the respondents to grant an opportunity to the petitioner to remove the curable defects and grant the renewal of mining lease.

2. Briefly stated, on 19.11.1989, an area of 7.59 hectares in village Lillory, District Satna (M.P.) was leased out by the respondent-State for limestone mining to one Arun Singh for a period of 10 years from 19.11.1989 to 18.11.1998. On 21.09.1993, the said lease was transferred in favour of this petitioner after taking permission from the Central Government, Ministry of Mines w.e.f. 21.09.1993, as per Rule 37 of the Mineral Concession Rules, 1960. Before expiry of the lease period (i.e. 18.11.1998), the petitioner applied for renewal of the said mining lease on 13.11.1997, within the stipulated time under Rule 24A(1) of the Mineral Concession Rules, 1960. According to the petitioner, he complied with all the necessary formalities. However, the petitioner was surprised to receive a communication (Annexure P-5) dated 10.05.2007, issued under the signature of Collector, District Satna. The said communication reads thus:-

"कार्यालय कलेक्टर (खनिज शाखा) जिला सतना म.प्र

क्रं. / खनिज / 2007 / 1047 सतना दिनॉक 10.05.2007

प्रति,

श्री पवन कुमार अहलूवालिया,

प्लाट न. बाधवगढ कालोनी,

सतना, (म.प्र.)

विषयः खनिपट्टा मौजा लिलौरी, रकबा 18.75 एकड खनिल चूनापत्थर अवधि 19.11.88 से 18.11.98 ।

संदर्भः म.प्र. शासन खनिज, साधन विभाग भोपाल का पत्र क्रं एफ3–21/107/12/1 दिनॉक 09.04.2007।

विषयांर्तगत खनिपट्टा में आपके द्वारा प्रस्तुत नवकरण आवेदन दि. 19.11.1997 संदर्भित आदेश द्वारा निरस्त कर दिया गया है। इस कारण अब खनिपट्टा क्षेत्र में खनन सक्रियाएं करने की पात्रता समाप्त हो चुकी है। अतः प्रकरण में निम्नानुसार कार्यवाही सुनिश्चित किया जावे–

1. यदि खनिपट्टा पर खनन कार्य किया जा रहा है तो तत्काल खदान पर कार्य करना बंद कर दे।

2. खनिपट्टा क्षेत्र का कब्जा संबधित खनि. निरीक्षक/ खनि सर्वेयर को एक सप्ताह के अंदर सौप देवें।

3. खनिपट्टा के लंबित कर निर्धारण अविलंब कराने हेतु अभिलेख संबधित खनि. निरीक्षक के समक्ष प्रस्तुत करें तथा तदनुसार यदि बकाया देयी हो तो जमा करें।

कलेक्टर
जिला– सतना(म.प्र.)
सतना दिनांक"

3. The petitioner thereafter approached the Tribunal, Ministry of Mines by way of Revision Petition No.16(43)/2007-RC-II. That revision petition was dismissed by the Tribunal vide order dated 09.03.2011 (Annexure P-10). Against this decision, the petitioner first carried the matter before the Delhi High Court by way of W.P. (Civil) No.2900/2011 which, however, was withdrawn on 07.01.2015 - in view of the Full Bench decision of that High Court. Pursuant to the liberty given by the Delhi High Court the petitioner has approached this Court to challenge the impugned orders, by filing the present writ petition on 22.03.2015. In the interregnum, however, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was introduced amending some of the relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

4. As aforesaid, the petitioner has called in question the letter issued by the Collector, Satna dated 10.05.2007 (Annexure P-5) and the order of the Tribunal dated 09.03.2011 (Annexure P-10).

5. Notably, the communication (Annexure P-5) dated 10.05.2007, issued under the signature of Collector, District Satna, refers to the order passed by the Under Secretary, Mines and Minerals Department, Government of M.P.

dated 09.04.2007 - rejecting the petitioner's application for renewal of mining lease. However, the order dated 09.04.2007 passed by the Appropriate Authority has not been challenged by the petitioner, as such.

6. Assuming that the argument of the petitioner that the said order dated 09.04.2007 has merged in the order passed by the Tribunal dated 09.03.2011 (Annexure P-10) is to be accepted, it may be useful to advert to the said order dated 09.04.2007 (Annexure P-4), which reads thus:-

"मध्यप्रदेश शासन
खनिज साधन विभाग
मंत्रालय
//आदेश//

भोपाल, दिनांक 09/04/07

कम्रांक–एफ–3–21/21/07/12/1 :: यह कि जिला सतना के विभिन्न ग्रामों में संलग्न सूची में उल्लेखित 19 आवेदकों द्वारा उनके नाम के समक्ष दर्शाये गये ग्राम/क्षेत्र एवं दिनांक को पूर्वक्षण अनुज्ञप्ति/खनिपट्टा स्वीकृत करने हेतु आवेदन पत्र प्रस्तुत किये गये है।

2. यह कि आवेदकों को आवेदन पत्रों की कमी की प्रतिपूर्ति करने के लिये सूचित करने के उपरांत भी आवेदन पत्र की प्रतिपूर्ति नहीं की गई और न ही कोई जवाब दिया गया। इससे स्पष्ट हुआ कि आवेदकों की आवेदन पत्रों के प्रति कोई रूचि नहीं है।

3. अतः राज्य शासन द्वारा पूर्ण विचारोपरांत पैरा–2 में उल्लेखित कारण से संलग्न सूची में उल्लेखित पूर्वेक्षण अनुज्ञप्ति/खनिपट्टा स्वीकृत करने संबधो 19 आवेदन पत्र इस शर्त के साथ निरस्त किये जाते है कि यदि संलग्न सूची में अंकित 19 आवेदनों में से कोई आवेदन पत्र पूर्व में किसी अन्य आदेश से निराकृत/निरस्त हो गये हो तो इन आवेदन पत्रों के संबंध में पूर्ववर्ती आदेश ही प्रभावशील होगा।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
(एस के शिवानी)
अवर सचिव,

म.प्र.शासन, खनिज साधन विभाग
भोपाल, दिनांक 9–4–07"

(emphasis supplied)

7. We may also usefully refer to the plea taken by the petitioner in the revision filed before the Tribunal against the aforesaid order. In the factual narration of the case, the petitioner stated thus:-

> "6. That, the State Govt. has again erred in passing the order. Reference is invited in para 2 of the said order which forms the basis of the order **"That the applicant has not shown interest".** It is noteworthy that the **applicant has filed the renewal application in time.**
>
> 7. That, the State Govt. of M.P. has passed the order in contravention of **Rule 26** (1) of **MCR 1960** which clearly states to pass an order not before giving an opportunity of being heard.
>
> **No such opportunity of being heard was given to the applicant which is against the basis principle of natural justice and principles of MMRD Act, 1957 and MCR 1960.**
>
> 8. That, the State Govt. of M.P. again **violated the provisions of Rule 26 (2) of MCR 1960 whereby it can't refuse the renewal on the ground that Form 1 is incomplete."**
>
> (emphasis supplied)

8. In the grounds for revision petition, the petitioner stated thus:-

> "B. For that the Ld. Authority below has grossly erred in not giving any opportunity of being heard to the petitioner before rejection of his application for renewal of the Ml. That it is submitted in this regard that if granted an opportunity to explain the reason for non-submitted in this regard that if granted an opportunity to explain the reason for non-submission of the documents in time the petitioner would have explained the same to the authority below.
>
> C. For that the Ld. Authority below has grossly erred in not complying with the provisions of the Rule 26 of the Mineral Concessions Rules, 1960 in not giving a reasonable opportunity

of being heard before rejecting his application for renewal of the ML. it is submitted in this regard that Rule 26 categorically prescribes that the State Govt. can exercise its power towards rejection of the renewal application, only after giving an opportunity of being heard to the applicant.

D. For the Ld. Authority below grossly erred in not appreciating that it was only a renewal application and as such most of the documents sought from the applicant has already been with the authority as filed at the time of grant of the Ml. That this gains significance from the provisions of sub rule (2) of Rule 26 which provides that a renewal application should not be rejected merely for want of non-submission of certain documents.

E. For that the Ld. Authority below grossly erred in not appreciating that non-submission of documents has never been prescribed as a reason towards rejection of a renewal application of the ML and that too without giving any reasonable opportunity of being heard. That if finds pertinence to mention here that the provisions of Sub Rule (3) of Rule 26 are directory in nature in that no consequences has been prescribed if the required documents are not submitted within the given period of 30 days. As such the State Govt. also responded to the renewal application of the petitioner, as filed in the year 1997, only in the year 2001 and, therefore, the Ld. Authority should have appreciated that the documents required from the petitioner being those which were to be obtained from the other Govt. agencies, it took some time for the petitioner to obtain the same, and thus, non-submission of the required documents within time should have been considered with leniency especially in view of the fact that the case of the petitioner has been that of renewal of the Ml and not that of fresh ML."

(emphasis supplied)

9. We may also refer to the relevant extract of the order of the Tribunal referring to the only contention raised on behalf of the petitioner and answered

by the Tribunal, which reads thus:-

> "4. The State Government in the comments dated 20.03.10 and 19.11.10 has reiterated its stand and stated that all the 19 applications including that of renewal of ML of Limestone of the Revisionist were rejected due to the reason that despite the notice the applicants did not complete/rectify their applications hence rejected. The application of the Revisionist has been rejected with the reasons mentioned in the impugned order. Thus the provisions of Rule 12 of MCR have been complied with. As per Andhra Cement Ltd. Government of AP 2000 (1) ALD 388 the Opportunity of being heard does not necessarily mean that an opportunity of oral hearing is to be provided. In the Revision application the revisionist has mentioned regarding the MOU executed with the TRIFAC on 16.02.08 but the impugned order was issued before that. In view of the above, the impugned order has been passed as per rules and the instant RA is liable to be rejected.
>
> 5. The case was heard for final argument on 23.11.10. Shri Manas Mahapatra Sr. Advocate along with other colleagues appeared on behalf of Revisionist Shri V.K.Austin, Jt. Director and Shri J.P. Shrivastava Asst.Geologist appeared on behalf of State Govt. Both reiterated their stand. The order was reserved.
>
> 6. The Revisionist only contention is that he has not been heard and notice is required under Rule 26 (1) of MCR and not under Rule 12 of MCR. I observe that Revisionist has accepted the basis issue of noncompletion of his application and also not rectified the deficiencies and also not responded to the notice of the State Govt. He is contending more on the technicalities of the notice and that he has not been orally heard. The fact that he has accepted the basic issue, the contention of non sending notice of hearing/non-hearing etc. has no basis and I thus agree with the contention of the State Govt. that the opportunity of hearing does not necessarily mean that oral hearing is necessarily required to be given in the circumstances stated above. I pass the following order.

ORDER

I do not find any infirmity in the impugned order dated 09.04.07 of the State Govt. Madhya Pradesh and reject the Revision Application."

(emphasis supplied)

10. The correctness of the aforesaid order is put in issue in the present writ petition. The petition has been resisted by the respondents on the basis of the findings recorded by the State Authority and considered by the Tribunal. Counsel for the respondents additionally submitted that no relief can be granted to the present petitioner in the light of the amended provisions initially introduced in the form of Ordinance on 12.01.2015; and subsequently because the Act made by the Parliament. In that, the request of the petitioner for renewal of the mining lease was duly considered and rejected by the State Government and as a result of which, there was no subsisting lease in favour of the petitioner when the amended provisions came into force. Further, assuming that the application for renewal of lease was to be considered if the petitioner were to succeed in this writ petition, being a case of renewal of lease, it will be a case of fresh grant in view of the observation of the Supreme Court in *M.C. Mehta vs. Union of India, reported*[1]. In para 76, the Court observed thus:-

"In *Rural Litigation and Entitlement Kendra v. State of U.P.* (1989 Supp (1) SCC 594), agreeing with views expressed in Ambica Quarry Workers, it was held that the FC Act applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of lessee's option, the requirement of the Act had to be satisfied before such renewal could be granted. In *State of M.P. and others v. Krishnadas Tikaram* (1995 Supp (1) SCC 587), these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is a fresh grant and must be consistent with law."

(emphasis supplied)

1. AIR 2004 SC 4016

Relying on these observations it is contended that, if it is a case of fresh grant, it cannot be entertained after coming into force of the amended Act as the Authorities are duty bound to conduct public auction in respect of the subject Mine. Hence, the request for renewal cannot be considered, in law. Even for this reason, the petition deserves to be dismissed.

11. Having considered the rival submissions, we may first analyse the reasons stated by the State Authority in rejecting the application for renewal filed by the petitioner dated 13.11.1997, vide order dated 09.04.2007. The principal reason for which the petitioner's application has been rejected is of having filed incomplete application and also for having failed to cure the defects inspite of opportunity given in that behalf and for not even responding to the said communication. On that finding the Authority assumed that the petitioner was not interested in pursuing the application as was the case of other applications, disposed of by the same order.

12. In the revision application filed by the petitioner before the Tribunal, although the petitioner specifically assailed the opinion of the State Authority that the applicant has not shown interest in pursuing the application; but has failed to question the correctness of the finding recorded in the order dated 09.04.2007 that : (1) application for renewal filed by the petitioner was incomplete; (2) inspite of giving opportunity, the petitioner did not cure the deficiencies in the application; (3) petitioner did not make any response to the communication sent to the petitioner for taking steps to cure the defects. What has, however, been asserted in the revision application, is, that no notice was served on the petitioner as per Rule 26 (1) of the Mineral Concession Rules, 1960 and the order passed by the State Government being violative of Rule 26 (2) of the same Rules.

13. During the consideration of the revision application, the only contention raised was that notice under Rule 26 (1) was not given to the petitioner. Instead notice under Rule 12 of the MCR Rules was given. After adverting to these facts, the Tribunal has then clearly recorded, in paragraph 6 of the order that, the petitioner has accepted the basic issue of non-completion of his application and also of having failed to rectify the deficiencies and also not responding to the notice of the State Government. In this backdrop, the Tribunal then proceeded to notice the decision of Andhra Pradesh High Court in the case of *Andhra Cement Ltd. Vs. State of A.P. and others*[2] and agreed with the

2. AP 2000 (1) ALD 388

State Government that opportunity of hearing does not necessarily mean that oral hearing must be given. Accordingly, the revision application has been dismissed.

14. In the first place, the petitioner has not challenged the order passed by the State Authority dated 09.04.2007. Secondly, the stated reasons recorded by the State Authority have not been specifically assailed in the revision or for that matter in the writ petition as filed. The factual foundation laid in paragraph 5 dealing with the facts of the case, nowhere deals with this aspect. The grounds urged in the writ petition are again relevant to other matters, but not specific to the reasons stated by the State Authority and dealt with by the Tribunal. The nearest ground of challenge of that factual aspect can be traced to ground No.6.8 which reads thus :-

> "6.8 For that, Rule 26 (3) makes it mandatory for the State to give a notice to the applicant for making good any short comings in the application and remove the defects accordingly. It is submitted that, in absence of such notice, the renewal cannot be rejected with has been done in the instant case by the State Government and further the same has been wrongly affirmed by the impugned order. Further Hon'ble Madras High Court, in *Gem Granites Pvt. Ltd. Vs. State of TamilNadu,* 2009 (5) CTC 422, has held that failure to afford opportunity to the applicant while refusing the renewal shall amount to violation of principles of nature justice."

Without successfully assailing the finding recorded by the State Authority in the order dated 09.04.2007 and noticed by the Tribunal, we fail to understand as to how the petitioner can succeed in pursuing the argument any further.

15. The challenge before the Revisional Authority in the context of non-compliance of Rule 26 (1) of the Rules, 1960 is an independent aspect which is not ascribable to the opportunity to be given under Rule 26 (3) of the same Rules. The petitioner can be justified in contending that being a case of application for renewal of mining lease, notice issued by the Authority under Rule 12 is of no consequence. The Authority, however, was obliged to give notice under Rule 26 (1) before refusing the request for renewal of mining lease made by the petitioner. The Tribunal has, however, discarded that argument on the finding that it is a technical argument. The Tribunal could

have negatived that plea on recording the finding that no prejudice has been caused to the petitioner because of the misdescription of the notice received by the petitioner - as the substance for the notice sent by the State Government clearly disclosed that it intended to proceed to decide the application for non-compliance of mandatory formalities inspite of giving opportunity in that behalf. Merely saying that the argument of the petitioner is an argument of technicalities was not enough; as atleast substantial compliance of Rule 26 (1) of giving opportunity of being heard before refusing to grant renewal, is indispensable. At best, the petitioner may succeed to that limited extent and can be relegated before the Tribunal for reconsideration of the revision application afresh on that matter.

16. However, we will have to answer the argument of the respondent/ State which is founded on the amended provisions of the Act of 1957, as amended in 2015. But, before that, we may usefully advert to the procedure regarding processing of application for renewal of mining lease. The relevant provisions before the amendment of 2015 and as applicable to the present case, when the application for renewal was filed by the petitioner and came to be rejected by the State Government on 09.04.2007, must be adverted to. Section 8 reads thus :-

> **"8. Periods for which mining leases may be granted or renewed.-**
>
> [[(1) The maximum period for which a mining lease may be granted shall not exceed thirty years:
>
> Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.]
>
> (2) . A mining lease may be renewed for [a period not exceeding twenty years].]
>
> [***]
>
> [(3) Notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorize the renewal of a mining lease in respect of minerals not specified in Part A and

Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government.]"

17. Notably, at the relevant time Section 8-A was not on the statute book. It has been introduced only by the Act 10 of 2015 w.e.f. 12.01.2015. We will advert to that provision a little later. The provision regarding renewal of mining lease can be then traced to the Mineral Concession Rules, 1960 as applicable at the relevant time. Rule 24-A as inserted by G.S.R. 86 (E), dated 10th February, 1987 and substituted by G.S.R. 56 (E), dated 17th January, 2000 and further amended by G.S.R. 21 (E), dated 11th January, 2002 reads thus :-

"[**24A. Renewal of mining lease.** – (1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

[(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.]

[(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government;]

[Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of a mining lease:

Provided further that in case a report is not received

from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.]

[***]

[(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.]

[***]]

[(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6) an application for the first renewal for a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may thing fit, allow extension of time for making of such application upto a total period not exceeding one year.]

[(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.]

[(10) The State Government may condone delay in an application for renewal of mining lease made after the time

limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease.]

(emphasis supplied)

Rule 26 as applicable "at the relevant time" reads thus :-

"26. Refusal of application for grant and renewal of mining lease:-

[(1)] [The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.]

[(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-rule 22.]

[(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than 1[thirty days] from the date of receipt of the said notice by the applicant.

2["(4) Notwithstanding anything contained in sub-rule(1) where an applicant for renewal of mining lease under rule 24A is convicted of illegal mining, and there are no interim orders of any court of law suspending the operation of the order of such conviction in appeals pending against such conviction in any court of law the State Government may after giving such applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to renew such mining lease"]"

18. By the amending Act 10 of 2015 not only Section 8 has been amended but also Section 8-A has been inserted. The amended Section 8 and newly inserted Section 8-A, read thus :-

> **"[8. Periods for which mining leases may be granted or renewed.-**
>
> (1) The provisions of this section shall apply to minerals specified in Part A of the First Schedule.
>
> (2) The maximum period for which a mining lease may be granted shall not exceed thirty years:
>
> Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.
>
> (3) A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.]
>
> **[8-A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.-** (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.
>
> (2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be granted for the period of fifty years.
>
> (3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.
>
> (4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.
>
> (5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where minerals is used for captive purpose, shall be extended and be

deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.]"

(emphasis supplied)

19. In the same Chapter III under title "Procedure For Obtaining Prospecting Licenses or Mining Leases in respect of Land In Which the Minerals Vest In The Government", Section 10 and newly introduced Section 10-A and Section 10-B provide as follows :-

> **"10. Application for prospecting licenses or mining leases.** – (1) An application for [a reconnaissance permit, prospecting license or a mining lease] in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.
>
> (2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgement of its receipt within the prescribed time and in the prescribed form.
>
> (3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the [permit, license or lease].
>
> **[10-A. Rights of existing concession holders and applicants.-** (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.
>
> (2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 :-
>
> (a) applications received under section 11-A of this Act;
>
> (b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the

case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

(c) Where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government.

10.B. Grant of mining lease in respect of notified minerals through auction. – (1) the provisions of this section shall not be applicable to cases covered by section 10-A or section 17-A or to minerals specified in Part A or Part B of the First Schedule or to land in respect of which the minerals do not vest in the Government.

(2) Where there is inadequate evidence to show the existence of mineral contents of any notified mineral in respect of any area, a State Government may, after obtaining the previous approval of the Central Government, grant a prospecting licence-cum-mining lease for the said notified mineral in such area in accordance with the procedure laid down in section 11.

(3) In areas where the existence of mineral contents of any notified mineral is established in the manner prescribed by the Central Government, the State Government shall notify such areas for grant of mining leases for such notified mineral, the terms and conditions subject to which such mining leases shall be granted, and any other relevant conditions, in such manner as may be prescribed by the Central Government.

(4) For the purpose of granting a mining lease in respect of any notified mineral in such notified area, the State Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who fulfils the eligibility conditions as specified in this Act.

(5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(6) Without prejudice to the generality of sub-section (5), the Central Government shall, if it is of the opinion that it is necessary and expedient to do so, prescribe terms and

conditions, procedure and bidding parameters in respect of categories of minerals, size and area of mineral deposits and a State or States, subject to which the auction shall be conducted:

Provided that the terms and conditions may include the reservation of any particular mine or mines for a particular end-use and subject to such condition which allow only such eligible end users to participate in the auction.

(7) The State Government shall grant a mining lease to an applicant selected in accordance with the procedure laid down in this section in respect of such notified mineral in any notified area."

(emphasis supplied)

20. Corresponding with the amendment to the provisions of the Act of 1957, even the Rules of 1960 have been amended. Rule 24-A and Rule 26 of the Rules as amended read thus :-

"[**24-A. Renewal of mining lease.-** [(1) An application for renewal of a mining lease shall be made to the State Government in Form J, at least twenty four months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf:

Provided that in cases where the mining lease is due to expire on or before the 7th January, 2017, the application for renewal shall be made at least twelve months before the date on which the lease is due to expire.]

[(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:]

[Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease:

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of renewal of mining lease.]

[***]

[(6) If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier:

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957).]

[***]

[(8) Notwithstanding anything contained in sub-rule (1)

and sub-rule (6), an application for the first renewal of a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.]

[(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon [or the date of expiry of the maximum period allowed for first renewal, whichever is earlier].]

[(10) The State Government may condone delay in an application for renewal of mining lease made after time limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease.]

26. Refusal of application for grant and renewal of mining lease:-

[(1)] [The State Government may, after giving an opportunity of being heard and] for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.]

[(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24-A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not

complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses *(d)*, *(e)*, *(f)*, *(g)* and *(h)* of clause *(i)* of sub-rule 22.]

[(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than [thirty days] from the date of receipt of the said notice by the applicant.]

[(4) Notwithstanding anything contained in sub-rule (1) where an applicant for renewal of mining lease under rule 24-A is convicted of illegal mining, and there are no interim orders of any Court of law suspending the operation of the order of such conviction in appeals pending against such conviction in any Court of law, the State Government may, after giving such applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to renew such mining lease.]"

21. The argument of the respondent/State, is that, by virtue of provisions of the amending Act of 2015, the State Authorities have no option but to grant mining lease only by way of public auction. Renewal of lease in respect of the subject mines and minerals is impermissible, as the lease was not a subsisting lease on the date of coming into force of the amending Act. The benefit of extended lease period by operation of law is only in respect of a valid and subsisting lease on the date of coming into force of the amended provisions. We find force in this submission.

22. On a bare reading of Section 8A, it is noticed that period of grant of mining lease and renewal has been specified. It is well settled position that grant of lease can be only a matter of contract or at best by operation of law. Regarding renewal of lease, the Supreme Court in the case of *M.C.Mehta* (supra) has held that it is well settled law that the grant of renewal is a fresh grant and must be consistent with law. So long as the State Government has not renewed the lease period, it cannot be a case of contractual rights and obligations.

23. Therefore, we may have to examine whether the provisions of Section 8-A can come to the aid of the petitioner. Admittedly, the lease in favour of the petitioner expired on 18.11.1998. No doubt the petitioner applied for renewal of lease period on 13.11.1997, within the specified time. That application, for some inexplicable reasons, was rejected by the State Government only on 09.04.2007. By virtue of the deeming provision applicable at the relevant time - as per Rule 24-A of Rules, 1960, the lease period stood extended by further period till the State Government passed an order on the application, i.e. on 09.04.2007. No doubt the petitioner challenged that order first before the Tribunal and thereafter by way of writ petition before the Delhi High Court, which writ petition was lateron withdrawn on 07.01.2015. It is, however, not possible to countenance the argument of the petitioner that during the pendency of the said writ petition, being proceedings in continuation of the order passed by the State Government on the application for renewal filed by the petitioner, the lease period would automatically get extended by operation of law. Inasmuch as - be it sub-Rule (6) or (9) of Rule 24-A, as applicable at the relevant time - the deeming provision elongates the lease period only for a further period "till the State Government passes an order" on the renewal application (which in the present case is 09.04.2007) and not thereafter.

24. Thus, on the date when the amending Act came into force – firstly – by Ordinance on 12.01.2015, the renewal application was not pending but already stood rejected by the State Government on 09.04.2007. In our opinion, no proceeding, in fact, was pending with reference to the said order (09.04.2007) on 12.01.2015. For, the petitioner had already withdrawn the writ petition from the Delhi High Court on 07.01.2015 and presented this writ petition only on 22.03.2015. Liberty granted by the Delhi High Court to the petitioner to file this petition before this Court will be of no avail to the petitioner. As a result, by virtue of the amended provisions of 2015, the State Authority would be bound to deal with the subject mine only by way of public auction and cannot entertain application for renewal of lease.

25. Reverting to Section 8-A of the Amending Act, it is noticed that the period of lease is extended by operation of law, in respect of specified leases and not apply to leases in respect of which application for renewal is already rejected or the lease is determined or lapsed. That position has been made amply clear by sub-Section (9) of Section 8-A of the provisions inserted by

way of amendment. Sub-Section (9) contains non-obstante clause and it envisages that all provisions in the preceding clauses of that Section have been made inapplicable to cases covered by sub-Section (9).

26. The facts of the present case persuade us to hold that it would not only be a case of rejection of renewal application vide order dated 09.04.2007; but also of lapsing of the lease period on that date, which was extended till that date, by virtue of the deeming provision applicable at the relevant time. As noted hitherto, the benefit of extended period or renewal of lease by operation of law in respect of specified mines and minerals is made applicable only to valid and subsisting leases as on the date of coming into force of the amendment on 12.01.2015. Taking any other view would mean that the amended provisions will have to be given retrospective effect and more so sub- Section (9) of Section 8-A will become otiose.

27. If the lease period has already lapsed before coming into force of the amendment Act, by virtue of amendment such lease would not get renewed or extended. Similarly, if the lease has been determined before coming into force of the amendment Act, the other provisions of amendment Act (Section 8-A in particular) will have no application, muchless to resurrect the lapsed lease. Same logic would apply to renewal applications which have been rejected by the State Government before 12.01.2015. Relying on the first proviso to sub clause (6) of Rule 24-A of the amended Rules, it was contended by the counsel for the petitioner that the provisions of amended Section 8-A extending the lease period in the case such as the present one will be attracted. The purport of the first proviso to clause (6) of Rule 24-A reinforces the position expounded by us that extension of lease period by operation of law (amended provisions) will be only in respect of valid and subsisting lease as on the date when the amended provisions came into force. Further, the first proviso to clause (6) of Rule 24-A must be construed as complementary or subservient to sub-Section (9) of Section 8-A.

28. The question as to whether the decision of the State Government would come into effect on attaining finality of the revision application or writ petition, as the case may be, need not be examined in the fact situation of the present case. Inasmuch as, on the date when the amending Act came into force w.e.f. 12.01.2015, neither any renewal application made by the petitioner was pending nor any revision or writ petition challenging the order passed on renewal application by the State Government was pending. In that, the petitioner had

already withdrawn the writ petition on 07.01.2015 from the Delhi High Court. The fact that liberty was given to the petitioner by the Delhi High Court to file the present writ petition does not mean any proceedings were pending in relation to the rejection order dated 09.04.2007, on 12.01.2015. Taking any other view would be virtually rewriting Section 8-A and sub-Section (9) thereof, in particular.

29. Taking any view of the matter, therefore, we are of the considered opinion, that no fruitful purpose would be served by relegating the petitioner before the Tribunal for recording a specific finding on the contention about no service of notice under Rule 26 (1) of Rules of 1960 as applicable at the relevant time or about the substantial compliances thereof.

30. Counsel for the petitioner had relied on the decision of the Supreme Court in the case of *Krishna Kumar Mediratta Vs. Phulchand Agarwala and others*[3] in support of the argument that non-curing of defect regarding deficit Court Fees accompanying the application does not render the application void and is a curable defect. In the first place, the reason recorded by the State Authority for rejecting the renewal application is not specific to non-payment of fees or deficit fees accompanying the renewal application; but is generally about the filing of defective or incomplete application and also of not taking steps to cure the defects inspite of opportunity given in that behalf. In any case, for the reasons already noted, no relief can be granted to this petitioner.

31. Learned counsel for the petitioner had also relied on the unreported order of the Division Bench of this Court passed in Writ Petition No.4909/2012 dated 22.06.2015. However, that decision is in respect of non-supplying of material documents to the petitioner which was the basis to form opinion by the Competent Authority. The observations made in the said decision may have to be understood in the context of the fact situation of that case and the finding recorded about non-observance of principles of natural justice. The issues answered in the present case have not been dealt with or considered in that decision.

32. While parting, we may invite attention of the Secretary, Mines and Minerals Department, Government of Madhya Pradesh to the fall out of not

---

3. (1977) 2 SCC 5

having decided the renewal application expeditiously. In the present case, the lease period had expired on 18.11.1998 but the petitioner continued to enjoy the minerals by virtue of deeming provision because of the pendency of the renewal application till 09.04.2007, which is almost over 9 years, without compensating the revenue of fair royalty amount. If this is the trend in respect of all the renewal applications, that should certainly be a matter of concern for the Department. For, it would inevitably result in loss of and burden on the State exchequer. The Secretary of the Department must, therefore, take corrective measures in the event any renewal applications filed prior to the coming into force of the amended provisions are still pending for decision; and more particularly in cases where no renewal request can be entertained, in law. The Authorities must act with utmost dispatch in all such matters. If the Secretary of the Department finds that any particular official or set of officials have shown inertia in deciding such applications in a time bound manner, must proceed against him/them by way of departmental action and take the same to its logical end including for recovery of the loss caused to the public exchequer from all concerned responsible for the situation. Copy of this decision be brought to the notice of the Secretary, Mines and Minerals Department, Government of Madhya Pradesh, forthwith. The Registry may additionally forward copy of the decision to the Secretary by e-mail, for information and necessary action.

33. For the reasons already recorded, we decline to entertain this petition and the same is, therefore, dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 1102
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice Sanjay Yadav
W.P. No.15498/2015 (Jabalpur) decided on 30 September, 2015

GYANJEET SEWA MISSION TRUST ...Petitioner
Vs.
UNION OF INDIA & ors. ... Respondents

A. ***Medical Council Act (102 of 1956), Section 10-A - Disapproving the scheme for establishment of a new Medical College -*** **Application for the permission was made by the petitioner to the Central**

Government on 26.08.2014 - Medical Council of India communicated its negative recommendation dated 24.08.2015 - No notice issued to petitioner in compliance of statutory requirement in Section 10-A(3) & (4) - Order passed by the Central Government dated 11.09.2015 is set aside - Central Government is directed to decide proposal afresh by giving opportunity of hearing to petitioner. (Paras 4, 5 & 8-10)

क. आयुर्विज्ञान परिषद् अधिनियम (1956 का 102), धारा 10–ए – नवीन चिकित्सा महाविद्यालय की स्थापना हेतु योजना का अननुमोदन – अनुमति हेतु याची द्वारा केन्द्र सरकार को आवेदन पत्र दि. 26.08.2014 को दिया गया – भारतीय चिकित्सा परिषद ने अपनी नकारात्मक अनुशंसा दि. 24.08.2015 संसूचित की – धारा 10-ए(3) एवं (4) की कानूनी अपेक्षा के पालन में याची को कोई नोटिस जारी नहीं – केन्द्र सरकार द्वारा पारित आदेश दि. 11.09.2015 अपास्त – केन्द्र सरकार को याची को सुनवाई का अवसर प्रदान करते हुए प्रस्ताव को नए सिरे से विनिश्चित करने हेतु निर्देशित किया गया।

***B. New Medical College* - Central Government is the final authority and the Medical Council of India is only a recommending Authority. (Para 7)**

ख. नवीन चिकित्सा महाविद्यालय – केन्द्र सरकार अंतिम प्राधिकारी है एवं भारतीय चिकित्सा परिषद एक अनुशंसा करने वाली प्राधिकारी मात्र है।

Cases referred :

(2004) 6 SCC 76, (2004) 9 SCC 676, W.P. No. 5481/2015 decided on 07.07.2015, SLP (Civil) No. 22599/2015 decided on 17.08.2015, Civil Appeal No. 7953/2015 order dated 24.09.2015 (SC), Civil Appeal No. 7954/2015 decided on 24.09.2015 (SC).

Amalpushp Shroti, for the petitioner.
Vikram Singh, for the Union of India.
Rajas Pohankar, for the Medical Council of India.
P.K. Kaurav, Dy. A.G. for the respondents/State.

ORDER

The Order of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- Heard counsel for the parties.

As short question is involved and because of urgency, we take up this matter for final disposal forthwith. Counsel for the respondents have no

objection in that behalf. They have waived notice for final disposal and also consented for immediate final disposal of the matter in view of the urgency.

2. The writ petition takes exception to the order passed by the Under Secretary to the Government of India, Ministry of Health and Family Welfare dated 11.09.2015 as also the order passed by the Medical Council of India dated 24.08.2015 Annexure P-11 and P-12 respectively.

3. This is second round of writ petition by this petitioner. On the earlier occasion, the petitioner had to challenge the decision of the appropriate Authority, which challenge was upheld on the finding that principles of natural justice were not observed by the appropriate Authority whilst deciding the matter in issue, vide judgment dated 01.07.2015 in W.P. No.7915/2015. That decision has been upheld by the Supreme Court with the dismissal of SLP (Civil) No.18125/2015 on 18.08.2015, filed by the Medical Council of India. After dismissal of the Special Leave Petition, the Medical Council of India acted upon the directions given by this Court and caused to conduct inspection of the institution on 20th and 21st of August, 2015. It, however, once again submitted a negative recommendation to the Central Government on 24.08.2015 (Annexure P-12). The Central Government after receipt of the said recommendation proceeded to pass order on 11.09.2015 (Annexure P-11), disapproving the scheme submitted by the petitioner for establishment of a new Medical College at Jabalpur in the State of Madhya Pradesh.

4. The grievance of the petitioner, on this occasion, is no different. On this occasion also, the challenge to the orders passed by the two Authorities is on the argument that the Authorities proceeded with the matter in utter disregard of the statutory obligation and, more so, the observations of this Court in the decision dated 01.07.2015. In that, no notice whatsoever was given by the Medical Council of India before submitting a negative report against the petitioner institution mentioning about the deficiencies, vide recommendation dated 24.08.2015. Similarly, the Central Government before passing the order dated 11.09.2015 did not issue notice to the petitioner. In other words, the decision is vitiated not only on account of breach of principles of natural justice, but non-compliance of statutory requirement in Section 10-A(3) and (4) of the Indian Medical Council Act, 1956.

5. The fact so asserted is indisputable. The impugned order passed by the Medical Council of India as also by the Central Government makes no

reference to having issued any notice to the petitioner before passing the same.

6. The learned counsel for the Central Government as well as the Medical Council of India, in all fairness, accept that no notice was given to the petitioner. On this count alone, both the orders deserve to be set aside and the petitioner deserve to be relegated before the Medical Council of India for being afforded opportunity of being heard before submitting negative recommendation to the Central Government. However, that may delay the entire process of consideration of the proposal, which may eventually end up in not starting the College in this academic year. Resultantly, denying 150 medical seats to the students community, in particular, in the State of Madhya Pradesh, if the permission was to be legitimately granted to the petitioner – institution in that behalf.

7. Since the Central Government is the final Authority and the Medical Council of India is only a recommending Authority, we deem it appropriate to relegate the petitioner before the Central Government for deciding all the issues as may be relevant for consideration of proposal regarding scheme for establishment of a new Medical College at Jabalpur submitted by the petitioner.

8. We have no manner of doubt that the Central Government will keep in mind that the petitioner claims that it has provided all the statutory and requisite facilities and is geared up to commence the College in this academic year (2015-2016) itself, if permission is accorded. The application for that permission was made by the petitioner to the Central Government on 26.08.2014, much before the cut off date. However, because of the inappropriate processing of the proposal, the delay has occasioned. The delay is in no way attributable to the petitioner, which fact can be discerned from the reasons recorded in the order dated 01.07.2015 passed in W.P. No.7915/2015; as also the present situation arising on account of not giving notice to the petitioner before passing the final order by the Central Government – notwithstanding the statutory requirement in that behalf and clear direction issued by the Court in the earlier round of writ petition.

9. Accordingly, we direct the Central Government to reconsider the proposal submitted by the petitioner for establishing a new Medical College at Jabalpur and take final decision thereon on or before 8th October, 2015. We are specifying this date as the admission process to all the Private Medical Colleges in the State of Madhya Pradesh will commence only after the

declaration of results of the common online examination to be conducted by APDMC on or around 8th October, 2015 and to complete the admission process before 14th October, 2015, as observed in the order dated 28.09.2015 passed in W.P. No.8810/2015 (PIL) and companion cases. The question: whether the admission process can be permitted after 30.09.2015, will be finally answered in the said proceedings. For the time being, however, we place on record the submission made by the counsel for the writ petitioner that in the case of *RKDF Medical College Hospital and Research Center,* the Supreme Court has already extended the cut off date for consideration of the proposal for renewal of permission by 10 days in terms of order dated 22.09.2015 passed in SLP (Civil) No.19513/2015.

10. Be that as it may, for the reasons reordered hitherto, we quash and set aside the order passed by the Central Government dated 11.09.2015 (Annexure P-11) and direct the Central Government to decide the proposal afresh on or before 8th October, 2015 by giving fair opportunity to the petitioner. The requirement of notice in terms of Section 10-A(4) is dispensed with, with the consent of the petitioner given through the counsel appearing before this Court. The petitioner assures to file its response/explanation before the Central Government on or before 3rd October, 2015. The petitioner will be free to raise all contentions, as may be permissible in law and including in the context of the deficiencies noted in the recommendation of the Medical Council of India dated 24.08.2015 (Annexure P-12). The respondent No.1 shall deal with those matters point-wise and give a reasoned decision in the event, the same is adverse to the petitioner – so that the petitioner can avail of further remedy, as may be permissible in law. It will be open to the petitioner to present the response/explanation in the office of the respondent no.1 at 11:00 A.M. on 3rd October, 2015, on which date and time, the respondent No.1 – the Secretary of the Department shall make himself available for affording hearing and conclude the hearing on the same day or on the following day and ensure that final decision is taken before 8th October, 2015; and communicated to the petitioner by e-mail/fax on the same day. The respondent No.1 shall continue with the hearing irrespective of office non-working day, in view of the urgency and the exceptional situation attributable to the lapse of the respondent no.1 in not giving prior notice to the petitioner before disapproving the scheme.

11. If the decision is in favour of the petitioner, it will be open to the petitioner to apply to APDMC/State of Madhya Pradesh to provide sufficient

number of students for admission to the 1st year MBBS Course in the petitioner- College.

12. For the nature of order that we have passed, it is not necessary to dilate on the other factual matrix and contentions. For which reason, we have not highlighted the same in this order.

13. After this order is dictated, now the counsel for the petitioner submits that the other points raised by him must also be dealt with. According to him, the petitioner should be permitted to commence provisional admission process as has been done in the case of Shri Astha Foundation For Education Society vs. Government of India and others in W.P. No.6447/2015, by the Bench at Indore. We have perused the order dated 28.09.2015 passed by the Division Bench at Indore in the said writ petition. That is an interim order. In the present case, we have decided to finally dispose of the writ petition. For which reason, the question of considering the request for permitting the petitioner to proceed with the provisional admission, does not arise. Further, we are doubtful about the correctness of the said approach. For, there is no express provision in the Regulations, at least brought to our notice by the counsel for the petitioner, empowering the Authorities to allow the College such as the petitioner (without grant of recognition) to admit students on provisional basis. Notably, the present case is not one of renewal permission, but "grant of fresh permission" to start a new medical college. Suffice it to observe, that since the petitioner has already succeeded on the other contention, we do not wish to dwell on this contention any further. Counsel for the respondents have justly relied on the decisions in the case of *Medical Council of India vs. Rajiv Gandhi University of Health Sciences and others,* (2004) 6 SCC 76 and *Dental Council of India vs. S.R.M. Institute of Science & Technology and another*, (2004) 9 SCC 676 that such interim orders should be eschewed. For the reasons already recorded, we need not dilate on these decisions any further.

14. Our attention was also invited to the decision of the Bombay High Court, in the case of *Sau. Mathurabai Bhausaheb Thorat Sevabhavi Trust vs. Union of India and others* in W.P. No.5481/2015 dated July 7th, 2015. No doubt, the Bombay High Court by a detailed judgment passed interim directions during the pendency of the writ petition and the Supreme Court declined to interfere with that order by dismissing SLP (Civil) No.22599/2015 on 17.08.2015. However, that was because the matter before the Bombay High Court was due for final hearing very shortly on 25th August, 2015. Thus,

neither the order of the Supreme Court, pointed out to us in that case nor that of the Bombay High Court, can be cited as a binding precedent on the question that we are called upon to answer. Besides this reason, we may further note that the case before the Bombay High Court was relating to proposal for "renewal permission" and not for grant of fresh permission, as in this case.

15. Counsel for the petitioner then persuaded us to take a view that instead of relegating the petitioner before the Central Government, the entire matter should be decided by this Court itself. For that, reliance has been placed on a recent unreported operative order passed by the Supreme Court dated September 24, 2015 in Civil Appeal No.7953/2015 in the case of *Rajiv Memorial Academic Welfare Society and another vs. Union of India and another.* That order reads thus:-

> "By a detailed order passed today we have allowed the appeal arising out of SLP(C) No. 25946/2015 and dismissed the appeal arising out of SLP(c) No. 26834/2015. The directions which are given in the Judgment read as under:
>
> "We are satisfied that in the aforesaid circumstances there was no need to direct conducting of re-inspection by the Medical Council of India and for the Academic Year 2015- 2016 direction could have been given by the High Court for grant of permission once the order of the Central Government was found to be contrary to law.
>
> The offshoot of the aforesaid discussion would be to allow the appeal filed by the Appellant/Society and dismiss the appeal of the Medical Council of India. The Government of India is directed to pass appropriate orders granting permission to the appellant/Society in respect of the college in question for the Academic Year 2015-2016 within a period of two days, having regard to the fact that the last date for conducting the admissions is 30th September, 2015. The College is also permitted to admit the students in accordance with law."
>
> Since the typing of the judgment containing directions therein and signing may take a couple of days, the aforesaid portion of the order should be out today and parties would be

given copy thereof so that the necessary directions be complied with by the authorities/parties concerned."

We fail to understand, as to how this order will be of any avail to the petitioner. The reasons for which this order has been passed, has not been placed before us. We were told that the reasons are still not available on the official Website of the Supreme Court. In our opinion, this order cannot be the basis to accept the argument of the petitioner that the Court itself should decide all the issues noted by the Medical Council of India pertaining to the known deficiencies, on its merits in exercise of writ jurisdiction. In any case, we are not inclined to do so in absence of any binding precedent pointed out to us that the discretion to be exercised by the appropriate Authority, in respect of matters relevant therefor, must be considered for the first time by the High Court itself. Once the Central Government passes a reasoned order, after giving opportunity to the petitioner, the situation may be different. In that case the Court will have the assistance of those reasons and the correctness whereof can be tested and if found to be untenable the Court will be in a position to mould the reliefs prayed by the writ petitioner to do substantial justice.

16. The challenge of the present petitioner, therefore, will have to be limited to the factum of not giving opportunity of hearing before the final decision was taken by the Central Government. That grievance will have to be redressed first; and after giving opportunity if the Central Government was to negative the claim of the petitioner by a reasoned order; in that eventuality, probably, it may be possible to invoke the principle expounded by the Supreme Court in the case of *Rajiv Memorial Academic Welfare Society and Another vs. Union of India and Another* in Civil Appeal No.7954/2015 dated 24.09.2015, if applicable to the facts of this case.

17. Besides this, no other contention has been raised which need to be dealt with in this order. In view of the urgency, we have tried to be very brief in our reasoning so that the Authority should get sufficient time to deal with all the issues that will be raised by the petitioner while considering the proposal regarding establishment of a new Medical College at Jabalpur.

18. The petition is **disposed of** on above terms with no order as to costs.

C.C. as per rules.

Petition disposed of.

I.L.R. [2016] M.P., 1110
WRIT PETITION
Before Mr. Justice R.S. Jha
W.P. No. 6328/2015 (Jabalpur) decided on 26 November, 2015

PINKI YADAV (SMT.) ...Petitioner
Vs.
STATE OF M.P. ...Respondent

***Service Law - Compassionate appointment - Policy* - It is the policy prevalent on the date of consideration of the application which is relevant and the subsequent amendment or modification therein would not effect the validity of such consideration - Petition dismissed.**
(Paras 8 & 9)

सेवा विधि – अनुकंपा नियुक्ति – नीति – आवेदन पत्र पर विचार किये जाने की दिनांक को प्रचलित नीति ही सुसंगत है एवं उसमें पश्चातवर्ती संशोधन अथवा परिवर्तन ऐसे विचारण की वैधता को प्रभावित नहीं करेगा – याचिका खारिज।

Case referred :

2010 (3) MPLJ 213.

L.C. Chourasia, for the petitioner.

(Supplied: Paragraph numbers)

ORDER

R.S. JHA, J. :- The petitioner has filed this petition being aggrieved by order dated 4.3.2015 passed by the Collector, Chhatarpur, seeking compassionate appointment on account of the death of her mother who died while in service on 24.11.2012 on the post of L.H.V at Public Health Centre, Nowgaon, District Chhattarpur.

2. The petitioner applied for compassionate appointment on 22.2.2013, however, her application for compassionate appointment was rejected by the authorities by order dated 5.2.2014 as is evident from a perusal of Annexure P-5. Subsequently, the petitioner again applied for reconsideration of her case in view of the new policy for compassionate appointment notified by the State Government on 29.9.2014 stating that in view of the changed criteria in para 4.1 of the policy, the disqualification for appointment on compassionate

appointment is incurred only when any member of the family is in regular service of the State, Corporation, Board, etc. It was submitted that as the petitioner's brother was working as a contractual Assistant Draftsman in the MANREGA, therefore, the disqualification that was prescribed in para 4.4 of the policy dated 18.8.2008 would not apply to the petitioner in view of the amended criteria prescribed in para 4.1 of the new policy notified on 29.9.2014. It is stated that inspite of the relaxation of the criteria in para 4.1 of the new policy, the respondent authorities have again considered and rejected the petitioner's claim for compassionate appointment by the impugned order dated 4.3.2015.

3. The learned counsel for the petitioner submits that as the petitioner's brother is working on contractual basis, the petitioner's case for compassionate appointment is liable to be reconsidered and allowed in view of the amended criteria prescribed in the new policy dated 29.9.2014 and the stand of the respondents in the return being contrary to the said Clause 4.1 of the policy, deserves to be rejected.

4. Having heard the learned counsel for the petitioner it is observed that the petitioner's case for compassionate appointment was considered and rejected by the authorities on 5.2.2014, Annexure P-5, in accordance with clause 4.1 of the old policy dated 18.8.2008 as it existed on that date as her brother was in contractual service.

5. The documents on record indicate that the new policy for compassionate appointment was notified on 29.9.2014 in which Clause 4.1 has been modified and it has been provided that a person seeking compassionate appointment would be disqualified for consideration only in cases where a member of the family is in regular service, however this Clause has come into existence after the petitioner's case had already been considered and rejected on 5.2.2014.

6. A perusal of Clause 12.2 of the policy dated 29.9.2014 is very specific and clear in this regard and provides that cases for compassionate appointment which had already been considered and rejected under the old policy shall not be reconsidered or reopened pursuant to the notification of the new policy.

7. In the circumstances, in view of clause 12.2 of the policy dated 29.9.2014, I am of the considered opinion that the respondent authorities have rightly rejected the claim of the petitioner stating that her claim cannot

be reconsidered having been rejected under the old policy of 2008.

8. Quite apart from the above, the Full Bench of this Court in the case of *Bank of Maharashtra & Another vs. Manoj Kumar Deharia and Another,* 2010 (3) MPLJ 213, has already held that in cases of compassionate appointment it is the policy prevalent on the date of consideration of the application which is relevant and the subsequent amendment or modification therein would not effect the validity of such consideration.

9. In view of the aforesaid facts and circumstances, I do not find any merit in the petition which is, accordingly, dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 1112
ELECTION PETITION
Before Mr. Justice Alok Verma
Election Pet. No. 23/2014 (Indore) order passed on 20 October, 2015

BALMUKUND SINGH GAUTAM ... Petitioner
Vs.
SMT. NEENA VIKRAM VERMA ...Respondent

Representation of the People Act (43 of 1951), Sections 98, 99(1)(a)(II) **- At what stage of trial, notices are to be issued to person who have been proved at the trial guilty of any corrupt practice and who are to be named u/s 99(1)(a)(II) of the Act - Notices are to be issued during trial and not at conclusion of trial - When a witness is examined, who deposed against a particular person involving him in commission of corrupt practice then the person should be given an opportunity to cross examine the witness - After closing of evidence of petitioner and respondent, persons called by the notices should be given an opportunity to adduce their evidence in defence and finally while passing final order u/s 98 of the Act, they should be named u/s 99 of the Act.** **(Paras 2 & 7)**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराऐं 98, 99(1)(ए)(II)– विचारण के किस प्रक्रम पर ऐसे व्यक्तियों को नोटिस जारी किया जाना चाहिए, जिन्हें विचारण में किसी भ्रष्ट आचरण का दोषी सिद्ध किया गया है एवं जिन्हें अधिनियम की धारा 99(1)(ए)(II) के अंतर्गत नामित किया जाना है – नोटिस विचारण के दौरान जारी किये जाने चाहिये न कि विचारण की समाप्ति पर – जब

किसी ऐसे साक्षी का परीक्षण किया जाता है, जिसने किसी व्यक्ति विशेष के विरुद्ध भ्रष्ट आचरण के कृत्य में संलिप्त होने बावत् गवाही दी है, तब उस व्यक्ति को ऐसे साक्षी का प्रतिपरीक्षण करने का अवसर दिया जाना चाहिए – याची एवं प्रत्यर्थी की साक्ष्य समाप्त होने के पश्चात नोटिस द्वारा बुलाए गए व्यक्तियों को बचाव में अपनी साक्ष्य प्रस्तुत करने हेतु एक अवसर प्रदान किया जाना चाहिए एवं अंततः, अधिनियम की धारा 98 के अंतर्गत अंतिम आदेश पारित करते समय उन्हें अधिनियम की धारा 99 के अंतर्गत नामित किया जाना चाहिए।

Cases referred :

1970 MPLJ 872, AIR 1996 SC 796, AIR 1996 SC 826,

A.M. Mathur with *Abhinav Dhanodkar*, for the petitioner.
C.L. Yadav with *O.P. Solanki*, for the respondent.

ORDER

ALOK VERMA, J. :- A question was raised before both the Counsels by this Court and their respective views were sought on the following question:-

2. "At what stage of trial, notices are to be issued to the persons, who have been proved at the trial guilty of any corrupt practice and who are to be named under section 99 (1) (a) (II) of the Representation of People Act, 1951".

3. Learned Senior Counsel appearing for the petitioner referred judgment of Hon'ble the Supreme Court in the case of *Dwarka Prasad Mishra Vs. Kamal Narayan Sharma and another* reported in 1970 MPLJ 872. In this case, for Shyamacharan Shukla, who was then printer, proprietor, publisher and keeper of the Mahakoshal Press, a Hindi daily was sought to be named under section 99 of the Representation of the People Act (hereinafter referred to as the 'Act'). Hon'ble the Supreme Court made following observations in paragraphs 36 to 38 of the judgment:-

> 36. It is however necessary, before we finally decide this appeal, to deal with the application which is made by the respondents who were on their own application impleaded in this appeal Mr. Chagla counsel for those respondents contends that the Court was bound to name Shyamacharan Shukla, printer, publisher, proprietor and keeper of Mahakoshal Press-a Hindi daily-under section 99 of the Representation of the People

Act, 1951. Section 99 (1) of the Act, as it then stood, provided:

(1) At the time of making an order under section 98 the Tribunal shall also make an order--

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording--

(i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any,who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b).....

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause,(ii)of clause (a) unless-

(a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard."

The High Court recorded in paragraph 199 (4) & (5) of their judgment their conclusion as follows :

"(4) It is proved that the Mahakoshal a Hindi daily, published from Raipur, and Shyamacharan Shukla, who was its proprietor, publisher, printer and keeper of the Press, were both agents of the respondent within the meaning of section 123 of the Act.

(5) It is proved that three false statements (Annexures 1, 11, 111) were published in the Mahakoshal, issues of the 12th and 26th April and 4th May, 1963, in relation to-the personal character and conduct of the petitioner; that all the three were false; and that the respondent did not believe any of them to be true. It is held that they were statements of the fact and that they were reasonably calculated to prejudice the election prospects of the petitioner.

At the hearing an application was made before the High Court that a proceeding should be drawn up under S. 99 of the Act against Shyamacharan, Shukla and a notice should be issued to him why he should not be named as having committed corrupt practice under s. 123 (4) of the Act. The High Court observed that the three statements (Annexures I, II & III) were published in the Mahakoshal of which Shyamacharan Shukla was the proprietor, publisher, printer and keeper. The High Court further observed that Shyamacharan Shukla was the agent of Mishra within the meaning of section 123 (4) but Shyamacharan Shukla was not and could not be made a party to the election petition. But the High Court was of the view that when the appeal was placed for hearing in April 1968, Mishra had raised certain preliminary objections and Sharma had also urged those preliminary contentions all of which were decided by the order dated May 4, 1968, and it was the, duty of Sharma on that occasion to satisfy the High Court, prima facie, that Shyamacharan Shukla had committed a corrupt practice under S. 123 (4) of the Act so that notice could be issued to him 'and opportunity to which he was entitled under section 99 of the Act may have been made available to him. But that was not done and in the opinion of the Court for avoiding further delay the application should be rejected.

37. We are unable to agree with the view so propounded by the High Court. Under section 99 of the Act the Court has no discretion in the matter, if the Court was of the view that any person who is proved at the trial to have been guilty of any

corrupt practice, not to name that person. It is true that preliminary objections were argued at an earlier stage, but Sharma could not before the appeal was heard ask the Court to issue a notice under section 99 of the Act on the footing that his case which was rejected by the Tribunal will be accepted. The duty under the Act is cast upon the Court or the Tribunal, and on the ground that the party has not applied for a notice, the High Court could not avoid the obligation imposed by statute to take proceeding under section 99, against the person proved at the trial to have been guilty of corrupt practice and to name him. We fail also to appreciate the ground on which the High Court has referred to delay been an "outweighing factor". Shyamacharan Shukla was however not a party to the proceeding and before he could be named a notice must go to him under section 99 of the Act.

38. We direct that, the proceeding be remanded to the High Court and the High Court do give notice to Shyamacharan Shukla under section 99 of the Representation of the People Act, 1951 to appear and to show cause why he should not be named for committing corrupt practices. If Shyamacharan Shukla appears in pursuance of the show cause notice he will be entitled to an opportunity of cross-examining witnesses who have already been examined by the Tribunal and has given evidence against him and he will be entitled to give evidence in his defence and of being heard. The High Court to report to this Court within three months from the date on which the papers are received by it.

4. Placing reliance on the observations made by Hon'ble the Supreme Court, learned Senior Counsel for the petitioner submits that in para 37 of the judgment, the words used are 'who is proved at the trial to have been guilty of any corrupt practice' implies that first finding has to be given by the Court that the person to be named is guilty of any corrupt practice and thereafter, notice to be issued to him and after giving him opportunity to cross examine the witness, who deposed against him and also adducing necessary evidence on his behalf, final finding about him should be given.

5. Learned Senior Counsel appearing for the respondent however,

disagrees with the submissions made by learned Senior Counsel for the petitioner. He placed reliance on the judgment of Hon'ble the Supreme Court in the case of *Mahohar Joshi Vs. Nitin Bhaurao Patil and another* reported in AIR 1996 Supreme Court 796: In this case, Hon'ble the Supreme Court dealt with the effect of non-compliance of section 99 of the Act. From paragraphs 49 to 58, Hon'ble the Supreme Court laid down the principles governing procedure under section 99 of the Act. The relevant paragraphs of the judgment be reproduced here as under:-

> 49. Before we take up for consideration the corrupt practice attributed to the appellant himself in para 30 of the election petition based on his own speech on 24.2.1990, it would be appropriate at this stage to refer to the argument based on Section 99 of the R.P. Act. Non-compliance of Section 99 of the R.P. Act.
>
> 50. Admittedly, no notice was given to Bal Thackeray, Pramod Mahajan or any other person against whom allegation was made of commission of corrupt practice in the election petition, even though the High Court has held those corrupt practices to be proved for the purpose of declaring the appellant's election to be void on the ground contained in Section 100(1)(b) of the R.P. Act. We would now indicate the effect of the combined reading of Sections 98 and 99 of the R.P. Act and the requirement of notice under section 99 to all such persons before decision of the election petition by making an order under Section 98 of the R.P. Act.
>
> 51. The combined effect of Sections 98 and 99 of the R.P. Act may now be seen. These provisions are as under:-
>
> "98. Decision of the High Court:- At the conclusion of the trial of an election petition the High Court shall make an order -
>
> (a) dismissing the election petition; or
>
> (b) declaring the election of all or any of the returned candidates to be void; or
>
> (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate

to have been duly elected.

99. Other orders to be made by the High Court. -

(1) At the time of making an order under section 98 the High Court shall also make an order -

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording -

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been quality of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless -

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123."

52. The opening words in section 98 are "At the conclusion of the trial of an election petition the High Court shall make an order". There can be no doubt that section 98 contemplates the making of an order thereunder in the decision of the High Court rendered `at the conclusion of the trial of an election

petition'. Declaration of the election of any returned candidate to be void in accordance with clause (b) is clearly to be made in the decision of the High Court rendered at the conclusion of the trial of an election petition and not at an intermediate state. Clauses (a), (b) and (c) in section 98 contemplate the different kinds of orders which can be made by the High Court in its decision at the conclusion of the trial which has the effect of disposing of the election petition in the High Court. There is nothing in section 98 to permit the High Court to decide the election petition piecemeal and to declare the election of any returned candidate to be void at an intermediate stage of the trial when any part of the trial remains to be concluded.

53. Sub-section (1) of section 99 begins with the words "At the time of making an order under section 98 the High Court shall also make an order" of the kind mentioned in clauses (a) and (b) therein. It is amply clear that the order which can be made under clauses (a) and (b) of sub-section (1) of section 99 is required to be made `at the time of making an order under section 98'. As earlier indicated, an order under section 98 can be made only at the conclusion of the trial. There can be no doubt that the order which can be made under sub-section (1) of section 99 has, therefore, to be made only at the conclusion of the trial of an election petition in the decision of the High Court made by an order disposing of the election petition in one of the modes prescribed in clauses (a), (b) and (c) of section 98. This alone is sufficient to indicate that the requirement of section 99 is to be completed during the trial of the election petition and the final order under section 99 has to be made in the decision of the High Court rendered under section 98 at the conclusion of the trial of the election petition.

54. Clause (a) of sub-section (1) of section 99 provides for the situation "where any charge is made in the petition of any corrupt practice having been committed at the election". In that case, it requires that at the time of making an order under section 98, the High Court shall also make an order recording

a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice; and the names of all persons, if any, who have been proved at the trial to have been quality of any corrupt practice and the nature of that corrupt practice. Clause (b) further requires the fixing of the total amount of costs payable and specifying the person by and to whom costs shall be paid. The net result is that where any charge is made in the petition of any corrupt practice having been committed at the election, the High Court shall `at the time of making an order under section 98' also make an order recording a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice; and where the charge of corrupt practice has been found proved, it must also record the names of all persons, if any, who have been proved at the trial to have been quality of any corrupt practice and the nature of that practice. thus the trial is only one at the end of which the order made by the High Court must record the names of all persons, if any, who have been proved at the trial to have been quality of the corrupt practice and the nature of that practice.

55. It follows that the High Court cannot make an order under section 98 recording a finding of proof of corrupt practice against the returned candidate alone and on that basis declare the election of the returned candidate to be void and then proceed to comply with the requirement of section 99 in the manner stated therein with a view to decide at a later stage whether any other person also is quality of that corrupt practice for the purpose of naming him then under Section 99 of the R.P. Act. It is equally clear that the High Court has no option in the matter to decide whether it will proceed under section 99 against the other persons alleged to be quality of that corrupt practice along with the returned candidate inasmuch as the requirement of section 99 is mandatory since the finding recorded by the High Court requires it to name all persons proved at the trial to have been quality of the corrupt practice. The expression "the names of all persons, if any, who have

been proved at the trial to have been quality of any corrupt practice" in sub-clause (ii) of clause (a) of sub-section (1) of section 99 clearly provides for such proof being required 'at the trial' which means 'the trial of an election petition' mentioned in section 98, at the conclusion of which alone the order contemplated under section 98 can be made. There is no room for taking the view that the trial of the election petition for declaring the election of the returned candidate to be void under section 98 can be concluded first and then the proceedings under section 99 commenced for the purpose of deciding whether any other person is also to be named as being quality of the corrupt practice of which the returned candidate has earlier been held quality leading to his election being declared void.

56. The rationale is obvious. Where the returned candidate is alleged to be quality of a corrupt practice in the commission of which any other person has participated with him or the candidate is to be held vicariously liable for a corrupt practice committed by any other person with his consent, a final verdict on that question can be rendered only at the end of the trial, at one time, after the inquiry contemplated under section 99 against the other person, after notice to him, has also been concluded. Particularly, in a case where liability is fastened on the candidate vicariously for the act of another person, unless that act is found proved against the doer of that act, the question of recording a finding on that basis against the returned candidate cannot arise. Viewed differently, if the final verdict has already been rendered against the returned candidate in such a case, the opportunity contemplated by section 99 by an inquiry after notice to the other person is futile since the verdict has already been given. On the other hand, if the question is treated as open, a conflicting verdict after inquiry under section 99 in favour of the notice would lead to an absurdity which could not be attributed to the legislature.

57. The plain language of Section 98 and 99 of the R.P. Act indicates the construction thereof made by us and this is also

supported by the likely outcome of a different construction which is an absurd result and must, therefore, be rejected. The High Court has overlooked the obvious position in law in taking a different view. No notice under section 99 was given by the High Court before making the final order under Section 98 of the R.P. Act declaring the election to be void. This is a fatal defect.

58.This alone is sufficient to indicate that apart from the reasons given earlier, the election of the appellant in the present case could not be declared void by making an order under section 98 on the ground contained in Section 100(1)(b) of the R.P. Act without prior compliance of section 99. Absence of notice under Section 99 of the R.P. Act vitiates the final order made under Section 98 by the High Court declaring the election to be void.

6. Further, he relies on the judgment of Hon'ble the Supreme Court in the case of *Pramod Mahajan Vs. Smt. Celine D'Silva and another* reported in AIR 1996 Supreme Court 826. In paragraph 12 of this judgment, Hon'ble the Supreme Court explained the view taken in the case of *Dwarka Prasad Mishra* (supra) and observed thus:-

The High Court appears to have misread the decision of this Court in *D.P. Mishra vs. Kamal Narayan Sharma and Anr.*, 1971 (1) SCR 8, to form the opinion that the course adopted by it was permissible under Section 99 of the R.P. Act. The question in that case was of the failure to issue notice under Section 99 of the R.P. Act to a person alleged to have committed the corrupt practice for which the returned candidate also was guilty. The High Court, in the appeal, did not comply with the requirement of section 99 for avoiding further delay. This Court rejected that view as incorrect and held as under :

"We are unable to agree with the view so propounded by the High Court. Under section 99 of the Act the Court has no discretion in the matter, if the Court was of the view that any person who is proved at the trial to have been guilty of any corrupt practice, not to name that person. It is true that

preliminary objections were argued at an earlier stage, but Sharma could not before the appeal was heard ask the Court to issue a notice under section 99 of the Act on the footing that his case which was rejected by the Tribunal will be accepted. The duty under the Act is cast upon the Court or the Tribunal, and on the ground that the party has not applied for a notice, the High Court could not avoid the obligation imposed by statute to take proceeding under section 99 against the person proved at the trial to have been guilty of corrupt practice and to name him. We fail also to appreciate the ground on which the High Court has referred to delay being an "outweighing factor". Shyamacharan Shukla was however not a party to the proceeding and before he could be named a notice must go to him under section 99 of the Act.

We direct that the proceeding be remanded to the High Court and the High Court do give notice to Shyamacharan Shukla under section 99 of the Representation of the People Act, 1951, to appear and to show cause why he should not be named for committing corrupt practices. If Shyamacharan Shukla appears in pursuance of the show cause notice he will be entitled to an opportunity of cross- examining witnesses who have already been examined by the Tribunal and has given evidence against him and he will be entitled to give evidence in his defence and of being heard....."

There is nothing in this decision to support the view taken by the High Court that it could decide the election petition and make an order under Section 98 declaring the election of the returned candidate to be void and then proceed under Section 99 of the R.P. Act against the other persons.

7. Accordingly, as observed by Hon'ble the Supreme Court in the case of *Pramod Mahajan* (supra), notices are to be issued during trial and not at conclusion of the trial as submitted by learned Senior Counsel for the petitioner. In this view of the matter, the question is answered that notices are to be issued during trial and when a particular witness is examined, who deposes against a particular person involving him in commission of corrupt practice then, the person should be given an opportunity to cross examine the witness.

After petitioner and respondent close their evidence, these persons called the notices' should be given an opportunity to adduce their evidence in defence and finally while passing final order under section 98 of the Act though persons, who proved to be guilty of corrupt practice should be named under section 99 of the Act. In the present case, following persons are named in the petition and, therefore, they should be given notice:-

(i) Gajendra Singh Baghel

(ii) Vikram Verma

(iii) Ashok Jain

(iv) Sanjay Vaishnav

(v) Devendra Patel

(vi) Anku Agrawal

(vii) Vinod Soni

8. Petitioner is directed to supply necessary details and pay PF for issuance of notices to these persons within a week under section 99 of the Act. Alongwith the notice relevant portion of the petition where allegations are made against the above persons, should also be enclosed. Petitioner is directed to supply copies of the relevant portion for service of notice.

9. This apart, the petitioner is directed to name any other person to whom notice is to be issued. It is further observed that apart from these persons if name of any other person would evolve during recording of the evidence he will also be given notice immediately after recording of evidence of that particular witness.

10. The question is answered, accordingly.

11. On 08.10.2015, learned Senior Counsel appearing for the petitioner submits that he would file an application under Order 18 Rule 3(a) of CPC.

12. Office is directed to list the matter on **29.10.2015** for consideration of the application filed by the petitioner under Order 18 Rule 3(a) of CPC.

Order accordingly.

I.L.R. [2016] M.P., 1125
REVIEW PETITION
Before Mr. Justice U.C. Maheshwari &
Mr. Justice Sushil Kumar Gupta
R.P. No. 156/2014 (Jabalpur) decided on 14 July, 2014

SHAILENDRA SINGH THAKUR ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

A. Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Locus Standi **- Review Petition assailing the order on the ground that the W.P. in the nature of P.I.L., itself was not maintainable because the same was in respect of private dispute of some builders who have also filed independent litigation and when they could not get success, P.I.L. was filed at their instance to protect their interest against resolution dt. 23.12.2013 which was passed before communication of notification dated 23.12.2013 made in respect of dissolution of Board of Directors of J.D.A. - Held - Impugned order was passed in the presence of all the parties impleaded in such petition - Applicant was not a party in that petition - Therefore, he did not have any locus standi to file this review petition. (Para 13)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – सुने जाने का अधिकार – आदेश को चुनौती देते हुए पुनर्विलोकन याचिका इस आधार पर लाई गई कि लोक हित वाद के रुप में रिट याचिका अपने आप में पोषणीय नहीं थी, क्योंकि यह कुछ भवन निर्माताओं के निजी विवाद से संबंधित थी, जिसमें उन्होंने पूर्व में ही स्वतंत्र मुकदमेबाजी की थी एवं जब उन्हें सफलता नहीं मिली तब संकल्प दिनांक 23.12.2013, जो कि जे.डी.ए. के निदेशक मण्डल को भंग किये जाने के संबंध में जारी अधिसूचना दिनांक 23.12.2013 की संसूचना के पूर्व पारित किया गया था, के विरुद्ध उनके हितों के संरक्षण हेतु उनकी प्रेरणा से लोक हित वाद प्रस्तुत किया गया – अभिनिर्धारित – आक्षेपित आदेश उक्त याचिका में बनाए गये समस्त पक्षकारों की उपस्थिति में पारित किया गया था – प्रार्थी उस याचिका में पक्षकार नहीं था – इसलिए, उसे इस पुनर्विलोकन याचिका को प्रस्तुत करने के लिए सुने जाने का कोई अधिकार प्राप्त नहीं।

B. Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Error apparent on the face of the record **- The order impugned has been passed by the Court after due application of mind and after considering**

the controversy involved - Even if such order is erroneous till some extent same is the matter of appeal, revision or other proceedings - Same cannot be termed as the error apparent on the face of the record as a ground for review - Petition is dismissed. (Paras 16 & 20)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – अभिलेख के पटल पर स्पष्ट त्रुटि – न्यायालय द्वारा आक्षेपित आदेश मस्तिष्क के सम्यक् उपयोग एवं अंतर्ग्रस्त विवाद के विचारोपरांत पारित किया गया है – यदि कुछ सीमा तक उक्त आदेश त्रुटिपूर्ण हो तब भी यह अपील, पुनरीक्षण अथवा अन्य कार्यवाहियों का विषय है – इसे पुनर्विलोकन हेतु एक आधार के रुप में अभिलेख के पटल पर स्पष्ट त्रुटि के तौर पर नहीं माना जा सकता – याचिका खारिज।

Cases referred :

2011 (3) SCC 287, 2014 (2) SCC 609, (1997) 8 SCC 715, 2007(3) MPLJ 361.

A.K. Jain with *Vivek Sharma*, for the petitioner.
C.K. Mishra, G.A. for the respondent No.1.
Sanjay K. Agrawal with *Piyush Bhatnagar,* for the respondent No. 3.
R.P. Agrawal with *Sanjay Agrawal* and *Anuj Agrawal,* for the respondent No. 4/Applicant Anil Sharma.

(Supplied: Paragraph numbers)

ORDER

The Order of the Court was delivered by :
U.C. MAHESHWARI, J. :- With the consent of the parties, instead to hear this petition only for admission, the same is heard for final disposal.

2. The applicant namely Anil Sharma Ex-Chairman, Jabalpur Development Authority, Jabalpur has filed this petition for review of order dated 4.3.2014 passed in W.P. No. 3192/14[PIL]. Subsequent to decision of such PIL, one Hon. Judge who presided such Bench has demitted the office and therefore under the Rules, this matter is placed before this Bench. It is noted that in the aforesaid earlier Bench one of us U.C.Maheshwari, J. was one of the Member.

3. The aforesaid writ petition was filed by the respondent No.4 herein for quashment of the resolution/order/decision of respondent No.2 and 3 taken on 23.12.2013 Annexure P-5 with the writ petition. As per averments of such

petition, the alleged resolution was passed by the authorities of the respondent No.2 and 3 in a meeting presided over by the present applicant on 23.12.2013. The contention that the Board of Directors of J.D.A. was already directed to be dissolved by the Hon. Chief Minister on dated 21.12.2013 for which notification was also issued on 23.12.2013 and in such premise the applicant was not remained the office bearer of respondent No.2 and 3 and did not have any authority to preside over the meeting and pass the aforesaid resolution dated 23.12.2013 Annexure P-5.

4. *Inter alia* the writ petition was filed for the following reliefs :-

1. The entire record pertaining to convening of meeting of the so called Board held on 23.12.2013 be called for.

2. The impugned resolution dated 23.12.2013 contained in Annexure P/5 passed by the so called Board of the respondent No.3 is liable to be quashed.

3. Any other relief to which this Hon. Court finds the petitioner entitled to be also granted.

5. Subsequently, in the presence of the respondents No. 1,2,3 herein in the aforesaid writ petition of respondent No.4, instead to decide the same on merits, the same was disposed of vide order under review dated 4.3.2014 in the following manner and directions :-

"In view of the aforesaid, we find it appropriate to dispose of this matter finally with the following directions:-

1. The respondent No.1 is directed to consider the grievances of the petitioner raised in this petition in respect of validity of the resolution Annexure P-5 passed after a decision by respondent no.1 to cancel all the nomination dated 21.12.2013 and after the order dated 23.12.2013.

2. While considering the matter, respondent No.1 shall extend an opportunity of hearing to the petitioner and respondent No.3 both and if any affected party is inclined to address in the matter, that party may also apply to respondent No.1 for extending an opportunity of hearing.

3. Respondent No.1 thereafter shall consider and decide the matter of legality of the decision taken after 21.12.2013, expeditiously as far as possible within a period of 30 days from the date of communication of this order.

4. Till the decision of respondent No.1 in this regard, interim order dated 21.2.2014 shall remain in force."

6. The applicant's counsel after taking us through the petition as well as the papers annexed, argued that the petitioner being Ex-Chairman of respondent No.3 has filed this petition challenging the impugned order under review saying that the same has been passed in such public interest litigation petition, was not entertainable for the cause which was challenged in the same as such cause was related to the private dispute of some builders and those builders had authority and have filed their independent litigation and when they could not get success, then the aforesaid PIL writ petition was filed. In such premise, he said that respondent No.4 had filed the aforesaid writ petition at the instance of such private builders to protect their interest against whom the aforesaid resolution dated 23.12.2013 was also passed.

7. In continuation it is said that as per settled proposition of the law laid down by the Apex Court in the matter of *Kalyaneshwari vs. Union of India* reported in 2011(3) SCC 287 and in the matter of *Arun Kumar Agrawal vs. Union of India* reported in 2014(2) SCC 609, the person like respondent No.4 could not have been permitted by the Court by entertaining his PIL petition in respect of the aforesaid private dispute of the builders and in such premise firstly, he said that such order was passed in the petition which itself was not entertainable under the law. He further argued that the decision taken by the Chief Minister of the State on 21.12.2013 was not having the authority of law or the notification and the Board of Director of respondent No.3 in which the applicant was the Chairman, was dissolved by publishing a notification on 23.12.2013 and such resolution being passed before communication of such notification of dissolution to him was in accordance with law and there was no necessity either to entertain this petition or pass any direction. In continuation he also said that in any case the aforesaid writ petition should not be disposed of with the directions of which the same was disposed of but according to the prayer clause, the same should have been decided on its merit to decide the sustainability of the aforesaid resolution dated 23.12.2014.

8. Subsequent to this, after taking us thorough (sic:through) the provisions of Sections 3, 73 and 83 of the *M.P. Nagar Tatha Gram Nivesh Adhiniyam 1973*, he said that even after dissolution of the Board of Directors of respondent No.3, there was no occasion to refer the matter to State of M.P. because as soon as the Board of Directors is dissolved then power automatically goes to Municipal Corporation and for the sake of arguments, if it is deemed that the respondent No.3 had functioning and was not dissolved then the power of the applicant as office bearer was continued till new person was appointed, thus the reference to the State Government to consider the controversy of the parties was not necessary. With these submissions the petitioner's counsel submit that there is apparent error on the face of the record in the impugned order, the same requires interference by way of review and prayed to allow this petition and by recalling such order directed to decide such petition afresh on merit.

9. On behalf of the respondent No.1, State of Madhya Pradesh Shri C.K. Mishra, Government Advocate supported the order impugned under review and prayed for dismissal of this petition.

10. Shri Sanjay K. Agrawal, learned standing counsel for respondent No. 2 and 3 initially supported the case of the petitioner but in the available circumstances on asking him whether any petition for review or other proceedings has been filed on behalf of the authorities of respondent No.2 and 3 to challenge the impugned order. On which he said that he did not have any objection if in compliance of the order under review, the case is examined and decided by respondent No.1 State of M.P. In addition to it, he said that the Jabalpur Development Authority has not dissolved, only the nominated Board of Directions (sic:Directors) has been dissolved.

11. On the other hand, learned Senior counsel for the respondent No.4 Shri R.P. Agrawal assisted by Shri Sanjay Agrawal responding the aforesaid argument by justifying the impugned order under review said that the same being passed under the vested jurisdiction of this Court under Art.226 of the Constitution of India on the allegations made in the review petition could neither be reviewed nor recalled and in such premise, no fresh hearing of the writ petition is required. In continuation firstly he said that after dissolution of the Board of Directors of the Jabalpur Development Authority in which the applicant was the Chairman, the applicant did not have any authority or *locus standi* to file this review petition because neither he was the party in the writ

petition nor he is personally affected by the impugned order under review. He also said that as such this Court instead to decided anything on merits, in the light of dissolution of the Board of Directors to resolve the controversy has referred the matter by the impugned order to the respondent No.1, the State of M.P., who had the authority to constitute and nominate the Board of Directors of respondent No. 2 and 3 and by which the same was dissolved. He further said that for the sake of arguments, if other merits of petition are examined, then it is apparent that the impugned order being passed after application of mind by the then Division Bench is in conformity of law and even if it is erroneous to some extent which is not the situation in the matter, then the same could not be considered to be error apparent on the face of the record and in such premise the remedy of review is not available to the petitioner. So far as the case laws cited on behalf of the petitioner is concerned, in the available scenario the same being distinguishable on facts, are not helping the petitioner because the same were decided by the Apex Court in different context.

12. So far as the arguments of the other side that in order to protect the interest of the private builders the respondent No.4 had filed this petition is concerned, Shri Agrawal said that those builders have filed their separate litigation and obtained the interim order the same are also annexed with the writ petition as Annexure P-6 and P-7 and therefore it could not be deemed that the respondent No.4 has come to this Court to protect the interest of any builder for some vested interest. He has filed such petition as a social worker so also in the interest of the public at large because the matter in dispute was related to the public institution and the public property. Once after entertaining the *locus standi* of respondent No.4 the petition was entertained by the then Division Bench and the impugned order has been passed in presence of all the parties then in review petition, the petitioner did not have any authority to challenge such question. With these submission he prayed for dismissal of this petition.

13. Having heard the counsel at length, keeping in view their arguments, we have carefully gone through the petition as well as the papers placed on record along with the impugned order Annexure A-2. It is undisputed on record that the aforesaid order was passed in public interest litigation so also in presence of all the parties impleaded in such petition. It is also apparent that the present applicant was not impleaded by the respondent No.4 and that petition was

decided only in between respondent No.4 and respondents No.1, 2 and 3. So firstly on such count we are of the view that the petitioner did not have any *locus standi* to file this review petition. If he is aggrieved, he may approach to the superior Court against the impugned order to challenge the same. Even otherwise it is apparent from the direction No.2 of the impugned order that the State Government was not only directed to extend an opportunity of hearing before deciding the matter to the parties of the petition only but also directed the State authorities that if any affected party inclined to address in the matter and file his/its objection with respect of subject matter then opportunity of hearing should also be given to such party so in such premises, the petitioner herein may apply to resolve his grievance before the respondent No.1 in compliance of the impugned order and such authority would consider the same.

14. Apart the aforesaid, even on examining the impugned order on its own merits, it is apparent that the present applicant was the Chairman of the respondent No.3 till 21.12.2013, the date on which the Chief Minister of the State has directed to dissolve the Board of Directors of respondent no.3 and in compliance of such directions in accordance with the procedure, the notification was promulgated and published on 23.12.2013 and on the same day the resolution in dispute Annexure P-5 in the writ petition was passed in a meeting of the respondent No.3 presided over by the applicant and the counsel submitted that on such date the applicant was the Chairman of the respondent No.3 while the respondent No.4 herein and some authority said that since 21.12.2013, the applicant was not remained the Chairman of such institution. Keeping in view of such situation, instead to decide such question on merit, such authority of the respondent No.1 State was directed to consider and decide such dispute and in such premises, the sustainability of the resolution of respondent No.2 and 3 as stated in the last para of the impugned order.

15. So in the premises,the authorities of the State has been directed to examine and resolve the alleged controvercy, then in such circumstances there is nothing in the impugned order for review.

16. It is a settled proposition of law that if order is passed by the Court of law after application of mind, keeping in view the controversy involved in the litigation then even if such order is erroneous till some extent, then the same may be matter of appeal, revision or other proceedings but the same could not be treated to be apparent error on the face of the record as ground for

review. In such premises we are of the considered view that mere on the whim of the applicant in the lack of any admissible ground, the impugned order could not be reviewed.

17. Our aforesaid approach is fully fortified by the decision of the Apex Court in the matter of *Parsion Devi and others vs. Sumitri Devi and others* reported in (1997) 8 SCC 715 in which it was held as under:-

> "9. Under Order 47 Rule 1 CPC a judgment may be open to review interalia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

18. Such principle was further followed by the division Bench of this Court in *Sushila and another vs. Rajbeer Singh and another* reported in [2007 (3) MPLJ 361] held thus :-

> "7. It is settled position under the law that even a decision of order erroneous in law or on merits it cannot be accepted that it is an error apparent on the face of the record and the aforesaid mistakes cannot be corrected exercising powers of review under order 47 Rule 1. Even if erroneous view taken by the Division Bench in M.A. No. 169/99 decided on 21.9.1999, the same cannot be corrected and naturally the present case will not fall strictly within the scope of review and it cannot be held that there is mistake apparent on the face of the record. Thus, considering the totality of the facts and circumstances of the case, we do not find any merit in this review petition. Accordingly, the review petition is dismissed."

19. In view of the aforesaid discussion and legal position, the case laws cited on behalf of the applicant's counsel being distinguishable on facts of the case in hand and being decided by the Apex Court in different context are not

helping the applicant in this present petition.

20. In view of the aforesaid, we have not found any apparent error on the face of the record in the impugned order Annexure A-2. Consequently, this petition being devoid of any merit is hereby dismissed. However, in the available circumstances, keeping in view that by the order under review, the authorities were directed to consider and decide the matter within 30 days after extending the opportunity of hearing to the parties including the third party, if the same approaches, but subsequently, such order was also stayed by this Court in the present matter, therefore the State authorities could not decide the matter in compliance of the earlier directions of the said order dated 4.3.2014, hence such period is further extended for 30 days from today with a direction to the State authorities to consider and decide the matter in compliance of the order under review dated 4.3.2014 passed in W.P.No. 3192/14.

There shall be no order as to costs.

Petition dismissed.

I.L.R. [2016] M.P., 1133
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
S.A. No. 870/2002 (Jabalpur) decided on 10 November, 2014

JWALA PRASAD & ors. ...Appellants
Vs.
STATE OF M.P. & ors. ...Respondents

A. Civil Procedure Code (5 of 1908), Section 100 - Second Appeal - Concurrent findings of fact - Suit for declaration and permanent injunction - Adverse Possession - **Suit property mutated in name of State of M.P. in 1954 - Appellants were never allotted nor remained in possession of suit property - Held - Necessary ingredients of adverse possession not made out - Appeal dismissed. (Para 6)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – तथ्य के समवर्ती निष्कर्ष – घोषणा एवं स्थायी व्यादेश हेतु वाद – प्रतिकूल कब्जा – वर्ष 1954 में वाद संपत्ति म.प्र. शासन के नाम पर नामांतरित की गई – अपीलार्थीगण को वाद संपत्ति कभी भी आबंटित नहीं की गई एवं न ही कभी वाद संपत्ति पर उनका कब्जा रहा – अभिनिर्धारित – प्रतिकूल कब्जे के आवश्यक घटक निर्मित नहीं होते हैं – अपील खारिज।

B. Civil Procedure Code (5 of 1908), Section 100 - Second Appeal - Concurrent findings of fact - **Appreciation of evidence not permissible on question of possession of property - Held - It being finding of fact could not be interfered in Second Appeal. (Para 6)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – तथ्य के समवर्ती निष्कर्ष – संपत्ति पर कब्जे के प्रश्न पर साक्ष्य का मूल्यांकन अनुज्ञेय नहीं – अभिनिर्धारित – तथ्य का निष्कर्ष होने के कारण इसमें द्वितीय अपील में हस्तक्षेप नहीं किया जा सकता।

C. Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), Sections 37 & 38 - Civil Suit - Maintainability - **Held - As the suit property is vested in State under provisions of the Act of 1952, so those proceedings could not be challenged by way of Civil Suit. (Para 6)**

ग. विंध्य प्रदेश जागीर उन्मूलन एवं भूमि सुधार अधिनियम (1952 का 11), धाराऐं 37 व 38 – सिविल वाद – पोषणीयता – अभिनिर्धारित – चूंकि 1952 के अधिनियम के उपबंधों के अंतर्गत वाद संपत्ति राज्य में निहित है, इसलिए उन कार्यवाहियों को सिविल वाद के माध्यम से चुनौती नहीं दी जा सकती।

D. Interpretation of Statutes - **Ground of 'Adverse possession' cannot be used as a 'sword' for prosecuting Civil Suit, but it can be used as a 'shield' for defending the right. (Para 7)**

घ. कानूनों का निर्वचन – 'प्रतिकूल कब्जे' के आधार को सिविल वाद चलाने के लिए एक 'तलवार' की तरह उपयोग नहीं किया जा सकता, परंतु अधिकार के बचाव के लिए इसे एक 'कवच' की तरह उपयोग किया जा सकता है।

Case referred :

2014 (3) MPLJ 36.

O.P. Mishra, for the appellants.
Akhilesh Singh, P.L. for the respondent No.1.

ORDER

U.C. MAHESHWARI, J.:- Heard on the question of admission.

On behalf of the plaintiffs, this appeal is preferred under Section 100 of the CPC being aggrieved by the judgment and decree dated 19.8.2002

passed by the 3rd Additional District Judge, Satna in Civil Regular Appeal No.73-A/2001 affirming the judgment and decree dated 31.7.2001 passed by the 3rd Civil Judge Class-II, Satna in Civil Original Suit No.127-A/1999 whereby the suit of the appellants filed for declaration and perpetual injunction with respect of the land in dispute stated in the plaint on the ground of perfecting their title by adverse possession was dismissed.

2. Fact giving rise to this appeal in short are that the appellants filed the impugned suit contending that the disputed land described in plaint situated in village Deori, Tahsil Rampur Baghelan, District Satna is coming in possession of their family from the time of their forefathers as on earlier occasion such land was given on Patta to their forefathers under the provisions of the M.P. Kanoon Mal. Subsequent to such Patta by the time under operation of law, they have become the Bhoomiswami of the land in dispute, but contrary to their rights and without giving any intimation or opportunity of hearing to them, the land was recorded in the name of the respondent No.1/State and thereafter the proceeding u/s 248 of the M.P. Land Revenue Code for removing their possession from the land was initiated on 27.3.1984. It is a further case of the appellants that in any case they being coming in uninterrupted possession as Bhoomiswami of the disputed land in the knowledge of its the then Bhoomiswami for more then (sic:than) 12 years had perfected the right of ownership and Bhoomiswami of the same by adverse possession. With these averments, prayed to declare the disputed land, recorded in the name of State of M.P., to be the land of the appellants with further reliefs for perpetual injunction to protect their possession over the disputed land. It is also the case of the appellants that the respondents No.2 to 7 did not have any right or title over the disputed land against the aforesaid perfected right and title of the appellants, but under some conspiracy with the officials of revenue department, such respondents had got mutated such land as Bhoomiswami in their name, while mere on account of such mutation, such respondents had not got any right, title and possession over the disputed land, as such, such mutation in the name of the respondents No.2 to 7 being ab initio void deserves to be quashed and such prayer is also made in the suit. Pursuant to such reliefs, the prayer for restoration of the possession of the appellants was also made.

3. On behalf of the private respondents by filing their written statement, the averments of the plaint regarding perfected title and possession of the

appellants over the disputed land are denied. In addition, it is stated that long before under the provisions of Jagir Abolition Act, 1952, the disputed land was declared to be the Government land and in such premises, the appellants or their forefathers were not entitled to keep such land in their name as Bhoomiswami. It is also stated that such land or any part of it was never allotted to the appellants on Patta or otherwise and such land is recorded in the name of the State since 1954 in the knowledge of the appellants/plaintiffs. Inspite such knowledge to the appellants, none of them had taken any steps to challenge the aforesaid mutation or the title of the State within prescribed period of limitation and therefore, the question of perfecting the right and title of the appellants over the land by adverse possession did/does not arise. It is further stated that in view of the provisions of Section 38 of the aforesaid Jagir Abolition Act, the appellants' suit being beyond the jurisdiction of the Civil Court is not entertainable and in such premises, prayer for dismissal of the suit was made.

4. In view of the pleadings of the parties, after framing the issues, the trial was held, after recording the evidence of the parties, on appreciation of the same, it was held that the appellants had not remained in possession of the disputed land or any part of it either on the basis of any Patta or otherwise. It was also held that the appellants had not perfected right and title over the disputed property by adverse possession. Besides aforesaid finding on merits, the suit was also dismissed by holding that in view of the provisions of section 37 and 38 of the aforesaid Jagir Abolition Act, the suit is not entertainable and also by holding the suit to be barred by time, the same was dismissed by the trial Court.

5. On challenging such judgment and decree of the trial Court by the appellants before the appellate Court, on consideration by affirming such judgment and decree of the trial Court, such appeal of the appellants was dismissed, on which the appellants have come to this Court with this appeal.

6. Having heard the appellants' counsel at length, keeping in view the arguments, I have carefully gone through the record of both the Courts below. It is apparent from the impugned judgments of the Courts below that there is concurrent findings of facts based on the appreciation of the evidence holding that such land was recorded in the name of State of M.P. in the year 1954 by virtue of the provisions of the Jagir Abolition Act and subsequently it was never allotted to any of the appellants or their forefathers and in such premises,

they or any of them were not remained in possession of such land or any part of it at any point of time. Besides this, they or any of them have not taken any steps within prescribed period to quash the aforesaid mutation of the State and its right over the land. In such premises by holding that the appellants or any of them did not remain in possession of the disputed land or any part of it, the suit was dismissed by the trial Court. Subsequently on filing the appeal by the appellants, on consideration the same was dismissed by the appellant (sic:appellate) Court. Even otherwise concurrently it was held by both the Courts below that the appellants could not prove their title over the disputed property either by adverse possession or otherwise by admissible evidence and documents. In the lack of possession of the appellants over the disputed land on the date of filing the suit, the necessary ingredients of the adverse possession like continuity of the uninterrupted possession for more than 12 years as Bhoomiswami under the hostile title of the then recorded Bhoomiswami, have also not been proved on the record. It is also apparent that appellants could not prove the source of their possession over the land. Apart this, in view of the provisions of Sections 37 and 38 of the Jagir Abolition Act, after vesting the land in the State under the provisions of such Act, such proceedings could not be challenged by way of civil suit and in such premises the impugned civil suit itself was not entertainable and was barred by law. In such premises, I am of the considered view that the findings on the question of possession and title of the property against the appellants being concurrent findings of facts could not be interfered by this Court at this stage under section 100 of the CPC by framing any proposed substantial question of law. It is a settled proposition of law that the concurrent findings based on appreciation of the evidence on the question of the possession of the property being findings of facts could not be interfered under section 100 of the CPC. So in such premises, this appeal being devoid of any merits deserves to be dismissed.

7. Apart the aforesaid, I am of the view that persons like the appellants/ plaintiffs did not have any right to file the suit for declaration and perpetual injunction on the ground of adverse possession. Such ground can be used by the persons like appellants as a shield to defend their right and possession but by entertaining the impugned suit, they could not be permitted to use the same as a sword, as such the appellants/plaintiffs did not have any right to file the suit for declaration on the basis of adverse possession unless they are having the title over the property on the basis of some source or documents. My such approach is fully fortified by the decision of the Apex Court in the matter

of *Guruwara Sahib Vs. Gram Panchayat Village Sirthala* reported in 2014 (3) MPLJ 36 in which it was held as under:

> "7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

8. In view of aforesaid discussion, I have not found any circumstances or material in the case at hand giving rise to any question of law rather than substantial question of law requiring any interference at this stage under section 100 of the CPC by framing any substantial question of law. Consequently, this appeal being devoid of merits deserves to be and is hereby dismissed at the stage of motion hearing.

There shall be no order as to the costs.

Appeal dismissed.

I.L.R. [2016] M.P., 1138
APPELLATE CIVIL
Before Mr. Justice Sanjay Yadav
M.A. No. 394/2015 (Jabalpur) decided on 30 July, 2015

BABLU @ NETRAM @ NETRAJ ...Appellant
Vs.
SMT. ABHILASHA ...Respondent

A. Evidence Act (1 of 1872), Section 3 - Witness - Appreciation of Evidence - **P.W. 2 lodged F.I.R. stating that the deceased was sitting on the mudguard and fell and run over by the offending vehicle - In Court evidence witness deposed that deceased was standing by the road side - The F.I.R. was lodged within a close proximity of the accident - The version of F.I.R. is reliable - Claims Tribunal was justified on relying on F.I.R. rather on distorted version in Court.** **(Para 4)**

क. साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षी – साक्ष्य का अधिमूल्यन– अ.सा. 2 ने यह कहते हुए प्रथम सूचना प्रतिवेदन दर्ज कराया कि मृतक मडगार्ड (कीचड़रोधक) पर बैठा था एवं गिरने से आक्षेपित वाहन द्वारा कुचला गया – न्यायालयीन साक्ष्य में साक्षी ने यह कथन किया कि मृतक सड़क के किनारे खड़ा था – प्रथम सूचना प्रतिवेदन दुर्घटना के निकट अवधि के भीतर दर्ज कराया गया – प्रथम सूचना प्रतिवेदन का विवरण विश्वसनीय है – दावा अधिकरण द्वारा न्यायालय में प्रस्तुत विकृत विवरण के स्थान पर प्रथम सूचना प्रतिवेदन पर विश्वास किया जाना न्यायोचित था।

***B. Reliance of document* - Once a part of content relied, no illegality in relying upon other parts, irrespective to the contents been proved or not. (Para 5)**

ख. दस्तावेज पर विश्वास किया जाना – जब एक बार किसी विषय वस्तु के किसी एक भाग पर विश्वास किया जाता है तब उस विषयवस्तु के सिद्ध होने अथवा न होने से निरपेक्ष रहते हुए उसके अन्य भागों पर विश्वास करने में कोई अवैधता नहीं।

***C. Words and Phrases - Approbate and reprobate* - Party placed statements on record, as part of evidence - Later urged that the same is inadmissible - Not permissible. (Para 5)**

ग. शब्द एवं वाक्यांश – अनुमोदन एवं निरनुमोदन – पक्षकार ने साक्ष्य के भाग के रुप मे कथन अभिलेख पर प्रस्तुत किए – पश्चात में कहा कि वह अग्राह्य है – अनुज्ञेय नहीं।

A.K. Sharma, for the appellant.
A.K. Dixit, for the respondent.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Owner and Driver of the offending vehicle has approached this Court vide present Appeal under Section 173(1) of the Motor Vehicles Act, 1988 against the Award dated 10.11.2014 whereby Rs.5,41,000/- has been awarded in lieu of death of one Prabhu Singh who died on 25.10.2011 having run over by offending Tractor bearing registration No.MP 15 AA 7192 while exonerating the Insurance Company from the liability on a finding that the offending vehicle was operated contrary to the insurance policy as the deceased was found sitting on the mud-guard of the offending

vehicle from where he fell down and run over.

2. Appellant takes exception to findings arrived at by the trial Court on the ground of being contrary to evidence led on behalf of applicant/appellant; wherein, the witnesses have stated in clear terms that the deceased was run over by offending vehicle while he was standing by the side of road. It is contended that the Claims Tribunal committed gross error in placing reliance on FIR rather on the statement of PW-2, an eye witness.

3. The relevant finding recorded by the Claims Tribunal are in paragraphs 12 to 19. In paragraphs 18 and 19 the Claims Tribunal found :

> "18. हस्तगत् मामले में आवेदकगण ने प्रथम सूचना रिपोर्ट (प्रदर्श पी–1) को उस बिन्दु तक स्वीकार करने का प्रयास किया है कि अनावेदक क्र.1 के वाहन से घटना दिनांक को प्रभूसींग की दुर्घटना में मृत्यु हुई, किन्तु इस तथ्य को स्वीकार करने से इंकार किया है कि प्रभूसींग उक्त ट्रेक्टर पर बैठा था। ऐसा वह नहीं कर सकते यह तो उस समय ही उन्हें इस रिपोर्ट के संबंध में वरिष्ठ अधिकारियों को शिकायत करनी चाहिए थी और ऐसा न करने से आंशिक रूप से अपने लाभ के लिए आंशिक तथ्य को स्वीकार और आंशिक तथ्य को अस्वीकार नहीं कर सकते उसे दस्तावेज सम्पूर्ण रूप से स्वीकार करना होगा।
>
> 19. इस प्रकार (प्रदर्श पी–1) के दस्तावेज से यह प्रमाणित है कि प्रभूसींग प्रश्नगत् वाहन के मडगार्ड पर बैठकर जा रहा था और उससे ही गिरने से उसकी मृत्यु हुई। आवेदकगण और अनावेदकगण क्र1 व 2 का यह कहीं अभिवचन नहीं है कि प्रभूसींग अनावेदक क्र.2 का ड्रायवर या क्लीनर या कंडक्टर है। इससे स्पष्ट है कि प्रभूसींग के वाहन पर बैठने के संबंध में कोई अतिरिक्त प्रीमियम बीमा कम्पनी को अनावेदक क्र.2 द्वारा अदा नहीं किया गया है और उसने वाहन पर सवारी के रूप में प्रभूसींग को बैठाया है जो कि स्पष्ट रूप से बीमा पॉलिसी के शर्तो का उल्लंघन है और प्रीयिम के अभाव में अनावेदक क्र.3 पूर्ण रूप से दायित्व से उन्मोचित होना पायी जाती है।"

4. That the FIR, reliance whereof has been placed by the Claims Tribunal was lodged by PW-2 namely Bheem Singh. This fact has not been denied by the appellant. It is also not denied that Bheem Singh was an eye witness and immediately when the accident occurred he had lodged the FIR with the police wherein it is stated :

> "मैं खेती करता हूँ। आज दिनांक 25/10/11 को शाम करीब 5 बजे मैं अपनी मोटर साइकिल से पिताजी के साथ देवरी आ रहा था। जैसे ही हम लोग बीना तिगड्डा रजौला पैट्रोल पंप के पास आये। उसी समय देवरी तरफ से मेरे गांव

के दिलीप सींग राजपूत का हरे रंग का ट्रेक्टर दिलीप सींग का भाई बबलू सींग ट्रेक्टर को तेज गति एवं लापरवाही पूर्वक चलाता आ रहा था ट्रेक्टर पर मडगाड पर मेरे बड़े पिताजी प्रभुसींग राजपूत(परिहार) एवं पडरही का राजू ठाकुर बैठे थे। पैट्रोल पंप तिगड्डा के पास एकदम मेरे बड़े पिताजी प्रभुसींग गिर गये उपर से ट्रेक्टर निकल गया जो गम्भीर रूप से घायल हो गये। बबलू ट्रेक्टर लेकर गॉव तरफ भाग गया। मैंने और पिताजी ने उन्हें उठाया। ट्रेक्टर का नम्बर नहीं देख पाया। प्रभुसींग को मोटर साइकिल से सरकारी अस्पताल देवरी इलाज कराने लाये। डॉ. ने इलाज करके जिला अस्पताल सागर रिफर कर दिया। हम लोग जीप से सागर ले जा रहे थे। प्रभुसींग रास्ता में खत्म हो गये तो लोटाकर वापिस देवरी ले आये अस्पताल की तरफ जीप में लास रखी है। रिपोर्ट करने आया हूँ। कार्य0 की जावे।

रिपोर्ट पढ़कर देखी कहे अनुसार लिखी है।"

5. It is observed that while entering in witness box he gave a different version that the deceased was standing by the road side, however, this witness does not dispute of having lodged the FIR. Though it is contended by learned counsel for appellant that the Claims Tribunal committed gross error in solely relying on the FIR, however, taking into consideration that the FIR was lodged within a close proximity of the accident having taken place and as witnessed by PW-2 Bheem Singh, the Tribunal is justified in relying upon the same rather a distorted version by him when he entered into the witness box.

6. In this context reference can be had of a decision in *Oriental Insurance Co.Ltd. vs. Premlata Shukla* (2007) 3 MPHT 225; wherein, their Lordships were pleased to hold :

> "13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.
>
> 14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been

proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In *Hukam Singh* (supra), the law was correctly been laid down by the Punjab and Haryana High Court stating;

"8. Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Partap had produced only his former deposition and gave no evidence in Court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The Trial Court had discussed the evidence of Ram Partap in the light of the report Exhibit D.1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial Court in letting in a certified copy of the previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in Court was not correct. When the parties

themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would indeed be permitting them both to appropriate and reprobate."

16. ... "

7. In view whereof no indulgence is caused in respect of the conclusion arrived at by the Claims Tribunal that the offending vehicle was being operated in breach of insurance policy.

In the result, Appeal fails and is dismissed. No costs.

Appeal dismissed.

I.L.R. [2016] M.P., 1143
APPELLATE CIVIL
Before Mr. Justice C.V. Sirpurkar
M.A. No. 3108/2009 (Jabalpur) decided on 6 November, 2015

KUJMATI (SMT.) ...Appellant
Vs.
THE UNION OF INDIA ...Respondent

A. ***Railway Claims Tribunal Act (54 of 1987), Section 23(1),(3) & Limitation Act (36 of 1963), Sections 5& 29(2)*** **- Whether Section 5 of the Limitation Act would have no application to an appeal filed under sub-section 1 of Section 23 of Railways Claims Tribunal Act, 1987 - Held - Yes, the High Court has no jurisdiction to entertain said appeal beyond the stipulated period of limitation of 90 days as per Section 23(3) of 1987 Act regardless of the fact that the appellant has sufficient cause for such delay - Application for condonation of delay dismissed and consequently, appeal also dismissed.**

(Paras 7 to 14)

क. रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 23(1),(3) व परिसीमा अधिनियम (1963 का 36), धाराऐं 5 व 29(2) – क्या रेल दावा अधिकरण अधिनियम, 1987 की धारा 23 की उपधारा 1 के अंतर्गत प्रस्तुत किसी अपील के मामले में परिसीमा अधिनियम की धारा 5 प्रयोज्य नहीं होगी –

अभिनिर्धारित – हां, इस तथ्य की परवाह किये बगैर कि अपीलार्थी के पास ऐसे विलंब हेतु पर्याप्त कारण है, उच्च न्यायालय को 1987 के अधिनियम की धारा 23(3) के अनुसार 90 दिवस की निश्चित अवधि की परिसीमा के पश्चात प्रस्तुत अपील की सुनवाई की अधिकारिता नहीं है – विलम्ब क्षमा किये जाने हेतु आवेदन पत्र खारिज एवं परिणामतः अपील भी खारिज।

***B. Railway Claims Tribunal Act (54 of 1987), Section 17(1)(2)* - Whether the Railway Claims Tribunal can condone the delay in filing the claim application u/s 13(1)(a) and (b) of the Railway Claims Tribunal Act, 1987 - Held - Yes, sub-section (2) of Section 17 of the Act of 1987 expressly empowers the Tribunal to entertain the claim application even beyond the period of limitation as prescribed u/s 17(1) of the Act of 1987, in case the applicant satisfies the Tribunal that he has sufficient cause for not making the application within the prescribed period. (Para 8)**

ख. रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 17(1)(2) – क्या रेल दावा अधिकरण अधिनियम 1987 की धारा 13(1)(ए) एवं (बी) के अंतर्गत दावा आवेदन प्रस्तुत करने में हुए विलंब को रेल दावा अधिकरण क्षमा कर सकता है – अभिनिर्धारित – हां, अधिनियम 1987 की धारा 17 की उपधारा (2) अधिकरण को अधिनियम 1987 की धारा 17(1) में विहित परिसीमा अवधि के पश्चात भी दावा आवेदन ग्रहण करने के लिए स्पष्ट रूप से सशक्त करती है, यदि आवेदक अधिकरण को संतुष्ट करे कि विहित अवधि में आवेदन पत्र प्रस्तुत न कर पाने हेतु उसके पास पर्याप्त कारण है।

***C. Railway Accidents and Untoward Incidents (Compensation) Rules 1990, Section 3(1), Part I of the Schedule* - Whether the maximum amount which may be awarded for death of a person in a Railway Accident or Untoward Incident is Rs. 4,00,000/- - Held - Yes, the maximum amount of compensation of Rs. 4,00,000/- is payable on account of death of a person in Railway Accident or Untoward Incident as per the Rules of 1990. (Para 15)**

ग. रेल दुर्घटना व अनपेक्षित घटना (प्रतिकर) नियम 1990, धारा 3(1), अनुसूची का भाग-I – क्या किसी व्यक्ति की रेल दुर्घटना अथवा अनपेक्षित घटना में मृत्यु होने पर अधिनिर्णित की जा सकने वाली अधिकतम राशि रु. 4,00,000/– है – अभिनिर्धारित – हां, नियम 1990 के अनुसार रेल दुर्घटना अथवा अनपेक्षित घटना में किसी व्यक्ति की मृत्यु होने के फलस्वरुप देय प्रतिकर की अधिकतम राशि रु. 4,00,000/– है।

Cases referred :

(2008) 3 SCC 70, (2009) 5 SCC 791, (2009) 15 SCC 183, (2003) 8 SCC 431, (2010) 5 SCC 23, (1991) 4 SCC 333, (1974) 2 SCC 133.

Vivek Agrawal, for the appellant.
Amrit Ruprah, for the respondent.

ORDER

C.V. SIRPURKAR, J. :- Heard on I.A.No.8460/2009 under Section 5 of the Limitation Act for condonation of delay of 319 days in filing this miscellaneous appeal.

2. It has been submitted on behalf of the appellant that appellant Kunjmoti is widow of deceased Raghuwar who had died in a train accident while traveling from Allahabad to Chapa in Sarnath Express on 15.01.2004. The Railway Claims Tribunal Bhopal Bench, had allowed the claim under Section 16 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to in the order as "the Act"); and had awarded a sum of Rs.4,00,000/-. Being aggrieved by the quantum of the award, this miscellaneous appeal under Section 23 of the Act, has been preferred.

3. It has been stated that as the appellant was not satisfied by the award passed by the Railway Claims Tribunal dated 29.08.2008, shall handed over the copy of the award for necessary action to her counsel Shri Manishanker Sahu of Raigarh; however, since the formalities regarding vakalatnama and affidavit could not be completed by the appellant, the appeal could not be preferred within the stipulated period. Subsequently, the copy of the award got misplaced in the office of the advocate. Later, on 25.07.2009, she learnt that for want of formalities regarding vakalatnama and affidavit, the appeal could not be filed. So, she along with her counsel visited the counsel at Jabalpur and ultimately the appeal was filed on 31.07.2009. The miscellaneous appeal was accompanied by an application under Section 5 of the Limitation Act, supported by affidavit of the appellant. Thus, the delay of 319 days was bona fide and deserves to be condoned.

4. The respondent has opposed the application under section 5 of the Limitation Act, by filing a written reply mainly on two counts. Firstly, it has been submitted that as per sub-section 3 of Section 23 of the Act, every appeal under section 23 has to be preferred within a period of 90 days from

the date of the order appealed against. Placing reliance upon the judgments rendered by the Apex Court in the cases of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur And Others,* (2008) 3 SCC 70, *Commissioner of Customs And Central Excise Vs. Hongo India Private Limited And Another*, (2009) 5 SCC 791, *Chaudharana Steels Private Limited Vs. Commissioner of Central Excise, Allahabad,* (2009) 15 SCC 183, *Prakash H. Jain Vs. Marie Fernandes,* (2003) 8 SCC 431, *Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission And Others* (2010) 5 SCC 23 and *Vinod Gurudas Raikar Vs. National Insurance Company Limited And Others* (1991) 4 SCC 333, it has been argued that the Act being a special law, provisions of sub-section (2) of section 29 of the Limitation Act, are not applicable and High Court has no jurisdiction to extend the period of Limitation prescribed by section 23 (3) of the Act. Secondly, taking recourse to Part I of the "Schedule" appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, it has been contended on behalf of the respondent that the maximum amount which may be awarded for death of a person in a Railway accident is Rs.4,00,000/-, which has already been awarded by the Tribunal; as such, the Court has no jurisdiction to enhance the amount any further. Thus, the appellant has no case on merits either; therefore, it has been prayed that the application under Section 5 of the Limitation Act as also the miscellaneous appeal, be dismissed.

5. This Court shall first consider as to whether or not Section 5 of the Limitation Act can be pressed into service for the purpose of condonation of delay in filing an appeal under Section 23 (1) of the Act?

6. In this regard learned counsel for the respondent has submitted that the cases relied upon by learned counsel for the appellant relate to Central Excise Act, 1994, Electricity Act, 2003, Representation of People Act, 1951 and Motor Vehicles Act, 1988. The principles enunciated in aforesaid cases would not be applicable to an appeal under section 23 of the Railway Claims Tribunal Act. It has also been submitted that as per sub-section 2 of Section 29 of the Limitation Act, where any special or local law prescribed 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 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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law. Relying upon the aforesaid language used to sub-section 2 of section 29 of the Limitation Act, learned counsel for the appellant has contended that there is nothing in Railway Claims Tribunal Act, 1987, which expressly excludes the application of provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act; therefore, Section 5 thereof would be applicable to the appeals filed under Section 23 (1) of the Act, and the High Court has jurisdiction to condone the delay taking recourse to Section 5 of the Limitation Act.

7. This Court bestowed its anxious consideration on the rival contentions. It may be seen that there are two provisions in the Railway Claims Tribunal Act, 1987, which relates to limitation, Section 17 of the Act reads as hereunder:

> ***17. Limitation–*** *(1) The Claims Tribunal shall not admit an application for any claim-*
>
> *(a) under sub-clause (i) of clause (a) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;*
>
> *(b) under sub-clause (ii) of clause (a) of sub-section (1) [or, as the case may be, sub-section (1-A)][1] of Section 13 unless the application is made within one year of occurrence of the accident;*
>
> *(c) under clause (b) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:*
>
> *Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of Section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under*

Section 78-B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

Section 23 is reproduced hereinbelow:

***23. Appeals.** – (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.*

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of order appealed against.

8. It may be noted at the outset that though sub-section (2) of section 17 expressly empowers the Railway Claims Tribunal to entertain an application made under sub-section (1) thereof even beyond the period of limitation prescribed by that sub-section, in case the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the prescribed period, no corresponding power has been conferred upon the High Court under Section 23.

9. It is true that the provisions relating to limitation in sub-section (3) of section 23 of the Railway Claims Tribunal Act, 1987 are not in *pari materia* with those in the Central Excise Act, 1944, Electricity Act, 2003, Representation of the People Act, 1951 or the Motor Vehicles Act, 1988; however, what are the principles to be considered while deciding as to whether or not application of sections 4 to 25 (inclusive) of the Limitation Act to any special or local law, have been clearly enunciated by the apex Court in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra* (1974) 2 Supreme Court Cases 133, which was a matter under the Representation of the People

Act 1951. In paragraph no: 17, the Supreme Court has observed that:

> *"It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."*

Likewise a three judge bench of Supreme Court in the case of *CCE & Customs v. Hongo India (P) Ltd.*, (2009) 5 SCC 791, at page 802 has held that:

> *35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of*

the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

10. If in the backdrop of aforesaid authoritative pronouncement, the scheme of the special law in question namely the Railway Claims Tribunal Act, 1987, is examined, it may be seen that the preamble reads as hereunder:

Preamble:

An Act to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration on non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto.

11. Section 2 contains definitions. Chapter II provides for establishment of Railway Claims Tribunals and benches thereof. Chapter III relates to jurisdiction, power and authority of the Claims Tribunals. Section 15 engrafts a bar to the exercise of jurisdiction by any Court or authority in any matter covered by the Act. Chapter IV lays down the procedure to be adopted by the Claims Tribunals established under the Act, including provision with regard to limitation. Section 22 relates to execution of the orders of the Claims Tribunal.

12. Thus, there can be no manner of doubt that the Railway Claims

Tribunals Act, 1987 is a complete code in itself. It was enacted in view of the fact that the litigation in Courts of law and before Claims Commissioners was very protracted; and with the avowed object to set up a specialized Tribunal for speedy adjudication of railway claims.

13. As such, regardless of the fact that no express reference has been made in The Railway Claims Tribunal Act, 1987, excluding the application of specific provisions of the Limitation Act, such application shall be deemed to have been impliedly excluded in view of the fact that the Railway Claims Tribunal Act is a complete code in itself and makes specific provisions to cover every aspect of the accident claims against railways.

14. In aforesaid view of the matter, Section 5 of the Limitation Act would have no application to an appeal under sub-section (1) of Section 23 of the Railway Claims Tribunal Act, 1987 and the High Court would have no jurisdiction to entertain such appeal beyond the stipulated period of limitation of 90 days regardless of the fact that the appellant had sufficient cause for such delay.

15. The Court is also in agreement with the arguments of learned counsel for the respondent that even on merits appellant has no case because Railway Claims Tribunal has also passed an award in the sum of Rs. 4 Lacs for the death of son of the appellant in a railway accident. Section 3 (1) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, ordains in clear terms that the amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule. Part-I of the Schedule appended to aforesaid Rules, prescribes the amount of compensation as Rs.4 Lacs, which has already been awarded by the Railway Claims Tribunal. Thus, even on merits the appellant has no case.

16. In the result, I.A.No.8460/2009 under Section 5 of the Limitation Act for condonation of delay is dismissed.

17. Consequently, this miscellaneous appeal under Section 23 (1) of the Railway Claims Tribunal Act, 1923 also stands dismissed.

C.C. as per rules.

Appeal dismissed.

I.L.R. [2016] M.P., 1152
APPELLATE CRIMINAL
Before Mr. Justice S.K. Gangele & Mr. Justice S.K. Palo
Cr.A. No. 686/2004 (Gwalior) decided on 24 July, 2014

BHAWAR SINGH & anr. ...Appellants
Vs.
STATE OF M.P. ...Respondent

(Alongwith Cr.A. 691/2004 & Cr.A. 712/2005)

A. Criminal Procedure Code, 1973 (2 of 1974), Section 154 - Delay in F.I.R. - 3 hours - **Place of incident 12 km from police station - Deceased shifted to hospital by Tractor trolly - No delay in lodging FIR. (Para 20)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन में विलम्ब – तीन घंटे – घटना का स्थान पुलिस थाने से 12 कि.मी. दूर – मृतक को ट्रेक्टर–ट्रॉली में अस्पताल भेजा गया – प्रथम सूचना प्रतिवेदन दर्ज कराने में विलम्ब नहीं।

B. Penal Code (45 of 1860), Section 149 - Member of unlawful assembly - **Accused No. 7 armed with 12 bore gun and also fired but gun shot did not hit anybody - No deadly weapon seized - Cannot escape criminality. (Para 23)**

ख. दण्ड संहिता (1860 का 45), धारा 149 – विधि विरुद्ध जमाव का सदस्य – अभियुक्त क्र. 7, 12 बोर बंदूक से सुसज्जित था एवं उसने गोली भी चलाई परन्तु वह किसी को लगी नहीं – कोई भी घातक शस्त्र जब्त नहीं – आपराधिकता से बच नहीं सकता।

C. Penal Code (45 of 1860), Section 149 - Unlawful assembly - Principle of vicarious liability - Applicability - **Every member of unlawful assembly having common object is responsible for the acts committed by any other member of that assembly and is guilty of substantive offence. (Para 23)**

ग. दण्ड संहिता (1860 का 45), धारा 149 – विधि विरुद्ध जमाव – प्रतिनिधिक दायित्व का सिद्धांत– प्रयोज्यता – समान उद्देश्य रखने वाले विधि विरुद्ध जमाव का प्रत्येक सदस्य उस जमाव के अन्य किसी भी सदस्य द्वारा कारित कृत्यों हेतु उत्तरदायी एवं मुख्य अपराध का दोषी होता है।

D. Practice & Procedure - Proof beyond reasonable doubt - Meaning - **Degree of proof must not be beyond a shadow of doubt.** **(Para 26)**

घ. पद्धति एवं प्रक्रिया – युक्तियुक्त संदेह से परे प्रमाण – अर्थ – प्रमाण की कोटि संदेह की छाया से परे नहीं होना चाहिए।

Cases referred :

2004 AIR SCW 2748, 1999 (1) JLJ 259, (2011) 2 SCC 198, AIR 1983 SC 753 = 1983 CR.L.J. 1096, Cr.A. No. 398/1999 decided on 16.11.2009, 2011 AIR SCW 4939, 2008 AIR SCW 2151, 2004 SCC (Cri) 106, (2006) 9 SCC 531, 2007 (3) MPHT 556 (DB), Cr.A. 67/2008 decided on 28.11.2011, Cr.A. No. 136/1998 decided on 03.07.2007, 2011 (1) MPHT 505 (DB), Cr.A. No. 216/2002 decided on 10.08.2010, Cr.A. No. 371/2006 decided on 21.02.2012, AIR 2011 SC 637, AIR 1994 SC 963, AIR 1995 SC 375, AIR 1997 SC 3527, 1999 (1) JLJ 259.

A.K. Jain, for the appellant No.1 in Cr. A. No. 691/2004.
Bhagwan Raj Pandey, P.P. for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by : **S.K. Palo, J. :-** Criminal Appeal No.686/2004 which has been filed by the appellants, Bhawar Singh & Kalua @ Raj Kumar is being decided along with Criminal Appeal No.691/2004 in which Ram Singh, Ranveer Singh, Upendra Singh & Munshi are the appellants and in Criminal Appeal No.712/05 which is a jail appeal filed by Sube Singh. These appeals arise out of the same sessions trial, therefore, judgment in this appeal shall also govern the disposal of connected Criminal Appeals No.691/04 & 712/2005.

2. The appellants have filed this appeal under Section 374 of Cr.P.C. aggrieved by the judgment of conviction and sentence dated 10.09.2004 passed by II Additional Sessions Judge (FTC), Sabalgarh, District Morena in Sessions Trial No.105/2002 *(State of M.P. Vs. Ram Singh & Ors)*. The appellants have been convicted and sentenced as per the table given below:-

Accused No.1, Ram Singh -

(i) 302 of IPC	Life imprisonment with fine of Rs.500/-	In lieu of fine 1 Yr. R.I.

(ii) 307/149 of IPC	10 Yrs. R.I. with fine of Rs.500/-	In lieu of fine 1 Yr. RI
(iii) 148 of IPC	3 Yrs. R.I. -	

Accused No.2, Sube Singh, Accused No.4, Bhawar Singh & Accused No.5, Kalua & Accused No.7 Munshi -

(i) 302/149 of IPC	Life imprisonment with fine of Rs.500/-	In lieu of fine 1 Yr. R.I.
(ii) 307/149 of IPC	10 Yrs. R.I. with fine of Rs.500/-	In lieu of fine 1 Yr. RI
(iii) 148 of IPC	3 Yrs. R.I. -	

Accused No.3, Ranvir -

(i) 302/149 of IPC	Life imprisonment with fine of Rs.500/-	In lieu of fine 1 Yr. R.I.
(ii) 307/149 of IPC	10 Yrs. R.I. with fine of Rs.500/-	In lieu of fine 1 Yr. RI
(iii) 148 of IPC	3 Yrs. R.I. -	
(iv) 25 (1)(B) of Arms Act	3 Yrs. with Rs.500/-	In lieu of fine 3 months
(v) 27 Arms Act	3 Yrs. with Rs.500/-	In lieu of fine 3 months

Accused No.6, Upendra Singh

(i) 302/149 of IPC	Life imprisonment with fine of Rs.500/-	In lieu of fine 1 Yr. R.I.
(ii) 307 IPC	10 Yrs. R.I. with fine of Rs.500/-	In lieu of fine 1 Yr. RI
(iii) 148 IPC	3 Yrs. R.I. -	

3. The prosecution story in brief is that on 13.06.2001 at about 05.30 pm at Village Badhreta complainant Rajpal alongwith Sevaram, Dataram, Vijay Singh & Vasudeo were going towards their house in the public path. This path is in front of the house of the accused Bhawar Singh. In the open terrace/

balcony of accused Bhawar Singh, all accused persons having common object were sitting armed with their weapons. Accused Ram Singh and accused Upendra were armed with 12 bore single barrel guns, accused Ranveer was armed with 12 bore *katta* (country made gun), accused Sube Singh was armed with *ballam*, accused Kalua was armed with *farsa*, accused Bhawar Singh was armed with *Kulhadi* and accused Munshi was armed with 12 bore single barrel gun. When the complainant party reached in front of the house of Bhawar Singh, accused Ram Singh fired with his 12 bore gun which hit Sevaram on his forehead. Sevaram fell down, he died on the spot. Accused Upendra Singh fired with his 12 bore gun to Dataram which hit his left wrist *(kocha)*. Dataram also fell on the ground sustaining injuries. Accused Ranveer Singh fired with his 12 bore gun, pellets of which hit Dataram's body. The complainant Rajpal took shelter of the wall and escaped injuries. The accused persons fired by their firearms with the intention to kill the complainant party. Accused Munshi fired from his 12 bore gun but the complainant had taken shelter of the wall, therefore, escaped injuries. Accused Kalua, accused Bhawar Singh and accused Sube Singh were abusing the complainant party and also instigated other accused persons to kill the complainant party by saying *'salo ko goli maar do, jane na paye'*. Roshan Lal, Raghupati & Keshav Baghel were present at the spot and saw the incident. The deceased Sevaram and injured Dataram were taken to Sabalgarh by tractor trolly. On this report at Police Station Sabalgarh crime was registered. After due investigation, charge-sheet has been filed under Sections 302, 307, 147, 148 & 149 of IPC read with Section 25/27 of the Arms Act.

4. As per the chart mentioned below the accused persons were explained charges, they abjured guilt. In their examination under Section 313 of Cr.P.C., the accused persons pleaded that they are innocent and pleaded that they have been falsely implicated. The charges are as under:-

Accused No.	Name	Charges
Accused No.1	Ram Singh	148, 302 for Sevaram, 307/ 149 for Dataram, 307/149 for Rajpal of IPC
Accused No.2	Sube Singh	148, 302/149 for Sevaram, 307/149 Dataram, 307/149 for Rajpal & 294 of IPC

Accused No.3	Ranveer Singh	148, 302/149 for Sevaram, 307/149 for Dataram, 307/149 for Rajpal of IPC, Section 25 (1) (B) & 27 of Arms Act.
Accused No.4	Bhawar Singh	148, 302/149 for Sevaram, 307/149 for Dataram, 307/149 for Rajpal 294 of IPC
Accused No.5	Kalua @ Raj Kumar	148, 302/149 for Sevaram, 307/149 for Dataram, 307/ 149 for Rajpal, 294 of IPC
Accused No.6	Upendra Singh	148, 302/149 for Sevaram, 307 for Dataram, 307/149 for Rajpal of IPC
Accused No.7	Munshi	148, 302/149 for Sevaram, 307/149 for Dataram & 307 for Rajpal of IPC

5. The accused persons after adducing evidence were held guilty and sentenced as per the details mentioned in table at paragraph No.2.

6. Aggrieved with this, appellants have filed the present appeals.

7. In Criminal Appeal No.686/2004, the appellants Bhawar Singh & Kalua assailed the impugned judgment on the ground that the learned Trial Court did not appreciate the evidence properly. On the basis of interested witnesses, the judgment of conviction has been passed. The FIR was lodged three hours late which is a belated FIR. There are many contradictions and omissions in the statements. There was no proof of abusing by the appellants, therefore, they were acquitted of that charge. The panchayatnama (Exhibit P-4) and safina form (Exhibit P-5) does not contain names of the appellants. The appellants also submitted that as per the prosecution story, it is alleged that the main accused, Ram Singh stated to have fired the gun suddenly. The appellants did not know that Ram Singh would suddenly fire. In that condition, the appellants had no common object to kill Sevaram, therefore, it is not proper to convict them under Section 302/149 of IPC. Therefore, the impugned judgment be set-aside and the appellants be set free.

8. In Criminal Appeal No.691/2004, the appellants Ram Singh, Ranveer, Upendra Singh and Munshi have assailed the impugned judgment on the grounds mentioned above. Beside that they have also submitted that appellant Munshi Singh is the son-in-law of the appellant Ram Singh. The investigating officer has not recovered any gun from the appellants. Recovery of gun from the appellant Munshi Singh is not proved. Therefore, the conviction of the appellants under Section 148 of IPC for having deadly weapons is not just and proper. The appellants cannot be convicted on the basis of their presence at the place of occurrence. Their participation in the crime is necessary for convicting them. The prosecution has not proved that Munshi Singh was the member of unlawful assembly. Therefore, his conviction under Section 302 read with Section 149 of IPC cannot be sustained. It is also contended that the learned Trial Court did not consider the presence of the appellants to constitute rioting. On the scrutiny of the evidence. If the so called injuries are corroborated by the medical evidence then, that can be accepted as against the accused who caused those injuries and then only they could be held to be members of the unlawful assembly, therefore, conviction of the appellant, Ranveer Singh under Section 302/149 of IPC and Section 148 of IPC deserves to be set-aside.

9. The occular evidence is not corroborated with the medical evidence. It is alleged by the prosecution that gunshot have been fired from the roof of the house of accused Bhawar Singh, due to which deceased Sevaram and Dataram sustained injuries when they were on the road. Considering the nature and the shape and direction of injuries of the deceased and Dataram, the injuries were not from upward to downward. The occular evidence is therefore does not corroborate the medical evidence. Scrutiny of the evidence was improper. No independent witness has been examined and there is no explanation in the record in this regard. Besides, there are many contradictions and omissions, therefore, the appellants have been wrongly convicted. It is prayed for allowing the appeal and to set-aside the impugned judgment and to acquit the appellants.

10. In Criminal Appeal No.712/2005, the appellant, Suberam has filed jail appeal through Central Jail, Gwalior.

11. Shri Bhagwan Raj Pandey, learned Public Prosecutor has opposed the contentions made by the appellants and submitted that the learned Trial

Court has considered all evidence available on the record, on the basis of which the learned Trial Court has arrived at the conclusion that there is ample evidence in the record as to their conviction, hence, the appellants are rightly held guilty.

12. Having gone through the rival contentions and the evidence available in the record, we find that deceased Sevaram son of Balwant and injured Dataram son of Mahipati (P.W.2) have received gunshot injuries due to which Sevaram succumbed to death on the spot. Dr. R.B. Agrawal (P.W.14) in his post-mortem report (Exhibit P-34) clearly opined that the death of Sevaram has occurred due to gunshot injuries on the forehead and the mode of death is homicidal. As per the MLC report (Exhibit P-36) Dr. R.B. Agrawal (P.W.14) found punctured multiple wounds in the neck, head, shoulder, chest, left forearm, thigh and upper part of sternum of Dataram. These injuries were found to be pellets of gunshot. These pellets were taken out, sealed and given to the constable for examination. These injuries were of grievous nature but these injuries could not have caused death in the natural course. The gunshot injury received by Sevaram on his forehead might have been fired from a parallel height, therefore, the gunshot was received on the forehead and bullet passed through the upper portion of ear. The gunshot injuries received by Dataram could have been received from front side but the injuries on the dorsal side of the hand could be received because of special position of the hand.

13. Accused No.1 Ram Singh was arrested by Exhibit P-9. On the basis of memorandum Exhibit P-14 seizure memo Exhibit P-16 was drawn and a 12 bore-gun (Article A) three live cartridges (Articles B,C & D) and three used cartridges (Article E,F & G) were seized.

14. Accused No.2 Sube Singh was arrested vide arrest memo Exhibit P-10. On the basis of memorandum Exhibit P-15 a *ballam* was sized (sic:seized) from him vide seizure memo Exhibit P-13.

15. Accused No.3 Ranveer was taken into custody by arrest memo Exhibit P-32. On the basis of his memorandum Exhibit P-1, Exhibit P-20 seizure memo was drawn by which a 12 bore gun (Article I) and a cartridge (Article H) has been seized from him.

16. Accused No.4 Bhawar Singh was arrested vide arrest memo Exhibit P-30. On the basis of his memorandum Exhibit P-25 a *kulhadi* was seized by

drawing seizure memo Exhibit P-21.

17. Accused No.5 Kalua @ Raj Kumar was arrested vide arrest memo Exhibit P-13 and on the basis of his memorandum Exhibit P-19 a *farsa* was seized by drawing seizure memo Exhibit P-18.

18. Accused No.6 Upendra was arrested by arrest memo Exhibit P-11. On the basis of memorandum Exhibit P-23 a gun and its licence has been seized by seizure memorandum Exhibit P-23.

19. Accused No.7 Munshi has been arrested by arrest memo Exhibit P-12.

20. On perusal of the F.I.R., it is shown that the report was lodged within 3 hours after the incident. The place of incident is stated to be at a distance of 12 Kms. from Police Station Sabalgarh. The injured person and the deceased were shifted to the hospital by arranging a tractor trolly. Thus, it cannot be said that the report was delayed. It can be further stated that in the present case the testimony of eye witnesses corroborate the medical evidence. Therefore, the prosecution version is fully established. In this regard, reference can be made to *Ram Bali v. State of U.P.* (2004 AIR SCW 2748).

21. The appellants have also assailed the impugned judgment on the basis that the names of the accused persons are not found place in the safina form and in the inquest (panchnama) report. In this regard, *Devi Singh and others v. State of M.P.,* 1999 (1) JLJ 259 can be profitably referred in which it has been held that "inquest – purpose of holding – is to ascertain cause of death – names of accused are not to be mentioned therein."

22. As per the prosecution story, the accused persons were sitting together in the terrace/balcony (open *chhatt*) of accused Bhawar Singh. They were more than 5 in number. Some of them were having deadly weapons, therefore, there was a common object, hence, it constituted "unlawful assembly" and all the accused persons were members of that unlawful assembly. Any one of them cannot be termed as innocent by-standers. The evidence show that there was an unlawful assembly and all the appellants were members of that unlawful assembly. There was use of force or violence by the members of unlawful assembly and that violence i.e., fire of gunshots, was done in prosecution of the common object of the unlawful assembly.

23. The objections raised by counsel for accused Munshi is that he was

not a member of the unlawful assembly, it could be very well asserted that his presence was not there with other accused persons. But simply because no deadly weapon was seized from him, he cannot escape his criminality. For this, we should discuss the scope of Section 149 of IPC. It incorporates the principle of vicarious liability and holds a person liable for an offence, which he might not have actually committed, by reason of his being a member of an unlawful assembly. In other words, every member of an unlawful assembly having a common object is responsible for acts committed by any other member of that assembly, and is guilty of the substantive offence.

24. In the case of *Umesh Singh v. State of Bihar* reported in 2000 (5) Supreme 92, the Hon'ble Supreme Court has held that "an accused whose case falls within the terms of Section 149 of IPC cannot be put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly. Every one must be taken to have intended the probable and natural results of the combination of the acts in which he had joined."

25. P.W.2, Dataram the injured has given a vivid description of the incident. The first gunshot was fired by accused Ram Singh which hit Sevaram on the forehead. Sevaram collapsed there. The second gunshot was fired by accused Upendra. Pellets of which hit Dataram on his chest. Accused, Ranveer then fired from country made gun, the pellets of which again hit Dataram. Rajpal (P.W.4), Brijesh Singh (P.W.9) & Raghupathi (P.W.10) have supported the statement of Dataram (P.W.2). The statement of Dataram (P.W.2), according to us, is unimpeachable testimony which is reliable. On account of firing of gunshot Sevaram had died. The evidence of other eye witnesses is further corroborated by medical evidence of autopsy surgeon, Dr. R.B. Agrawal (P.W.14)..

26. It is worth mention here that, in criminal trial "proof beyond reasonable doubt does not mean that the degree of proof must be beyond a shadow of doubt." In this regard, the law laid down by the Hon'ble Apex Court in *Iqbal Moosa Patel v. State of Gujarat,* (2011) 2 SCC 198 can be profitably referred.

27. The Hon'ble Supreme Court has also propounded in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat,* AIR 1983 SC 753=1983 Cr.L.J. 1096, as regarding appreciation of evidence in criminal trial. Which reads as

under:-

"Over much importance cannot be attached to minor discrepancies. The reasons are obvious:-

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation, it is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident or the time duration of an occurrence usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time – sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to be get confused, or mixed up when

interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

(8) Discrepancies which do not go to the roof of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. More so when the all important "probabilities – factor" echoes in favour of the version narrated by the witnesses."

28. Keeping in mind the above guidelines laid down by the Hon'ble Supreme Court, a minor discrepancies and the small variation of the witnesses cannot be said to have any adverse effect in the present case.

29. As far as the injuries caused to Dataram (P.W.2), all injuries are said to be pellets of gunshot. In this regard, Dr. R.B. Agrawal (P.W.14) has clearly stated that those were gunshot injuries and he also proved the x-ray Exhibit P-37 to Exhibit P-42.

30. In absence of tattooing or blackening of skin of the deceased or injury at or around the gunshots, the injuries could have caused from more than three feet distance. Dr. R.B. Agrawal (P.W.14) has made it clear that there was no tattooing or blackening in the nearby wounds. He has specifically denied the suggestions made by the defence counsel at Para 31 of his cross-examination that the pellets which he recovered from the gunshot injuries of Dataram cannot be implanted at the time of X-ray. He has reasoned for the same that in case of implant, the pellets could have been round in shape, whereas the recovered pellets were of oval (*chapta*) shape. He agreed to the

suggestions that even the gunshot fired from a height, injuries caused to Dataram could be possible.

31. He also agreed to the suggestions that the injury caused to Sevaram on his head is not likely had the gunshot fired from the balcony from a distance of 12 feet. But this is only an opinion and the injury caused to Sevaram could have been possible, if Sevaram was looking upward, therefore, this opinion that the gunshot inflicted from the height of balcony could not have been possible cannot be adhered to.

32. In this regard, the appellants relied on unreported case of *Pappu @ Gajraj v. State of M.P.* passed in Criminal Appeal No.398/1999 decided on 16.11.2009 by a Division Bench of this Court. But the same is not attracted in the case because in the case of *Pappu* (supra), the blackening and charring marks on the dead body was present which could be inflicted from a close range of near about 3 feet, whereas in the present case as per the prosecution, the gunshot was fired from a distance and the balcony of a house. Similarly other case relied upon by counsel for the appellant Ram Singh is *Mahendra Singh v. State of U.P.* reported in 2011 AIR SCW 4939 is also not attracted in this case.

33. Counsel for the appellant Ram Singh also placed reliance relied on *Daya Nand v. State of Haryana,* 2008 AIR SCW 2151 in which it has been held that Murder - Solitary injury – Gun shot fired by accused hit deceased on waist – Offence not murder – Accused liable to be convicted only under S. 304 Part II. In the present case the injury was on the forehead of the deceased not on the waist. Hence not attracted.

34. Counsel for the appellant also relied on *Manke Ram v. State of Haryana* reported in 2004 SCC (Cri) 106 in which the Hon'ble Supreme Court has held as under:-

> "Murder or culpable homicide not amounting to murder – Appellant inviting the deceased S to his room to have a drink – While both of them were drinking, P.W.5 (nephew of S) interrupted their drinking session by asking his uncle to get up and join him for dinner – S acceded to the said request because of which the appellant S and appellant – Appellant using his service revolver causing fatal injuries to S – No enmity between

S and appellant – Absence of motive – Incident took place in a sudden fight in the heat of passion – Considering that S and the appellant were inebriated and the service revolver being next to the place where the fight took place and was not kept there by a planned act by the appellant, held, it could not be altogether ruled out that the shots were fired not with an intention of taking an undue advantage by the appellant – Thus, on facts, conviction of appellant altered from Section 302 IPC to S. 304 Pt. II IPC.

35. There has been enmity between the parties in the case in hand. There was no sudden fight. The incident took place can be termed as premeditated. The accused persons were waiting armed with deadly weapons, hence, the present case is distinguishable.

36. Similarly placing theory of a single gunshot fired by the appellant, counsel for the appellant argued that at the most it may constitute an offence under Section 304 Part II and not section 302 of IPC. Counsel for the appellant relied on *Surendra Singh @ Bittu v. State of Uttaranchal,* (2006) 9 SCC 531, but the present case is not of the same nature for the simple reason that the appellants were waiting for the complainant to come with preparation armed with deadly weapons, whereas in the case of *Surendra Singh* (supra), the appellant acted on an impulse and that too upon instigation.

37. Similar is the case of *Udayveer v. State of M.P.,* 2007 (3) MPHT 556 (DB) and unreported judgment of *Laxman Yadav v. State of M.P.* passed in Criminal Appeal No.67/2008 decided on 28.11.2011 by this Court. Hence, these references cannot render any help to the case of appellant Ram Singh.

38. Counsel for the appellant, Ram Singh placed reliance on unreported judgment of *Dataram & Ors. v. State of M.P.* passed in Cr.A.No.136/1998 decided on 3.7.2007 by this Court, in which there was no previous enmity and because there was some dispute about land and there was exchange of dialogues suddenly the appellant went running to his house and came back armed with 12 bore gun of his father and shot to the deceased. The present case is therefore distinguishable.

39. Counsel for the appellant, Ram Singh relied on *Ziledar Singh v. State of M.P.*, 2011 (1) MPHT 505 (DB) In which the trial court convicted the appellants under Section 304 Part I of IPC. It was a case of private defence,

therefore, it is also distinguishable from the present case. Similarly reliance is being placed by the learned counsel for the appellant Ram Singh on unreported judgment of *Manbendra Singh @ Banti & Ano. v. State of M.P.* passed in Criminal Appeal No.216/2002 decided on 10.08.2010 and *Murari v. State of M.P.,* passed in Criminal Appeal No. 371/2006 decided on 21.2.2012 are distinguishable and does not attract in the present case.

40. As regards the intention of the accused is concerned, the same cannot be proved by any means except that it can be asserted by actions of the accused. In this regard, the law laid down in *Mangesh v. State of Maharashtra* (AIR 2011 SC 637) can be profitably referred, which reads as below:-

> "The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation and if so the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

41. The intentions of the accused persons in the present case can be inferred from their actions. Firstly, there was preparation as they were armed with deadly weapons waiting for the complainant party to come. Secondly, the gunshot was fired straight on the head of deceased Sevaram. Thirdly, the gunshot fired to injured Dataram was shot in the chest among other parts of his body. Fourthly, there was enmity between the parties and they were not stranger. Fifthly, the

incident took place in a cold-blooded situation. There was no heat of passion. All these circumstances show that the intention was very clear.

42. It is vehemently argued by learned counsel for the appellant Ram Singh that the injuries caused to Dataram (P.W.2) could not be caused by 12 bore gun. Because 12 bore gun bears bullets not pellets. But this contention doesn't have any positive support. At the other hand a 12 gauge shotgun can be used for firing of single solid slug and at the same time it can throw cartridge which have pellets. 12 gauge shells are most commonly used are round in shape and filled with lead or lead substitute pellets.

43. Relying on *Panchaiah and others v. State of Karnataka* reported in AIR 1994 SC 963, *Awadesh and others v. State of U.P.* reported in AIR 1995 SC 375 and *Madru Singh v. State of M.P.* reported in AIR 1997 SC 3527, a Division Bench of this Court in *Devi Singh and others v. State of M.P.*, 1999 (1) JLJ 259 has held that "all accused coming together with respective arms – causing one death and injuries to witnesses – fled away together – incident proved by 9 witnesses – two of them injured – offences made out." Similar in the present case.

44. For the foregoing reasons, the appeals, filed by the appellants against their conviction and sentence, fails and is hereby dismissed. Their conviction under Section 148, 302/149 and 307/149 of IPC (appellant Ram Singh under Section 302 simpliciter of IPC and appellant Upendra under Section 307 simpliciter of IPC) are hereby affirmed, their sentences as described in paragraph No.2 are hereby affirmed. The appellants Bhawar Singh and Kalua are on bail. Their bail bonds shall stand cancelled and they are directed to surrender before the learned Trial Court on or before **26.08.14** to serve out the remaining part of the sentence, failing which the learned Trial Court shall issue arrest warrant against them and also notice to their sureties and may pass necessary order against them.

45. The Registry is hereby directed to send the original bail bonds filed by the appellants Bhawar Singh and Kalua to the learned Trial Court and photocopy thereof be retained in the original record. The original record of the learned Trial Court be sent back forthwith so as to reach the learned Trial Court on or before **26th August, 2014** for necessary compliance.

Appeal dismissed.

I.L.R. [2016] M.P., 1167
APPELLATE CRIMINAL
Before Mr. Justice Jarat Kumar Jain
Cr. A. No. 1954/2014 (Indore) order passed on 13 July, 2015

MEENADEVI (SMT.) ...Appellant
Vs.
OMPRAKASH & ors. ... Respondents

***Criminal Procedure Code, 1973 (2 of 1974), Sections 2(d), 2(wa), 372, 378(4), Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009) and Penal Code (45 of 1860), Sections 323/34, 341 & 506(2) - Victim - Appeal* - Case instituted on complaint - Complainant has right to file appeal against acquittal - Provision u/s 378(4), Cr.P.C. applicable - Whereas case instituted on police report victim can appeal against such order of acquittal, or convicting for a lesser offence or imposing inadequate compensation under amendment inserted under the proviso of Section 372 Cr.P.C. (Para 9)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 2(डी), 2(डब्ल्यू ए), 372, 378(4), दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2008 (2009 का 5) एवं दण्ड संहिता (1860 का 45), धाराऐं 323/34, 341 व 506(2) – पीड़ित – अपील – परिवाद पर संस्थित प्रकरण – परिवादी को दोषमुक्ति के विरुद्ध अपील प्रस्तुत करने का अधिकार है – धारा 378(4) दं.प्र.सं. के उपबंध प्रयोज्य – जबकि पुलिस प्रतिवेदन पर संस्थित प्रकरण में दं.प्र.सं. की धारा 372 के परन्तुक मे प्रविष्ट किए गए संशोधन के अंतर्गत पीड़ित दोषमुक्ति अथवा किसी कमतर अपराध के अंतर्गत दोषसिद्धि अथवा अपर्याप्त प्रतिकर के आदेश के विरुद्ध अपील प्रस्तुत कर सकता है।

Cases referred :

2013 (3) Crimes 493 (Raj.), 2011 (2) MPLJ 643, 2015 Cri LJ 1627, 2015 (1) NIJ 166 (Del.), AIR 2013 SC 395.

Nidhi Bohra, for the appellant.
Navneet Kishore, for the respondent.

ORDER

J.K. JAIN, J. :- Appellant has filed this appeal u/s 378 (4) of Code of Criminal Procedure (in brief "Code") against the order passed by Additional Chief Judicial Magistrate Indore in Criminal Case No. 15815/2010 on

31/1/2014 by which acquitted the respondents from the charge u/ss 341,323 or 323/34 and 506-II of IPC.

2. The appellant has filed a private complaint against the Respondents wherein the Additional Chief Judicial Magistrate, Indore took cognizance for the offence under Sections 341, 323 or 323/34 and 506-II of IPC and after trial, acquitted the Respondents from all the charges. Being aggrieved appellant/ complainant filed this appeal u/s 378 (4) of Code after obtaining special leave to file an appeal.

3. Respondents have raised a preliminary objection that the appeal u/s 378(4) of the Code is not maintainable whereas the appeal to the proviso of Section 372 of Code is competent.

4. Learned counsel for the Respondents submitted that the appellant is a victim, therefore, as per the amended proviso to Section 372 of the Code the appellant should have filed the appeal before the Sessions Court and not before this Court under Section 378 (4) of Code. For this purpose he placed reliance on the judgment of Rajasthan High Court in the case of *Gulab Singh vs. Ashok Kumar* 2013 (3) Crimes 493 (Raj.).

5. On the other hand learned counsel for the appellant submits that the case is instituted on a private complaint, therefore, as per the provisions of Section 378 (4) of the Code the appeal has been filed after obtaining Special leave. As per the provisions of 372 of the Code a victim can file the appeal and the complainant is not a victim as defined in section 2(wa) of the Code. Thus, the appeal u/s 378(4) of the Code is maintainable, for this purpose she placed reliance on the judgment of this Court in the case of *Dharamveer Singh Tomar vs. Ramraj Singh Tomar* 2011 (2) M.P.L.J. 643 and judgment of Chhatisgarh High Court in the case of *Kailash Murarka vs. K. Geet Srijan* 2015 CriLJ 1627 and judgment of Delhi High Court in the case of *Bhajanpura Co-operative Society Limited vs. Sushil Kumar* 2015 (1) NIJ 166 (Del).

6. After hearing learned counsel for the parties, I have considered the submissions.

7. For this purpose I have to see the scheme, object and reasons of the amendment which is inserted by Code of Criminal Procedure (Amendment) Act 2008. Before this amendment, cases which were instituted on police report the victim had no right to file an appeal against the order of the acquittal. Even

the victim was not entitled to engage an advocate of his choice to assist the prosecution without the permission of the Court. Therefore the legislation thought it proper to enable him proper opportunity so he may be able to actively participate in the judicial process. Therefore, by the Code of Criminal Procedure (Amendment) Act 2008, a new clause (wa) in Section 2 has been inserted which is as under: -

> **"(wa) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heirs".**

Inserted the proviso to Section 24 which is as under:-

> **"provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."**

Inserted the proviso to Section 372 as under:-

> **"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."**

8. Section 2(d) of the Code reads as under:-

> **"Complaint means any allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some person, whether, known or unknown, has committed an offence, but does not include a police report."**

9. With the aforesaid definition of complaint, it is clear that a case instituted on a complaint and a case instituted on a police report are different. In a case instituted on complaint, complainant has right to file appeal against the order of acquittal as per the provisions of 378(4) of the Code but in a case instituted on a police report the victim has no such right. Therefore the legislation by

way of amendment inserted the proviso to Section 372 of the Code so as to enable the victim to appeal against such order of acquittal or convicting for a lesser offence or imposing inadequate compensation.

10. The Hon'ble Apex Court in case of *Subhashchand Vs State(Delhi Administration)* AIR 2013 SC 395 has held that complainant, who might be a private person or public servant or State/State Authority has only right to file application u/s 378 (4) of the Code for special leave to appeal against the order of the acquittal before the High Court, whether offence is bailable or non-bailable, cognizable or non-cognizable, complainant cannot file such appeal in Sessions Court.

11. This Court in case of *Dharmaveer Singh Tomar* (supra) took the view that against the order of acquittal, in case instituted on complaint, the complainant has only remedy to file appeal u/s 378(4) of the Code.

12. In the Chhatisgarh High Court there were two conflicting decisions on this issue and therefore a reference has been made to a larger Bench and after elaborate discussion Chhatisgarh High Court answered the reference in the case of *Kailash Murarka* (Supra) that the complainant is not entitled to prefer an appeal under proviso to Section 372 of the Code before the Court of Sessions against the judgment of acquittal passed by subordinate criminal court arising out of criminal complaint filed by complainant and complainant is required to prefer an appeal under 378 (4) of the Code before the High Court after obtaining special leave.

13. Delhi High Court in the case of *Bhajanpura Co-operative Society Ltd* (supra) has taken the same view.

14. For the reasons aforesaid I am unable to convince with the judgment of Rajasthan High Court in the case of *Gulab Singh* (supra) that against the order of acquittal complainant can file appeal under proviso to section 372 of the Code before the Court of Sessions.

15. Thus, there is no force in the argument of the learned counsel for the Respondents that this appeal under 378(4) of the Code is not maintainable before this Court. Thus, the application **[I.A.No.3200/2015]** stands dismissed.

Let the matter be fixed for final hearing in due course.

Order accordingly.

I.L.R. [2016] M.P., 1171
APPELLATE CRIMINAL

Before Mr. Justice P.K. Jaiswal & Mr. Justice D.K. Paliwal

Cr. A. No. 357/2015 (Indore) order passed on 14 September, 2015

STATE OF M.P. ... Appellant
Vs.
RADHESHYAM & ors. ... Respondents

Limitation Act (36 of 1963), Sections 3 & 29(2), Prevention of Corruption Act (49 of 1988), Section 13(1)(e) and Special Courts Act, M.P. 2011 (8 of 2012), Sections 9(3) & 17 - Applicability of provision of Limitation Act - Delay in filing appeal **- High Court can consider the prayer for condonation of delay - The appellant has filed an affidavit in support of application - No counter affidavit has been filed - Sufficient cause has been shown by the appellant and delay seem to be bonafide - Delay condoned. (Paras 8 & 10)**

परिसीमा अधिनियम (1963 का 36), धाराऐं 3 व 29(2), भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) एवं विशेष न्यायालय अधिनियम, म.प्र. 2011 (2012 का 8), धाराऐं 9(3) व 17 – परिसीमा अधिनियम के उपबंध की प्रयोज्यता – अपील प्रस्तुत करने में विलंब – उच्च न्यायालय विलम्ब को माफ किये जाने हेतु प्रार्थना पर विचार कर सकता है – अपीलार्थी ने आवेदन पत्र के समर्थन में एक शपथ पत्र प्रस्तुत किया है – कोई प्रति शपथ पत्र प्रस्तुत नहीं – अपीलार्थी द्वारा पर्याप्त कारण दर्शित किया गया है एवं विलम्ब सद्भाविक प्रतीत होता है – विलम्ब माफ किया गया।

Cases referred :

AIR 1976 SC 105, 2004(2) MPLJ 359, AIR 2002 SC 1201.

Arvind Gokhale, for the appellant.
Vinay Saraf, for the respondent No.1.

ORDER

The Order of the Court was delivered by :
D.K. PALIWAL, J. :- The appellant Special Police Establishment, Indore had filed an application for confiscation of the property acquired by the respondents, which were *prima facie* found to be disproportionate to known sources of income of the respondents. Crime No.80/2011 under Section 13(1)(e) of the Prevention of Corruption Act has been registered against the

respondents. An application for confiscation of the properties has been submitted, which has been dismissed vide order dated 18.12.2014 The order was communicated on 18.12.2014. The certified copy was obtained on 20.12.2014. Thereafter, the Special Prosecutor gave his opinion on 31.12.2014 to the SPE, Indore. It is submitted that thereafter entire copies of the case were collected and the case was sent to the Head Office of Special Police Establishment (Lokayukt), Bhopal. The Lokayukt Organization on 8.1.2015 has been forwarded the same to the General Administration Department from where the proposal was sent to the Law Department on 13.2.2015 and on 13.2.2015 the Law Department decided to prefer an appeal. Thereafter, this appeal was filed. It is submitted that during the aforesaid process delay of 44 days has occurred. The said delay is not intentional and is *bona fide*, hence prayed for condonation of delay in filing this appeal.

2. The prayer is opposed by the learned counsel appearing on behalf of the respondents submitting the Special Courts Act, 2011 provides the limitation for every stage of the case and is a special law, therefore, the provisions of Section 5 of Limitation Act are not applicable to the appeal filed under Section 17 of the Special Courts Act. It is further submitted that the reasons stated by the applicant are not sufficient or proper to condone the delay.

3. We have heard submissions of the learned counsel for the parties. The appellant/State has preferred an appeal against the order, whereby the learned trial Court has dismissed the application for confiscation of the property vide order dated 18.12.2014. Aggrieved person can prefer an appeal under Section 17(l) of M.P. Vishesh Nyayalaya Adhiniyam, 2011 within thirty days from the order has been passed.

4. Learned counsel appearing on behalf of the respondents submits that there is a provision for appeal against the judgment and sentence passed by the Special Court under Section 9 of the M.P.Special Courts Act. The appeal can be preferred wihin a period of thirty days from the date of judgment. However, the proviso has been added to sub-Section (3) of Section 9 that High court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied for the reasons to be recorded in writing that the appellant had sufficient cause for not preferring an appeal within the period. It is submitted that such proviso does not find place under Section 17 of the Special Courts Act. Had the Legislature intended to condone the delay, there was no reason not to add a proviso in Section 17 of the Special Courts Act like the proviso

added in Section 9 of the M.P.Special Courts Act.

5. However, the learned counsel appearing on behalf of the appellant submits that in view of the provisions of Section 29(2) of the Limitation Act, this Court can condone the delay.

Section 29(2) of the Limitation Act provides as under:-

"29 Savings. - (1) Nothing.....(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 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."

6. The Hon'ble Apex Court in the case of *Manguram Vs. Delhi Municipality,* AIR 1976 SC 105, has observed as under :-

"There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1963 Section 29, sub-section (2), Cl. (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22 shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local

law. S.29, sub-s. (2), cl. (b) of the Indian Limitation act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provides for the applicability of Section 5 and the ratio of the decision in *Kaushalya Rani*'s case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963 Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in *Kaushalya rani's* case AIR 1964 SC 260 = (1964 (1) Cri.L.J. 152) the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything, in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5."

7. The Full Bench of this Court in the matter of *Mohd Sagir Vs. Bharat Heavy Electricals and others,* 2004(2) MPLJ 359, has observed as under:-

"If a different period of limitation is provided under the special law and there is no express exclusion the provisions of Section of Limitation Act sections 4 to 24 (both inclusive) would apply."

8. Thus, in our opinion, in view of the aforesaid legal position and in the light of the provisions of Section 29(2) and Section 13 of Limitation Act, this Court can consider the prayer for condonation of delay. The appellant has filed an affidavit in support of the application. No counter affidavit has been filed.

9. The Hon'ble in a catena of cases has held that word "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party. In the matter of *Ram Nath Sao Vs Gobardhan Sao,* AIR 2002 SC 1201, the Hon'ble Apex Court has held that by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high, causing enormous loss and irreparable injury to a party against whom the lis terminates and defeating valuable right of such a party to have the decision on merits. The Courts should strike balance between the resultant effect of the order it was going to pass upon the parties either way

10. In this view of the matter, in our opinion, sufficient cause has been shown by the appellant and the delay seems to be *bona fide,* hence the delay deserves to be condoned. Consequently, the application is allowed and the delay is hereby condoned.

Order accordingly.

I.L.R. [2016] M.P., 1175
ARBITRATION APPEAL
Before Mr. Justice Alok Aradhe
Arb. Appeal No. 31/2012 (Jabalpur) decided on 29 July, 2015

UNION OF INDIA & anr. ...Appellants
Vs.
M/S RAVI BUILDERS AND RAJENDRA AGRAWAL & ASSOCIATES ...Respondents

***A. Arbitration and Conciliation Act (26 of 1996), Sections 31(3), (7), 34 & 37* - Award passed by the Arbitrator assailed on the**

ground that the same has been passed in contravention of Clause 64(5) of the agreement - Held - Clause 16(3) and 64(5) of the agreement specifically provides that the parties had agreed that no interest shall be payable for whole and any part of the money - Thus, Arbitrator cannot award interest. (Paras 8 & 9)

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराऐं 31(3), (7), 34 व 37 – मध्यस्थ द्वारा पारित अधिनिर्णय को इस आधार पर चुनौती दी गई कि वह करार के खण्ड 64(5) के उल्लंघन में पारित किया गया है – अभिनिर्धारित – करार के खण्ड 16(3) एवं 64(5) विनिर्दिष्ट रुप से उपबंधित करते हैं कि पक्षकारों के मध्य यह सहमति हुई थी कि संपूर्ण धन अथवा उसके किसी भाग पर कोई ब्याज देय नहीं होगा – अतएव, मध्यस्थ ब्याज अधिनिर्णित नहीं कर सकता।

***B. Arbitration and Conciliation Act (26 of 1996), Sections 31(3), (7), 34 & 37 - New Plea* - Raising of new plea in respect of bar contained in Clause 64(5) of the agreement - Objection with regard to grant of interest being a pure question of law can be raised at this stage - Award passed by the Arbitrator with regard to interest is set-aside - Appeal is partly allowed. (Pars 10, 11 & 12)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराऐं 31(3), (7), 34 व 37 – नवीन अभिवाक् – करार के खण्ड 64(5) में वर्णित वर्जन के संबंध में नवीन अभिवाक् लिया जाना – ब्याज के संदाय के संबंध में ली गई आपत्ति विधि का विशुद्ध प्रश्न होने से इस प्रक्रम पर उठाई जा सकती है – ब्याज के संबंध में मध्यस्थ द्वारा पारित अधिनिर्णय अपास्त किया जाता है – अपील अंशतः मंजूर।

Cases referred :

AIR 2010 SC 3337, (1999) 8 SCC 122, AIR 1992 (Orissa) 144, 2003 (Delhi) 32, 2000 (2) MPLJ 473, AIR 2004 (Karnataka) 109, AIR 1996 SC 2853, (2006) 11 SCC 181, 1994 Supp.(1) SCC 644, (2003) 5 SCC 705, (2006) 11 SCC 245, (2015) 3 SCC 49, (2009) 12 SCC 26.

Atul Choudhari, for the appellants.
Sanjay Agrawal, for the respondents.

JUDGMENT

ALOK ARADHE, J. :- In this appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), the appellants have assailed the validity of the judgment dated 13.12.2011 passed by the trial Court by which the objection preferred by the appellants

under Section 34 of the Act, has been rejected.

2. Facts giving rise to filing of the appeal, briefly stated, are that the respondent was awarded the work of construction of a Bridge at Bina-Maksi Section. The value of the contract was Rs.18,63,601/-. The stipulated period of completion of the work was three months. Thereafter, the respondent was granted two extensions, firstly on 8.7.2003 and secondly on 8.10.2003. The contract awarded to the respondent was terminated on 1.9.2004. The respondent by communication dated 20th September, 2004, sought settlement of the claim and appointment of an Arbitrator under Clause 64(1) of the General Conditions of Contract.

3. The appellants failed to appoint an Arbitrator, therefore, an application under Section 11(6) of the Act was filed, which was registered as M.C.C. No.440/2005 and was allowed by a Bench of this Court vide order dated 23.9.2005 and Mr. Justice K.L. Israni, a retired Judge of this Court was appointed as the sole Arbitrator. The respondent submitted the claim on 16.2.2006 before the Arbitrator. The appellants submitted its written reply. The Arbitrator passed an award dated 28.7.2007, by which, out of total 12 claims submitted by the respondent, the sole Arbitrator allowed 6 claims to the tune of Rs.12,97,000/- along with interest @ 10% on the aforesaid amount from the date of dispute till the date of Award and @ 12% from the date of Award till the date of realisation.

4. Being aggrieved by the aforesaid Award, the appellants filed an objection under Section 34 of the Act. The Additional District Judge by order dated 30.12.2011 dismissed the objection preferred by the appellants on the ground that the appellants have failed to make out any ground under Section 34 of the Act. In the aforesaid factual background, the appellants have filed this appeal.

5. Learned counsel for the appellants while inviting the attention of this Court to Clause 64(5) of the agreement submitted that the aforesaid clause expressly prohibits grant of interest, however, the Arbitrator in contravention of the aforesaid clause as contained in the agreement, has awarded interest to the respondent, which is impermissible. In support of aforesaid submission, reliance has been placed on decision of Supreme Court in the case of *M/s. Sree Kamatchi Amman Constructions Vs. Divisional Railway Manager (Works), Palghat and other,* AIR 2010 SC 3337. It has further been

submitted that the claims of the respondent were overlapping and therefore, they could not have been awarded by the Arbitrator. It is also urged that no reasons has been assigned by the Arbitrator for passing the Award, and the same has been passed in contravention of Section 31(3) of the Act. It is further submitted that the Arbitrator has committed jurisdictional error as he has travelled beyond the terms and conditions of the agreement. In this connection, reliance has been placed on a decision in the case of *Steel Authority of India Ltd., Vs. J.C. Budhraja, Government and Mining Contractor*, (1999) 8 SCC 122.

6. On the other hand, learned counsel for the respondent has submitted that neither in the reply filed before the Arbitrator nor in the application under Section 34 of the Act, the appellants have taken the ground that in view of Clause 64(5) of the agreement, no interest can be awarded to the respondent. Therefore, the respondent cannot be permitted to raise the aforesaid plea for the first time in this appeal. In support of aforesaid submission, learned counsel for the respondent has placed reliance on decisions reported in *State of Orissa Vs. Shanti Devi and others,* AIR 1992 (Orissa) 144, *M/s. Continental Construction Ltd., Vs. Food Corporation of India and others,* AIR 2003 (Delhi) 32, *Indian Railway Construction Co. Ltd., Vs. Singh Construction Co. Bilaspur*, 2000(2) MPLJ 473, *Karnataka State Road Transport Corporation and another Vs. M.Keshava Raju,* AIR 2004 (Karnataka) 109. It is further submitted that clause 16.3 of the contract, to which reference was made in the objection under Section 34 of the Act, merely states that the appellants shall not grant interest to the respondent on the amount deposited as earnest money and security deposit. It was urged that the aforesaid clause does not take away the power of the Arbitrator to award interest. To buttress the submission, learned counsel for the respondent has referred to a decision in the case of *Port of Calcutta Vs. Engineers-De-Space-age*, AIR 1996 SC 2853. While inviting the attention of this Court to the objection filed by the appellants under Section 34 of the Act as well as the order passed by the trial Court, it is pointed out that no ground under Section 34 of the Act has been made out by the appellant.

7. I have considered the respective submissions made by learned counsel for the parties. The scope of Section 34 of the Act has been defined in catena of decisions. The Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd,* (2006) 11 SCC 181 while taking note of the decision

rendered by it in *Renusagar Power Co. Ltd. v. General Electric Co.,* 1994 Supp (1) SCC 644 wherein it was held that an arbitral award can be set aside if it is contrary to fundamental policy of Indian law; the interests of India; or justice or morality, held that public policy is a matter dependent upon the nature of transaction and the nature of statute. However, subsequently, in the case of *ONGC Ltd. v. Saw Pipes Ltd.,* (2003) 5 SCC 705, the Supreme Court added another ground for exercise of courts' jurisdiction for setting aside the award i.e. if it is patently arbitrary. In *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*, (2006) 11 SCC 245 it was held by the Supreme Court that if an award suffers from patent illegality, which goes to the root of the matter, the court can interfere with the award passed by the arbitrator. In a recent decision, in the case of *Associate Builders v. Delhi Development Authority,* (2015) 3 SCC 49, the Supreme Court after taking note of various previous judgments rendered by it with regard to scope of interference with the arbitral award held that none of the grounds contained in Section 34 (2) (a) of the Act deals with the merits of the decision rendered by an arbitrator. It is only when the award is in conflict with the public policy of India as prescribed in Section 34 (2) (b) (ii) of the Act then the merits of an arbitral award are to be looked into under certain specified circumstances. It was further held that the Court would interfere with an award passed by an arbitrator if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of the Act or terms of the contract. It was also held that the court hearing an appeal does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence, to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind, would not be held to be invalid on this score.

8. In the backdrop of aforesaid well settled legal position, facts of the case at hand, may be noticed. At this stage, it is appropriate to reproduce the relevant clauses of the General Conditions of Contract, namely Clauses 16.3 and 64.5 as under:-

> "16(3). No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in

terms of Sub-Clause (1) of this clause will be payable with interest accrued thereon.

64 (5). Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the awards is made".

From perusal of the aforesaid clauses of the agreement, it is evident that the parties had agreed that no interest shall be payable on the amount of earnest money and security deposit and in case arbitral award is for payment of money, no interest shall be payable for whole or any part of the money for any period till the date on which the Award is made.

9. It is worth noticing that decision in case of *Engineers-De-Space-age* (supra) was under the Arbitration Act, 1940, which did not contain a specific provision like Section 31(7) of the Act, which deals with award of interest by the Arbitrator. The Supreme Court in the case of *Syeed Ahmad & Co., Vs. State of U.P.*, (2009) 12 SCC 26, has held that decisions rendered under the old Act may not be of assistance to decide the validity of grant of interest under the Act; and would not apply to cases arising under the Act. The Supreme Court in the case of *M/s. Sree Kamatchi Amman Constructions* (supra) has held that under Section 31(7) of the Act, the Arbitrator is bound by the terms of the contract in so far as the award of interest from the date of cause of action to the date of Award is concerned. Therefore, where the parties had agreed that no interest was payable, the Arbitral Tribunal cannot award interest between the dates when the cause of action arose to the date of Award. Section 31(7) of the Act, reads as under:-

"31(7)- **Form and contents of arbitral award.**-(7)(a) Unless otherwise agreed by the parties, where and insofar as in arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date

of payment".

Thus, it is evident that the Arbitrator cannot award interest in respect of antelite and pendentelite period, unless agreed by the parties. Thus, in view of Clauses 16(3) and 64(5) of General Conditions of Contract, the Arbitrator could not have awarded interest for antelite and pendentelite period.

10. So far as the contention made by learned counsel for the respondent that the appellants have never raised an objection that the agreement contains a bar with regard to grant of interest under clause 64(5) of the agreement and same has been raised for the first time before this Court is concerned, from perusal of paragraph 32 of the written reply, it is evident that the appellants have taken a stand that the respondent is not entitled to any interest because the respondent itself was at fault and had abandoned the work and therefore, the grant of interest is covered under excepted matters. Similarly, in the application under Section 34 of the Act, in paragraph 12, an objection has been raised that the Arbitrator has wrongly awarded the interest @ 10% p.a. And 12% p.a.. In any case, the objection with regard to grant of interest, being a pure question of law which arises for consideration on admitted facts, could be raised by the appellants in this appeal. Therefore, in the fact situation of the case, it cannot be said that the appellants are precluded from raising the objection with regard to grant of interest before this Court.

11. So far as the submission made by learned counsel for the appellants that no reasons have been assigned by the Arbitrator while passing the Award is concerned, the same is required to be stated to be rejected, as from perusal of the Award passed by the Arbitrator, it is evident that the Arbitrator has assigned reasons for allowing 6 out of 12 claims preferred by the respondent. Therefore, the contention that the Award has been passed in contravention of Section 31(3) of the Act, cannot be accepted.

12. So far as the submission made by learned counsel for the appellants that the Arbitrator cannot act beyond the terms of the agreement is concerned, the same deserves acceptance, as in the instant case, the Arbitrator in contravention of the terms and conditions of the agreement has awarded interest to the respondent for the antelite and pendentelite period. Besides the aforesaid ground, the appellants were unable to make out any ground under Section 34 of the Act for setting aside of the Award. The trial Court has rightly rejected the objection preferred by the appellants under Section 34 of the Act, except

in so far as it pertains to grant of antelite and pendentelite interest. However, the trial Court has failed to appreciate that Arbitrator while granting antelite and pendentelite interest, has travelled beyond the terms of contract.

13. In view of preceding analysis, the impugned judgment in so far as it upholds the Award of the Arbitrator with regard to interest for antelite and pendentelite period is concerned, is set aside. In the result, the Award passed by the Arbitrator in so far as it pertains to grant of interest for antelite and pendentelite period is also set aside.

In the result, the appeal is partly allowed. In the facts of the case, the parties shall bear their own costs.

Appeal partly allowed.

I.L.R. [2016] M.P., 1182
CIVIL REVISION
Before Mr. Justice S.C. Sharma
Civil Rev. No. 35/2015 (Indore) decided on 2 September, 2015

RAMMANOHAR PANDEY ...Applicant
Vs.
ABHAY KUMAR JAIN (DEAD),
THROUGH LRs. & ors. ... Non-applicants

Civil Procedure Code (5 of 1908), Order 21 **- An execution application was preferred and an objection was raised by the present applicants stating that the decree cannot be executed as the terms and conditions of decree were not fulfilled - Held - Decree holder has not complied with the terms and conditions laid down in the judgment and decree by not depositing the amount of remain sale consideration within 60 days and by not at all depositing the amount towards the Court Fees and penalty - Objection preferred by the present applicants deserves to be allowed - Execution is dismissed. (Paras 29 & 30)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 – एक निष्पादन आवेदन प्रस्तुत किया गया एवं वर्तमान आवेदकगण द्वारा यह कहते हुए आपत्ति उठाई गई कि डिक्री का निष्पादन नहीं किया जा सकता, क्योंकि डिक्री की शर्तों एवं निबंधनों को पूर्ण नहीं किया गया था – अभिनिर्धारित – डिक्रीदार ने 60 दिनों के भीतर विक्रय प्रतिफल की शेष रकम जमा नहीं करके और न्याय शुल्क एवं शास्ति की रकम

बिल्कुल भी जमा न कर निर्णय एवं डिक्री में प्रतिपादित शर्तों एवं निबंधनों का अनुपालन नहीं किया है – वर्तमान आवेदकगण द्वारा उठाई गई आपत्ति स्वीकार योग्य है – निष्पादन खारिज।

Cases referred :

1982 JLJ 92, AIR 2014 Raj. 102, AIR 1975 SC 1957, AIR 1954 SC 50, 1997 (1) MPWN 163, 2015 SAR (Civil) 549, AIR 1969 Allahabad 296, 2002 SAR (Civil) 457, AIR 1977 SC 1201, AIR 1938 Bom. 447.

(Supplied: Paragraph numbers)

ORDER

S.C. SHARMA, J. :- The present Revision is arising out of order dt. 20/11/2014 passed in Execution Case No. 9A/2002 (Abhay Kumar Vs. Ramkumar Pandey).

2. Facts of the case reveal that one Abhay Kumar has filed a civil suit claiming specific performance of the contract against Shri Ram Kumar and Shri Rammanohar and the same was decreed by judgment and decree dt. 22/9/2014. As per paragraph 42 of the judgment, the plaintiff was directed to pay Stamp Duty along with Penalty in respect of agreement dated 19/11/1995 (Ex.P/2) keeping in view the Indian Stamp Act, 1899 (M.P. Amendment Act, 1990), Sec. 2 Schedule I Entry No.23. The trial Court has also directed that the entire remaining sale consideration be also paid within a period of 2 months. The third condition imposed by the trial Court was that after payment of Stamp Duty and after payment of the remaining sale consideration ie., Rs.65000/-, the defendant Nos. 1 and 2 shall execute a sale deed in favour of the plaintiff. There was a specific condition in the judgment ie., Condition No.7 that in case, within a period of 2 months, Stamp Duty and Penalty is not paid in respect of Ex.P.2 which is an agreement to sale, the plaintiff will not be entitled for execution of the sale deed. The terms and conditions, as stated in paragraph 42, are reproduced in Hindi (as the judgment is in Hindi), as under :-

> 42– अतः उक्त विवेचन के आधार पर वादी का दावा निम्नानुसार डिक्री किया जाकर आदेश दिया जाता है कि :–
>
> 1. वादी अनुबन्ध पत्र दिनांकित 19–11–95 (प्रदर्श पी. 2) पर भारतीय स्टाम्प एक्ट 1899 (म.प्र. संशोधन) एक्ट 1990 की धारा 2 अनुसूची 1–ए इन्ट्री नम्बर 23 के अनुसार स्टाम्प ड्यूटी और पेनल्टी दो माह के अन्दर

अदा करेगा।

2. वादी को यह भी निर्देशित किया जाता है कि वह प्रतिवादी कमांक –2 को शेष विकय मूल्य दो माह के अन्दर अदा करेगा।

3. वादी द्वारा उपरोक्त अनुसार स्टाम्प ड्यूटी और पेनल्टी नियमानुसार अदा करने पर और प्रतिवादी कमांक –2 को बतौर विकय मूल्य 65,000/– रूपये अदा करने पर वह प्रतिवादी कमांक –1 की ओर से प्रतिवादी प्रतिवादी कमांक –2 द्वारा वादग्रस्त मकान नम्बर 88 बालकृष्ण बापूजी मार्ग बड़नगर का विकय पत्र निष्पादित कराने का अधिकारी रहेगा।

4. वादी विकय पत्र के निष्पादन का सम्पूर्ण खर्चा स्वयं वहन करेगा।

5. वादी को यह भी अधिकार होगा कि प्रतिवादीगण द्वारा विकय पत्र निष्पादित न कराने पर न्यायालय के द्वारा विकय पत्र सम्पादित करा सकेगा।

6. प्रतिवादीगण को यह भी निर्देशित किया जाता हि कि वे वादग्रस्त मकान को दो माह तक किसी अन्य व्यक्ति को न तो विकय करेगें न अन्तरित करेगे।

7. वादी द्वारा दो माह के अन्दर प्रदर्श पी. 2 के विकय अनुबंध के संबंध में स्टाम्प ड्यूटी और पेनल्टी अदा न करने पर वह डिकी निष्पादन करा पाने का अधिकारी नहीं होगा।

8. प्रकरण की परिस्थितियों को देखते हुए प्रतिवादीगण अपना स्वयं का और वादी का वाद व्यय वहन करेंगे।

9. अभिभाषक शुल्क प्रमाणित होने पर अथवा तालिका अनुसार जो भी कम हो लगाई जावे। तद्नुसार जयपत्र बनाया जावे।

3. It is noteworthy to mention that on 22/11/2004 an amount of Rs.65000/- was deposited by the plaintiff, however, it is again an admitted fact that Stamp Duty and Penalty was not paid by the plaintiff nor the amount was deposited with the Court. An appeal was preferred in the matter and the same was registered as MA No. 2674/2004 and an interim order was passed on 27/1/2005 meaning thereby, after expiry of 2 months period granted by the trial Court to deposit the amount, as stated above. The decree holder finally withdrew the appeal by filing an application before this Court. This Court has passed the following order in MA No. 2674/2004, on 18/11/2011 :

C.R.No. 35/2015

02.09.2015

Appellant by Mr. A. K. Sethi senior advocate with Mr. Harish Joshi and Mr. Kamal Eran, Advocates.

Respondent No.1 by Mr. Brajesh Pnadya, Advocate.

Respondent No.2 with Mr. Anand Pathak, advocate.

Learned counsel for the appellant submits that the respondent No. 1 Ramkumar has died. Therefore, he prays for time to move appropriate application for bring legal representatives of respondent No. 1 on record.

Respondent No. 2 who is cousin of respondent No. 1 is present in Court submits that respondent No. 1 is alive and is at present at Jabalpur in connection with his medical treatment.

Keeping in view the statement made by respondent No. 2 who is present in court, prayer made by the appellant stands rejected.

Being aggrieved by award dated 22/09/2004 passed by Additional District Judge, Ujjain in COS No. 9 A/2002 whereby the suit filed by appellant for specific performance was allowed and a decree was passed in favour of the appellant and against respondents directing the appellant to pay stamp duty and penalty on the agreement dated 19/11/1995 and to pay sale consideration of Rs. 65000.00 within two months. It was further directed that upon payment of stamp duty and penalty and sale consideration, the respondents shall execute sale deed in favour of the appellant. Being dissatisfied with the condition of payment of stamp duty and penalty, present appeal has been filed.

Learned counsel for the respondents submits that the appeal itself is not maintainable as it is filed u/o 43 r.1 CPC while the appeal ought to have been filed u/s 96 CPC after payment of full court fees.

Learned counsel for the appellant submits that appellant be permitted to withdraw the appeal with a liberty to move appropriation application u/o 47 r.1 CPC before the Court below.

This prayer is opposed by the learned counsel for the respondents.

From perusal of the record, it is evident that this Court vide order dated 27/01/2005 has passed the order in the following words:

"The stay application is considered and allowed and the operation of the impugned order relating to the stamp duty and penalty is, hereby, stayed. The sale deed will be executed as per the judgment and decree after the decision on the issue of the payment of the stamp duty and penalty.

The amount deposited by the appellant i.e., Rs. 65,000 be invested in the nationalized Bank for the period of two years in the fixed deposit.

Keeping in view the prayer made by the learned counsel for the appellant, appeal filed by the appellant is disposed of with a direction that appellant shall be at liberty to move appropriate application before the competent court.

4. An execution application was preferred on 30/3/2012 and an objection was raised by the present applicants on 22/3/2013 stating that the decree cannot be executed as the terms and conditions of the decree were not fulfilled meaning thereby, the amount was not deposited as directed by the trial Court. However, the objection has been rejected. Learned counsel for the applicant has vehemently argued before this Court that the question of executing the decree does not arise in the light of the specific conditions mentioned in the judgment and decree ie., Clause 7 as the amount was not paid in time ie., the condition of paying the amount within a period of 2 months, as directed by the trial Court.

5. On the other hand, Mr. A. K. Sethi, learned senior counsel for the respondent has argued before this Court that the judgment and decree passed by the trial Court was stayed on 27/1/2005 and the stay continued upto

18/11/2011 and thereafter application was preferred for depositing the amount, however, as no permission was granted by the trial Court / executing Court, the amount has not been deposited and, therefore, the decree holder is not at fault and either this Court or the executing Court should grant liberty to the decree holder to deposit the amount as per Clause 7.

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

7. Clause 7 of paragraph 42 makes it very clear that the decree holder was required to deposit Rs.65000/- within a period of 23 months towards the remaining sale consideration and he was also required to deposit the Stamp Duty and Penalty in respect of agreement Ex.P/2 dt. 19/11/1995. The amount of Rs.65000/- was deposited on 22/11/2004.

8. The Issue before this court is whether the amount was deposited within 60 days or not.

9. It is an undisputed fact that the judgment and decree was passed on 22/9/2004. The amount of Rs.65,000/- was deposited on 22/11/2004 meaning thereby, there is a delay of one day in depositing the amount.

10. In the case of *Brijmohandas and another Vs. Punjab National Bank and others* reported in (1982 JLJ 92), almost similar issue has been dealt with while calculating the period in respect of limitation. The Division Bench of this Court by taking into account the General Clauses Act, 1897, in paragraph 23 has held as under :

> 23. here it would be relevant to refer to Sec.9 of the General Clauses Act 1897 (Act No. X of 1897) Sub-Sec. (1) of Sec. 9 of this Act provides that in any General Act or regulation made after the commencement of this Act it shall be sufficient to the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of the days or any other period of time to use the word "to". Subsection (2) further provides that the Section applies also to all Central Acts made after the third day of January 1868, and to all regulations made on or after the 14th day of January 1887. It therefore, follows that Sec. 9 only lays down the statutory recognition to the well established principle relating to the interpretation of statutes

that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Applying the terms of Sec. 9 and the general rule of construction of statutes, the date on which the goods were received at the destination station has to be excluded. On perusal of the evidence referred to in paragraph 22 above, it is thus clear that as regards the railway receipt no. 670242 ex.P/25, its goods were received at the destination station on 20/2/1970 and delivered to the defendant No.2 on 6/3/1970 ie., much after the expiry of the period of 7 days after the termination of transit as defined in Sec. 77 (c) (3) and Sec. 77 (5) of the Railways Act, and as such the defendant respondent Nos. 3 (a) and (b) were totally absolved of their liabilities as far as the goods covered by the railway receipt No. 670242 (Ex.P/25) were concerned. But because the goods covered by the railway receipt Nos. 670035 to 670041 (Ex.P/9 to P/15) and Railway receipt No. 6711112 P/26 are concerned the same were delivered to defendant No.2 before the expiry of the period of 7 days after the termination of transit and therefore respondent No.3 (a) and (b) were not so absolved of the liability under the provisions of Sec. 77 (c) (3) read with Sec. 77 (5) of the Railways Act.

11. The Division Bench has held that the first day on which the amount was due is to be ignored and the last day on which the amount has been deposited, has to be taken into consideration while computation of time. Keeping in view the aforesaid judgment, as the amount was deposited on 22/11/2004, it was certainly deposited with a delay of one day.

12. Not only this, the judgment and decree was passed on 22/9/2004. From 22/9/2004 till 27/1/2005 ie., the day this Court has granted stay in M.A.No. 2674/2004, there was no interim order. The stay was granted after expiry of 2 months period and, therefore, this Court is of the considered opinion that as the amount was not deposited in respect of stamp duty and penalty within a period of 2 months, the question of executing sale deed of the present applicants does not arise.

13. In the case of *Rajendra Kumar Chachan Vs. Banne Singh and others* reported in (AIR 2014 Raj. 102), the Rajasthan High Court in paragraph 12 and 13 has held as under :

12. In view of the aforestated legal and factual position the court comes to an irresistable conclusion that the respondent plaintiffs having not paid the purchase money to the petitioner defendant No.9 within the time limit fixed by the Court in the decree. The provisions contained in Sec. 14 of the said Act and of the order XX Rule 14 had come into play and the suit itself had stood dismissed consequently the execution proceedings had also stood terminated and there was no question of executing court permitting the respondent plaintiffs to deposit the purchase money as directed in the impugned order. On the dismissal of the suit even the execution proceedings did not survive. The court therefore holds that the impugned order passed by the executing court is not only without jurisdiction but illegal perverse and liable to be set aside.

13. Since the execution proceeding were not maintainable in the eye of law the orders passed by the executing court therein more particularly the order permitting the respondent plaintiffs to take over the possession of the suit premises by the breaking open the lock, were also without any authority of law. The respondent No. 1 and 2 are therefore required to be directed to hand over the peaceful and vacant possession of the suit premises to the petitioner. In that view of the matter the impugned order is set aside. The objections filed by the petitioner are allowed and the execution petitioner of the respondent plaintiffs No.1 and 2 is dismissed. The respondent No.1 and 2 are directed to handover the possession of the suit premises to the petitioner within 2 weeks from today.

14. In the aforesaid case also the decree holder was required to deposit the amount within the time prescribed and as the amount was not deposited by the decree holder, the execution proceeding by the executing Court were held to be beyond jurisdiction and were held to be illegal.

15. Hon'ble the Supreme Court of India in the case of *Sulleh Singh and others Vs. Sohan Lal and another* reported in (AIR 1975 SC 1957), and the apex Court in paragraph 3, 3A, 4, 5, 13 and 15 has held as under :

3. The respondents filed this suit for possession by pre-emption of the land in payment of Rs. 30,000/- on allegations that the respondents were on the date of sale tenants of the land under the vendors. The respondents alleged that their right of pre-emotion was superior to that of the vendees. They also alleged that the sale took place for Rs. 30,000/- only and the remaining was fictitiously mentioned in the deed of sale. The suit was dismissed on the ground that one suit on behalf of the four plaintiffs, who were tenants of different parts of the land, was not maintainable.

3A On appeal the suit was remanded for re-trial.

4. At the trial on remand, two plaintiffs withdrew from the suit. The trial court directed the remaining two plaintiffs-respondents Sohan Lal and Nathi to deposit Rs. 6,300/- and Rs. 5,670,'- respectively on or before 1 April, 1969 less 1/5th of the pre-emotion amount already deposited by them. The Trial Court gave the respondent Sohan Lal a decree for possession by pre-emotion in respect of Killa Nos. 14/1. 17 and 18/1 of Rectangle 37. The plaintiffs- respondents aggrieved by the order. filed an appeal alleging that the respondent Sohan Lal was a tenant of Killa No. 24 under the vendors and the decree should have been passed in their favor for the whole of the land and that decree should have been passed in favour of Sohan Lal in respect of Killa No. 24 of Rectangle 37. The other ground in the appeal was that the decree should have been passed in favour of the plaintiffs-respondents for whole of the land.

5. The Additional District Judge on 29 July, 1969 passed a decree for. possession by pre-emotion in favour of respondent Sohan Lal on payment of Rs. 9,100- and he was directed to deposit this amount in Court on or before 20 August, 1969. The Addition District Judge passed a decree for possession by pre-emption in favour of respondent Sohan Lal of Killa No. 24 of Rectangle 37. The decree in favour the respondent Nathi was maintained without change.

13. In the present case, the lower appellate court did not grant any stay to the plaintiffs-respondents. In view of the fact that the plaintiffs respondents did not deposit the amount as directed by the Trial Court (1) A.I.R. 1954 S.C. 50. (2) [1969] 2 S.C.R 514. on or before 1 April, 1969, it became mandatory on the lower appellate court by reason of the ruling of this Court in *Naguba Appa's* case (supra) to dismiss the suit. The observations of this Court in *Naguba Appa's* case (supra) that the pre-emptor is bound to comply with the directions of the Trial Judge unless that decree is altered in any manner by a Court of Appeal do not mean that where the deposit is not made in accordance with the directions of the Trial Court, the appellate court can extend the time for payment. Thereafter, the lower appellate court was in error in extending the time for payment till 2 . August, 1969.

15. The contention of the appellants that the lower appellate court was wrong in extending the time for payment is correct because the failure of the plaintiffs-respondents to deposit the amount in terms of the-Trial Court's decree would result in pre-emptor's' suit standing dismissed by reason of their default in not depositing the pre-emption price. The contention of the appellants that the High Court was wrong in not setting aside the order of extension of time passes by the lower appellate court is correct. It is only if the plaintiffs-respondents had paid the decretal amount within the time granted by the Trial Court or if the plaintiffs-respondents had obtained another order from the lower appellate Court granting any order of stay that the lower appellate court might have considered the passing of appropriate order in favour of pre-emptors. The High Court should have allowed the appellant-s' appeal and not made any distinction in dismissing plaintiff-respondent Nathi's suit and allowing plaintiff-respondent Sohan Lal any extension of time to make the payment. Further, it appears that the plaintiff respondent Sohan Lal did not pay the amount.

16. In the aforesaid case also, there was a direction of the trial Court to

deposit the amount within a time framework and the same was not done. Extension was granted by the lower appellate Court and the same was held to be bad in law.

17. In the case of *Naguba Appa Vs. Namdev* reported in (AIR 1954 SC 50), in paragrapn (sic:paragraph) 2, the apex Court has held as under :

> 2. It was contended on behalf of the appellant that the decision of the High Court was wrong inasmuch as an appeal having been preferred from the trial court's decree in the pre-emption suit, the preemptor was justified in not depositing the amount within the time fixed by the decree. This argument cannot be sustained. Mere filing of an appeal does not suspend the decree of the trial Judge and unless that decree is altered in any manner by the court of appeal, the preemptor is bound to comply with its directions. In our opinion, the High Court was right in holding that the preemptor's suit stood dismissed by reason of his default in not depositing the pre-emption price within the time fixed in the trial Court's decree. It was next contended that the decree drawn up by the trial Judge was not in accordance with the provisions of Order 20 Rule 14 in that it contained no direction to the effect that if the deposit was not made within the time fixed the suit will stand dismissed. In our view, this contention is not sound because the dismissal of the suit is as a result of the mandatory provisions of Order 20 Rule 14 and not by reason of any decision of the Court and the omission to incorporate this direction in the decree could not in any way affect the rights of the parties.

18. In the aforesaid case also an appeal was preferred against the judgment and decree and it was held by the apex Court that non compliance of the directions with regard to the deposit of the amount within fixed time will not entitle the decree holder to claim relief.

19. In the case of *Rameshwar Dass Gupta Vs. State of U.P.* reported in [1997 (1) MPWN Note 163 Page 239] it has held that a decree has to be executed as per the provisions under Order 21 and the Execution Court cannot amend or enlarge the decree.

20. In the light of the aforesaid judgment, this Court is of the considered opinion that in the present case, the executing court also erred in law and facts

in dismissing the application preferred by the present applicants, especially in the light of the fact that the amount in question was not deposited within 2 months.

21. The apex Court in the case of *P. R. Yelumalai Vs. N. M. Ravi* reported in 2015 SAR (Civil) 549 has taken a similar view. The apex Court in the aforesaid case has held that in case of a conditional decree, if the decree holder fails to deposit the remain sale consideration within the specified time as per the judgment and decree, rejection of execution petition on the ground of delay in depositing of sale consideration is in order and the order passed by the executing Court has to be held as valid order.

22. The Full Bench of Allahabad High Court in the case of *Habib Mian and another Vs. Mukhtar Ahmad and another* reported in (AIR 1969 ALLAHABAD 296), in paragraph 34, 44 and 45 has held as under :

> 34. The result is that 1 agree with the conclusions of Brother Pathak, though for somewhat different reasons, that the appeal should be allowed with costs.
>
> 44. Upon that view of the matter, I would hold that the decree-holder was bound to get the appeal dismissed between March 17, 1952, the date of the decree, and March 31, 1953, when the first instalment became payable. The period is over one year and it can be reasonably supposed that it was considered sufficient by the parties for the decree-holder to secure the dismissal of the appeal. If within this period the decree-holder failed in getting the appeal dismissed, the suit would be considered as having been dismissed and this would be before the date upon which the first instalment would otherwise have been payable by the judgment-debtors. If the decree-holder succeeded in getting the appeal dismissed within this period, clearly the judgment-debtors would be liable to pay the first instalment on March 31, 1953, in accordance with the terms of the decree and, thereafter, further instalments annually.
>
> 45. In my opinion, inasmuch as the decree-holder failed to get the appeal dismissed before March 31, 1953, the suit must be deemed to have been dismissed and, in the circumstances,

there being no decree which could be executed against the judgment-debtors, the execution application is liable to be dismissed on that ground.

23. In the aforesaid case also, the terms and conditions of the compromise decree were not fulfilled within the time framework and in those circumstances the Full Bench has held that the decree in question is unexecutable.

24. The apex Court in the case of *Government of Orissa Vs. M/s. Ashok Transport Agency and others* reported in 2002 SAR (CIVIL) 457, has taken a similar view.

25. The apex Court in the case of *Sunder Dass Vs. Ram Prakash* reported in (AIR 1977 SC 1201), in paragraph 3, has held as under :

> 3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and whenever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the the decree being null and void, there would really be no decree at all.

26. In the aforesaid case, it has been held that the executing Court cannot go behind the decree nor it can question its legality or correctness.

27. In the present case, as the terms and conditions of the decree were not satisfied within the time framework, in the light of the aforesaid judgment, the executing Court was left with no other choice except to allow the application preferred by the applicant and this Court is of the considered opinion that the executing Court has erred in law and facts in rejecting the application preferred

by the present applicant.

28. In the case of *Ramchandra Govind Vs. Laxman Savleram* reported in (AIR 1938 Bombay 447), wherein it was held that the judgment debtor was asked to deposit the money within 15 days from certain date and the amount was deposited and the issue was whether the date on which the order has been passed and the amount so deposited, has to be taken into account or not, or has to be excluded. The Bombay High Court has held that the first day on which the order has been passed has to be excluded and in the present case also if the first date on which the order was passed is excluded, then the amount was certainly deposited beyond the period of 60 days.

29. In the light of the aforesaid, it can be safely gathered that the decree holder has not complied with the terms and conditions laid down in the judgment and decree as per paragraph 42 of the judgment dt. 22/9/2004 by not depositing the amount of remain sale consideration within 60 days and by not at all depositing the amount towards the Court Fees and Penalty. It is pertinent to note that the amount has not been deposited till date.

30. This Court is of the considered opinion that the objection preferred by the present applicants deserves to be allowed and is accordingly allowed. The impugned order dt. 20/11/2014 is set aside. As a result, the execution case No. 9A of 2002 (Abhay Kumar Vs. Ramkumar Pandey) is dismissed.

Order accordingly.

I.L.R. [2016] M.P., 1195
CIVIL REVISION
Before Ms. Justice Vandana Kasrekar
Civil Rev. No. 375/2015 (Jabalpur) decided on 2 February, 2016

RAJNARAYAN TIWARI ...Applicant
Vs.
SMT. VIDHYA AWATHI ...Non-applicant

Civil Procedure Code (5 of 1908), Order 21 Rule 11 - Execution of conditional temporary injunction order **- Order of temporary injunction was passed with a condition that if the plaintiff fails to prove his case, he would be liable to pay compensation of Rs. 60,000/- - Suit was dismissed and judgment was maintained in Second Appeal also - However, condition of payment of compensation of Rs. 60,000/- was not included in decree -**

Held - Provisions of Order 21 Rule 11 are applicable for execution of the decree and not the order - Since the condition was not made as a part of decree the order passed under Order 39 Rule 1 & 2 is not a decree - Application filed under Order 21 Rule 11 is not maintainable - Impugned order is set-aside - Revision is allowed. (Para 9)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 11 – सशर्त अस्थायी व्यादेश के आदेश का निष्पादन – अस्थायी व्यादेश का आदेश इस शर्त के साथ पारित किया गया कि यदि वादी अपना प्रकरण प्रमाणित करने में विफल रहता है तो वह रु. 60,000/– प्रतिकर के रुप में अदा करने हेतु दायी होगा – वाद खारिज किया गया एवं निर्णय द्वितीय अपील में भी स्थिर रखा गया – तथापि, रु. 60,000/– प्रतिकर अदा करने की शर्त डिक्री में शामिल नहीं की गई – अभिनिर्धारित – आदेश 21 नियम 11 के उपबंध डिक्री के निष्पादन हेतु प्रयोज्य है न कि आदेश हेतु – चूंकि शर्त को डिक्री का भाग नहीं बनाया गया था, इसलिए आदेश 39 नियम 1 व 2 के अंतर्गत पारित आदेश डिक्री नहीं है – आदेश 21 नियम 11 के अंतर्गत प्रस्तुत आवेदन पत्र पोषणीय नहीं है – आक्षेपित आदेश अपास्त – पुनरीक्षण मंजूर।

D.K. Upadhyay, for the applicant.
P. Soni, for the non-applicant.

ORDER

VANDANA KASREKAR, J. :- The petitioner has filed the revision challenging the order dated 26.06.2015 passed by First Civil Judge Class-II of IInd Additional District Judge, Tikamgarh in Execution Case No.61-A/09-13, thereby issuing a Kurki warrant against the petitioner.

2. Brief facts of the case are that the petitioner filed a civil suit No.61-A/09-13 before the trial Court u/s. 39 of the Specific Relief Act for mandatory injunction and alongwith the plaint, the petitioner has also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (hereinafter in short referred to as "the Code").

3. The trial Court vide its order dated 30.09.2008 has granted injunction in favour of the petitioner on a condition that if the petitioner failed to prove his case then he will be liable to pay compensation to the respondent and the petitioner is directed to furnish a bail bond of Rs.60,000/-.

4. That subsequently the suit filed by the petitioner was dismissed by the trial Court vide its judgement and decree dated 29.10.2010. However, no decree in respect of damages was passed nor the damages were quantified.

The judgement passed by the trial Court was maintained by this Court in a second appeal. The respondent thereafter filed an application under Order 21 Rule 11 of the Code for execution of the order dated 30.09.2008.

5. The petitioner filed objection/reply to the application on the ground that the application is not maintainable as there is no executable decree and the order passed under Order 39 Rule 1 and 2 of the Code does not amount to decree.

6. Executing Court after hearing the parties, vide order dated 26.06.2015 rejected the objection raised by the petitioner and issued a warrant of attachment. Being aggrieved by the said order, the petitioner has filed the present revision.

7. Learned counsel for the petitioner submits that the trial Court has erred in issuing a warrant of attachment against the petitioner for execution of a unexecutable decree. It is further argued that provisions of Order 21 Rule 11 of the Code are applicable to the execution of the movable decree and in the present case the order is passed on an application under Order 39 Rule 1 and 2, which is a interlocutory order and not the decree. It is also argued that while dismissing the suit, the order under Order 39 Rule 1 and 2 of the Code is not made a part of the decree and even the amount of damages was not quantified, it is therefore, prayed that the order passed by the trial Court be set aside and the revision be allowed.

8. On the other hand, learned counsel for the respondent supports the order passed by the trial Court and submits that the petitioner is bound to comply with the conditions imposed on the petitioner at the time of granting injunction in his favour. It is further argued that the trial Court has not committed any error in passing the said order.

9. I have heard learned counsel for the parties and perused the record as well as the order passed by the trial Court. From perusal of the order, it appears that the trial Court while allowing the application filed by the petitioner under Order 39 Rule 1 and 2 of the Code has imposed a condition that if the petitioner fails to prove his case then in that case, he is bound to furnish a bail bond of Rs.60,000/- and will pay damages also. The suit filed by the petitioner was dismissed and the judgement passed by the trial Court was maintained by this Court. However, the said condition was not made as a part of the decree and the order passed under Order 39 Rule 1 and 2 of the Code is an interlocutory order

and is not a decree. The provision of Order 21 Rule 11 are applicable for the execution of the decree and not the order and thus, the application filed by the respondent for execution of the order passed under Order 39 Rule 1 and 2 of the Code itself is not maintainable. Thus, the impugned order passed by the trial Court is not sustainable in law and is hereby set aside.

10. Accordingly, the revision petition is allowed with no order as to cost.

Revision allowed.

I.L.R. [2016] M.P., 1198
CRIMINAL REVISION
Before Mrs. Justice S.R. Waghmare
Cr. Rev. No. 647/2015 (Indore) decided on 8 July, 2015

BANSHILAL & ors. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(10) **- Dispute had occurred regarding farming of land by the complainant party - The mens-rea to insult or humiliate, and the act to be done within full public view, is missing and the only intention of the accused seems to be removing the encroachment and possession of the complainant parties - Charge framed by trial court is set aside. (Para 13)**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(10)– शिकायतकर्ता पक्ष द्वारा भूमि पर कृषि किये जाने पर विवाद उत्पन्न हुआ – अपमानित एवं नीचा दिखाने के दुराशय, तथा कृत्य को लोक दृष्टिगोचर स्थान पर किये जाने का अभाव है और शिकायतकर्ता पक्ष का अतिक्रमण एवं कब्जा हटाना ही अभियुक्त का एक मात्र आशय प्रतीत होता है – विचारण न्यायालय द्वारा विरचित आरोप अपास्त।

Cases referred :

2014 (I) MPWN 97, AIR 2011 SC 1905, AIR 2008 SC. (Supp.) 634.

O.P. Solanki, for the applicants.
Mukesh Parwal, P.L. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

S.R. WAGHMARE, J. :- By this revision petition u/S.397 r/w 401 of Cr.P.C., the petitioners are aggrieved by the order passed by Special Session Judge, Dhar dated 22.05.2015 in Session Case No.23/15 framing charges for offence u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC and S.3(1)(X) of Prevention of Atrocities Act.

2. Briefly stated the facts of the case are that on the date of incident i.e.22.09.2014 complainant Rekhabai filed a report stating that she was an agriculturist and was farming on Government land in village Dharavara. On the date of incident Shyamubai, Ramubai, Sumitrabai and Anandibai were helping her to cut the grass when at around 12:00 pm noon Virendra, Jitendra and 8 to 10 other people arrived there and started hurling verbal abuses submitting that they are Harijan people and asked them to leave the fields since it belonged to the accused persons and uncle of Virendera slapped the complainant and a free fight ensued. Thereafter the police report was filed at the Police Station and the offence was registered u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC and S.3(1)(X) of SC/ST Act and investigation was lunched.

3. On completion of investigation, the accused persons were arrested and the charge sheet were filed. The trial Court on considering the above framed the charges as already listed above against the petitioners on 22.05.2015.

4. The Court considered the arguments prior to framing charges and came to a conclusion that the offences were prima facie made out regarding framing of charges and hence this present petition.

5. Counsel for the petitioners has vehemently urged the fact that dispute pertains to an agriculture land and although the complainant parties claimed that it was insult hurled in public place the same was not proved. Even if the FIR and the prosecution allegations are considered, Counsel submitted that there was nobody at the place of occurrence and hence the registering the offence u/S.3(1) (X) of SC/ST Act was uncalled for and the ingredients were not established and the accused persons ought to be discharged from the same.

6. Besides, Counsel submitted that it is obvious in the incident itself that

that offences was not committed with intension to humiliate the complainant in public regarding their caste. In fact it was not within public view and ingredients of S.3(1) (X) of SC/ST Act were not fulfilled; despite which learned judge of the trial Court has framed charges u/S.3(1)(X) of SC/ST Act. Besides Counsel submitted that important elements to be considered are whether the caste name was called out and it was not meant as an abuse. Counsel submitted that the agricultural land belongs to the accused persons and the complainant was bent upon encroaching their land and hence dispute arose. According to the prosecution there were no other persons in the field and in this light also Counsel submitted that the impugned order be set aside and the accused have fled from the place of occurrence and have not been identified. He submitted that no case was made out for the said offences and the impugned order framing charges be set aside.

7. Counsel for the petitioner placed reliance in the matter of *Maharaj Singh and Others v. State of M.P.* 2014(I) MPWN 97 the Court held thus:

> 7. On bare perusal of entire prosecution case, it is clear that quarrel took place because the dispute of pit. For framing the charge u/S.3(1)(X) Prevention of Atrocities Act, it is necessary to abuse the complainant with an intention to insult or humiliate and also this act was done within the public view.
>
> 8. In FIR, it was not mentioned that complainant was abused to insult or humiliate only because he belongs to schedule caste and secondly it was also not mentioned that at the time of incident persons were present there and they saw and heard the entire incident. Though, it was mentioned that after commission of offence, witnesses Nanda and Kashiram reached on the spot. So in the considered view of this Court the ingredients of this offence u/S.3(1)(X) of Prevention of Atrocities Act is not fulfilled even after taking into consideration the prosecution case in its totality.

8. Counsel also placed reliance in the matter of *Asmathunnisa v. State of A.P.* AIR 2011 SC 1905 to state that offences of atrocities and expression "in any place within public view" occurring in S.3(1)(X) means that the public must view the person being insulted for which he must be present and no offence on allegations under said section gets attracted if person is not present.

9. Counsel further reliance in the matter of *Gorige Pentaiah vs. State of A.P.* & Ors. AIR 2008 SC (Supp) 634 to state that offence of atrocities and complainant alleging that accused abused him with name of his caste and no allegation in complaint that accused was not S.C. or S.T. and allegations of intentional humiliation in place within public view was also absent and the complaint lacks in basic ingredients of offence and continuance of proceedings would be abuse of process of law.

10. Counsel for the respondent/State on the other has fully supported the order of the lower Court and submitted that there was ample medical evidence to implicate the present petitioners since complainants parties has received injuries and it cannot be denied that petitioners had assaulted the complainant parties. Undoubtedly, nature of the dispute pertains to the agricultural land but in the process no verbal abuses have been hurled in the name of the caste. Counsel submitted that the trial Court had erred in coming to the conclusion that offence u/S.3(1)(X) of the SC/ST Act is made out.

11. Consequently Counsel urged that there is no infirmity in the impugned judgment of lower Court. He prayed for dismissal of the petition.

12. On considering the above submissions, I find that medical evidence on record fully justified the framing of charges u/Ss. 294, 147, 325/149, 323/149, 506, 427 of IPC. However regarding Section 3(1)(10) of SC/ST Act considering the prosecution case, it is clear that quarrel took place due to farming of the agricultural land by the complainant party. Thus it is essential to consider whether framing of charges u/S.3(1)(X) of SC/ST Act was required at all and if the prosecution allegations are considered in detail, I find that ingredients for these offences is missing in record. There were no other persons available at the place of occurrence to state that the offences occurred in the full public view. Similarly on bare perusal of the prosecution case, it is clear that the dispute took place due to tilling of the agricultural land; but for framing of charge under Section 3(1)(10) of the SC/ST Act, it is necessary that the abuses hurled to the complainant should be with an intention to insult or humiliate because the complainant belongs to a particular scheduled caste. Then in the present case both the ingredients are not fulfilled. The act was not done with the intention to humiliate the complainant ladies because they belong to Harijan caste and moreover there was nobody else in the field and hence the ingredient of publication is also not fulfilled.

13. Thus it cannot be said that insult were hurled in full public view and

appreciating the fact that power u/S.482 of Cr.P.C. have been invoked and they have to be exercised sparingly, carefully and with great caution, however, if there is any abuse of process leading to injustice and it has been brought to the notice of the Court, then the Court would be justified in preventing injustice due to absence of specific provisions in the Statute. And in the present case I find that framing of charge u/S.3(1)(X) of SC/ST Act is absolutely uncalled for primarily because the dispute had occurred regarding farming of land by the complainant parties. The mens rea to insult or humiliate and the act to be done within full public view is missing and the only intention of the accused seems to be removing the encroachment and possession of the complainant parties and hence framing of charges by the impugned order needs to be set aside only to the extent of the charges framed for offence u/S.3(1)(X) of SC/ST Act.

14. The application therefore, is partly allowed and it is directed that although the framing of charge u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC is upheld, framing of charges under Section 3(1)(10) of SC/ST Act is hereby set aside.

15. With the aforesaid observations and directions, the revision petition is allowed to the extent herein above indicated.

CC as per rules.

Revision allowed.

I.L.R. [2016] M.P., 1202
CRIMINAL REVISION
Before Mr. Justice Rajendra Mahajan
Cr. Rev. No. 1988/2015 (Jabalpur) decided on 15 October, 2015

SHIVENDRA TRIPATHI ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 - Framing of charges **- Challenged on the strength of letter written by the prosecutrix to S.H.O. of police station contending that applicant's father has agreed to accept her as daughter-in-law and the applicant is also ready to marry her - Held - Prosecutrix has nowhere stated in the letter written to S.H.O. or in her statement recorded u/s 164 of the**

Cr.P.C. that she has levelled false allegation against the applicant - Merely because she has developed friendly understanding with the applicant, prosecution of the accused cannot be stopped - Since the charges of rape and criminal intimidation are on record, applicant cannot be discharged - Revision is dismissed. (Para 8)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – आरोपों का विरचित किया जाना – अभियोक्त्री द्वारा पुलिस थाने के एस.एच.ओ. को लिखे गये उस पत्र के आधार पर चुनौती दी गई, जिसमें यह तर्क प्रस्तुत किया गया था कि आवेदक का पिता उसे बहू के रुप में स्वीकार करने हेतु सहमत है तथा आवेदक भी उससे विवाह करने के लिए तैयार है – अभिनिर्धारित – अभियोक्त्री ने एस.एच.ओ. को लिखित पत्र में अथवा द.प्र.सं. की धारा 164 के अंतर्गत अभिलिखित अपने कथन में यह कहीं भी नहीं कहा है कि उसने आवेदक के विरुद्ध मिथ्या आरोप लगाया है – मात्र इसलिए कि उसने आवेदक के साथ मैत्रीपूर्ण समझौता कर लिया है, अभियुक्त का अभियोजन रोका नहीं जा सकता – चूंकि बलात्संग एवं आपराधिक अभित्रास के आरोप अभिलेख पर हैं, आवेदक को आरोपमुक्त नहीं किया जा सकता – पुनरीक्षण खारिज।

Cases referred :

AIR 1979 SC 366, AIR 2000 SC 2583, AIR 2003 SC 1639, AIR 2005 SC 203, AIR 2013 SC 2753, 2015 (II) MPJR 62, 2014 CR.L.J. 540 SC, 2014 (3) MPHT 82 SC.

Umakant Sharma with *N.K. Shah*, for the applicant.
A.N. Gupta, P.L. for the non-applicant No.1/State.
Brajesh Choubey, for the non-applicant No.2.

ORDER

RAJENDRA MAHAJAN, J. :- This criminal revision under Section 397 read with 401 of the Cr.P.C. has been preferred by the applicant feeling dissatisfied and aggrieved by the order dated 02.07.2015 passed by the Sessions Judge, Shahdol in Sessions Trial No.55/2015, whereby the applicant is charged with the offences punishable under Sections 376(2)(n) and 506(B) of the I.P.C.

2. The relevant and necessary facts for adjudication of this revision are given below:-

(2.1) On 20.08.2014, the prosecutrix, who is the respondent No.2

herein, lodged an oral report at Police Station Kotwali, Shahdol making allegations against the applicant that he came in close contact with her. He proposed to her. Thereupon, she told him that she got married in her childhood and she is the mother of a girl. The applicant told her that notwithstanding the aforesaid facts he would marry her. Thereafter, he had physical intimacy with her over two years. As a result of his cohabitation, she has become pregnant and is presently carrying two months old pregnancy. She disclosed him about her pregnancy. He insisted upon her to undergo abortion, but she refused to do so. Thereupon, he started giving her life threats and he has gone into hiding since long. His parents refused to give her his whereabouts. She has also alleged that earlier she became pregnant with his cohabitation. At that time, upon his insistence she had abortion. Upon her oral report, an F.I.R. is recorded against the applicant at Crime No.517/14 under Sections 376 and 506(B) of the I.P.C.

(2.2) Upon completion of the investigation, the applicant is charge sheeted under Sections 376 and 506(B) of the I.P.C.

(2.3) After the committal proceedings, the case is registered as Sessions Trial No.55/2015.

(2.4) Having heard the learned counsel for the parties over the framing of charges, the learned Sessions Judge vide the impugned order has held that there is prima facie evidence for framing of charges against the applicant under Sections 376(2)(n) and 506(B) of the I.P.C. and has levelled the aforesaid charges at him.

(2.5) Dissatisfied with the action of the trial Court in framing aforesaid charges against him, the applicant has filed this criminal revision.

3. The learned counsel for the applicant has submitted that the prosecutrix gave a written application dated 23.08.2014 to the S.H.O. of the aforesaid police station praying that the applicant's father Premraj has agreed to accept her as his daughter-in-law and the applicant is also ready to marry her. Therefore, she does not want any action by the police against him upon her

police report dated 20.08.2014. It is also submitted by him that the same facts have been reiterated by the prosecutrix in her statement dated 23.08.2014 recorded under Section 164 of the Cr.P.C. However, the learned Sessions Judge had not taken into consideration the aforesaid documents in right perspective while passing the impugned order. If he had given due weightage to them, then the applicant would have been discharged under Section 227 of the Cr.P.C. Thus, the learned Sessions Judge has committed a grave error of facts and law by framing the aforesaid charges. Upon these submissions, he has prayed for quashing of the impugned order and discharge of the applicant of the aforesaid charges on the basis of the aforesaid documents. In support of the submissions, learned counsel has relied upon the decisions rendered in the cases of *Union of India Vs. Prafulla Kumar Samal* (AIR 1979 SC 366), *State of M.P. Vs. Mohan Lal Soni* (AIR 2000 SC 2583), *Uday Vs. State of Karnataka* (AIR 2003 SC 1639), *Deelip Singh @ Dilip Kumar Vs. State of Bihar* (AIR 2005 SC 203), *Prashant Bharti Vs. State of NCT of Delhi* (AIR 2013 SC 2753) and *Hemant Choubey Vs. State of M.P.* (2015 (II) MPJR 62).

4. Per contra, learned Panel Lawyer has contended that the prosecutrix in her letter dated 23.08.2014 and her statement under Section 164 of the Cr.P.C. does not state that she has made false allegations against the applicant. On the other hand, she has simply stated that she does not want any penal action against the applicant as he and his parents have agreed upon her marriage with the applicant. Thus, the prosecutrix's allegations of her sexual exploitation upon the false promise of marriage and life threats upon her refusal to undergo abortion by the applicant are there. It is further submitted by him that the prosecutrix has made aforesaid allegations against the applicant in her case diary statement dated 21.08.2014. In view of the above, the learned Sessions Judge has not committed any error of law or facts by framing the aforesaid charges.

5. The learned counsel for the respondent No.2/prosecutrix has supported the arguments raised by the learned counsel for the applicant.

6. I have anxiously considered the rival submissions and perused entire material on record.

7. In the cases of *State of U.P. Vs. Naushad* (2014 Cr.L.J. 540 SC) and *Deepak Gulari Vs. State of Haryana* (2014 (3) MPHT 82 SC), the

Supreme Court has laid down the law that sexual intercourse/sexual exploitation on the false promise of marriage amounts to rape. Upon the perusal of the F.I.R. of the case and the case diary statement of the prosecutrix, I have found that in the aforesaid the prosecutrix has squarely stated that the applicant had sexually exploited her over two years on the promise of marriage despite her saying that she got married in her childhood, and she is the mother of a girl. Upon the aforesaid facts, the police have rightly registered the case against the applicant for the offences punishable under Sections 376 and 506(B) of the I.P.C.

8. Upon the meticulous and careful reading of the letter dated 23.08.2014 written by the prosecutrix to the S.H.O. of Police Station Shahdol and her statement under Section 164 of the Cr.P.C., I have found that the prosecutrix has not stated overtly or covertly that she has levelled false allegations against the applicant. On the other hand, she has simply and guilelessly stated that the parents of the applicant and the applicant himself are agreed upon her marriage with the applicant, therefore, she does not want to prosecute him. Hence, the charges of rape and criminal intimation (sic:intimidation) are undeniably on record. Resultantly, on the basis of the aforesaid, the applicant cannot be discharged in terms of Section 227 of the Cr.P.C. Further, I am of the considered view that once the complainant/informant has set the criminal machinery of the State in motion by lodging a report of cognizable offence(s) then, further proceedings in the case cannot be stopped at his insistence because he has arrived at friendly understanding with the accused and he does not want any penal action against him. Otherwise, there will be a complete anarchy and the State's criminal machinery will become a tool of whims and fancies of the complainant. Upon the aforesaid premises, the complainant cannot stop the prosecution of the accused of a cognizable case except as per provisions of Section 320 of the Cr.P.C. Hence, in the present case, the prosecutrix cannot stop the prosecution of the applicant because she has developed an understanding with the applicant. Thus, the trial Court is bound to conduct the trial of the case in accordance with the provisions of the Cr.P.C. irrespective of the fact whether the prosecutrix would support the prosecution case or not at trial?

9. The law laid down in the first five rulings as mentioned in Para 3 of this order are not applicable in this case as they are distinguishable on facts. In the last citation, the prosecutrix in her statement under Section 164 of the Cr.P.C.

has stated inter-alia that she had lodged the report of rape and other offences against the applicant/accused, because he had come to her college and beat her with his shoes and tried to take her in the vehicle. Thereupon, this court has held that in the case-offence under Section 376 of the I.P.C. is not made out on the basis of the statement of the prosecutrix. However, all the remaining offences are prima facie made out as framed by the trial court. Thus, the law laid down in the said authority is also not applicable in the facts-situation of the present case.

10. In the light of aforesaid discussion, I do not find any infirmities with the impugned order of framing of charge. I, therefore, dismiss this revision being meritless affirming the impugned order.

11. Accordingly, this revision is finally disposed of.

Revision disposed of.

I.L.R. [2016] M.P., 1207
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice B.D. Rathi
M.Cr.C.No.332/2013 (Gwalior) decided on 10 March, 2015

SURESH CHAND SHARMA & ors. ...Applicants
Vs.
STATE OF M.P. & anr. ...Non-applicants

Dowry Prohibition Act (28 of 1961), Sections 3 & 4 - Dowry - **In a case where marriage has not been performed and only engagement has been performed, if any illegal demand is made in regard to dowry, the accused can be charged with offence u/s 3 & 4 of the Dowry Prohibition Act. (Para 12)**

दहेज प्रतिषेध अधिनियम (1961 का 28), धाराऐं 3 व 4 – दहेज – किसी ऐसे प्रकरण में जहां विवाह संपन्न नहीं हुआ है और मात्र सगाई हुई हो, दहेज के संबंध में कोई अवैध मांग की जाती है, तब अभियुक्त पर दहेज प्रतिषेध अधिनियम की धारा 3 एवं 4 के अंतर्गत अपराध का आरोप अधिरोपित किया जा सकता है।

Cases referred :

1991 Cri LJ 639, 2011 Cr LR(SC) 781, 2004 SCC (Cri) 699, AIR 1983 SC 1219, AIR 1996 SC 2184, AIR 2009 SC 913.

Rajmani Bansal, for the applicants.
Lalan Mishra, P.L. for the non-applicant No. 1/State.
V.D. Sharma, for the non-applicant No. 2.

ORDER

B.D. Rathi, J. :- The present petition has been preferred by the petitioners/accused under Section 482 of the Code of Criminal Procedure, 1973, in short the 'Code' for quashing the impugned FIR registered at Crime No. 96/2012 by P.S. Mahila Thana Padav, district Gwalior for the offence punishable under section 3/4 of the Dowry Prohibition Act, 1961.

2. It is not in dispute between the parties that after completion of the investigation, charge-sheet has been filed before the court competent and the case is pending for trial before the trial court.

3. The case emerges out of the record of the case is that one written complaint was filed by complainant/respondent No.-2-Dr. (Smt) Subra Bhatta, addressing to the Station House Officer of the Mahalia Thana Padav, district Gwalior on dated 1/12/2012 with allegations that her engagement was performed on 28/3/2012 with accused/petitioner No.3- Romesh Dubey. The marriage was to be solemnized on 29/11/2012. In view of aforesaid schedule of marriage programme, certain bookings were done by the parental side of the complainant after payment of cash in advance to the concerning proprietors of catering, photography, sound and light decorations including to the place of venue owner. On 1/10/2012, accused/petitioner No.1-Suresh Chand Sharma and Smt. Nirmala Sharma (petitioners No. 1 and 2), who are father and mother of respondent No.3-Romesh came to the residence of the complainant and made demand of Rs. 20 lacs and one car in dowry. On 2/10/2012 at around 12 in noon, the petitioner No.1-Suresh Chand informed to father of the complainant that contract of proposed marriage had broken. Thereafter, some conversations were made between the parties and after that again both the parties agreed to marry of their children. On 8/10/2012, again one phone call was allegedly made by the petitioner No.1-Suresh Chand to the father of complainant that during Faldan ceremony, if car was not provided to the family of bridegroom then it would not be good for the family of the complainant. Demand was also made by petitioner No.1-Suresh Chand that at least pay cash amount of Rs. Eleven lacs in addition to the car worth of Rs. Five Lacs, during the "Faldan" ceremony. The father of the complainant was also threatened

by the petitioners/accused to fulfill their demands. Ultimately on failing to fulfill the aforesaid illegal demands, the contract of marriage has been broken by the petitioners. In the aforesaid background, the written complaint was lodged by the complainant/respondent No.2 with Mahila Police Station, Padav on 24/11/12 which was registered at Crime No.96/12 for commission of the offence under section 3/4 of the Dowry Prohibition Act against the present petitioners/accused. After investigation into crime, the charge-sheet has been filed and the matter is pending for trial before the trial court.

4. The quashment of the FIR and the entire proceedings pending have been sought *inter-alia* on the ground that the complaint has been lodged with *mala fide* intentions to harass the petitioners and that no case is made out against the accused. It is submitted by the counsel that as per the definition given under the Act in this case there was nothing to indicate that any demand for dowry was ever made by the petitioners. In continuation, he argued that demand of dowry to become an offence under section 4 of the Act, it must be made at the time of marriage and not during the negotiations of marriage. Reliance in this behalf is placed on the words of expression "bride" and "bridegroom" in section 4 to emphasis that at the stage of pre-marriage negotiations, the boy and the girl are not "bride" and "bridegroom" and therefore the demand made at that stage cannot be construded as a demand of dwory punishable under section 4 of the Act. It is also submitted that in absence of actual given or agreed to -be given it cannot be said that there was a contract of dowry as defined in section 2 of the Act. To support his arguments, reliance is placed by the counsel on the decision of Calcutta High Court in the case of *Sankar Prosad Shaw and others Vs. The State and another* reported in 1991 Cri.L.J. 639.

5. That apart, according to the learned counsel, even if the complaint is to be read as a whole, and accepted in its entirety as true, no case has been made out against the petitioners herein of their having committed the offences of which they were charged. On the contrary it appears that the petitioners have been falsely implicated because as per the enquiry report of the SHO of police station Padav addressing to the City Supdt. of Police dated 29/11/2012 (Annexure-P/2) the complainant herself was not agreed to marry and after repeated notice she remained absent before the Enquiry Officer whereas as per the statements of the witnesses on record who were cited by the petitioners,

the petitioner No.3 was ready and willing to marry with the complainant. Hence, taking the aforesaid scenario of the case, it is prayed that the petition may be allowed and the FIR and entire proceedings basing thereupon may be quashed. In support his submission, learned counsel for the petitioners has placed reliance on judicial pronouncement of Apex Court in the case of *Bhushan Kumar Meen Vs. State of Punjab & others* reported in 2011 Cr.L.R.(SC) 781.

6. *Per contra,* the contention put forth by the learned counsel for respondent No.2 is that the allegations made in the complaint *prima facie* constitutes commission of the alleged offence against the petitioners/accused. The attention of this court is drawn by the counsel on the aspect that under section 4 of the Dowry Prohibition Act, mere demand of dowry is sufficient to bring home to the offence to an accused. Thus, any "demand" of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives according to the counsel for the respondent No.2 would fall within the mischief of "dowry" under the Act. It is submitted by the counsel that specific allegations were made in the complaint that amount of Rs. Twenty Lacs and four wheeler were demanded by the petitioners/accused and owing to failing to fulfill their demands, the contract of marriage was broken by the petitioners. To bolster his submission, reliance is placed on the principles of law laid down by the Apex court in the case of *Reema Aggarwal Vs. Anupam & others* (2004 SCC (Cri) 699. Hence, it is prayed that the petition sans substance and is liable to be dismissed.

7. Having regard to the arguments advanced by the learned counsel for the parties, the entire case has been examined. In the factual background of the case, two following questions appear to be just and proper for adjudication of this case :-

(i) Whether there was any demand of dowry made by the accused-petitioners as defined in section 2 of the Act and in view of penal provision provided in section 4 of the Act ?.

(ii) In view of police enquiry report dated 29/11/12, entire proceedings should be dropped ?.

Question No.(i)

The issue covering question No.(i) is no more res integra and stands answered long back somewhat in the year 1983 by the Apex Court in the case of *L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and others* (AIR 1983 SC 1219). The aforesaid view has been repeatedly taken subsequently in the cases of *S.Gopal Reddy Vs. State of Andhra Pradesh* (AIR 1996 SC 2184) and *Baldev Singh Vs. State of Punjab* (AIR 2009 SC 913).

8. Before considering the rival submissions of the parties it would be useful to reproduce relevant provisions of the Sections under the Dowry Prohibition Act:

> **2 Definition of 'dowry'.** —In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—
>
> (a) by one party to a marriage to the other party to the marriage; or
>
> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,
>
> at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.
>
> [***] Explanation II.— The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).
>
> **3. Penalty for giving or taking dowry.**—1[(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]: Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years]. (2) Nothing

in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act: Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

9. The definition of the term "dowry" under section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage." Section 4 of the Act aims at discouraging the very "demand"

of "dowry" as a "consideration for the marriage". Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand , if satisfied, would constitute the graver offence under section 3 of the Act punishable with imprisonment. Meaning of the expression "dowry" as commonly used and understood is different than the peculiar definition thereof under the Act. Under section 4 of the Act mere demand of dowry is sufficient to bring home the offence to an accused. The word agreement referred to in section 2 has to be inferred on the facts and circumstances of each case. So, only in the absence of agreement for dowry, the accused persons cannot get rid of because word agreement is misconceived. This would be contrary to the mandate and object of the Act. Dowry definition has to be interpreted with other provisions of the Act including sections 3 and 4 which prescribe the penalty for giving or taking dowry under the Act.

10. In the case in hand, admittedly, the contract of marriage was broken owing to non-fulfillment of illegal demand of dowry but it does not mean that accused persons cannot be called as bridal family because bridegroom means a man who has just been married or is about to be married and vice versa. In view of this definition of bridegroom, petitioner No.3-Romesh Dubey can also be recognized as bridegroom and so also other petitioners No.1, 2 and 4 can be said as belonging to bridal family. In view of this settled position of law, the question No.(i) is answered against the petitioners and in favour of respondent No.2.

11. Now coming to the next which is question No.(ii), on perusal of the police report dated 29/11/2012, it is clear that the issue was not inquired into in regard to demand of dowry by the police authority. It is strange to note that nowhere it was mentioned in such a report by the Enquiry Officer that the allegations of demand of dowry were falsely levied by the complainant. The only anxiety expressed by the Enquiry Officer was that the petitioner No.1-Suresh Chand was ready to perform marriage of his son (petitioner No.3) with complainant/respondent No.2-Dr. Subra Bhatt, therefore, at the cost of the said enquiry report, the petitioners/accused cannot seek advantage.

12. Having thus taken into consideration the law enunciated above by the Hon. Apex Court, it can be safely held that even in a case where the marriage has not been performed and only engagement was performed, in that case

also, if an illegal demand has been made in regard to dowry even without entering into an agreement, for consideration of marriage, then also the bride or bridegroom and his/her family and relatives can be charged with the offence punishable under section 3/4 of the Dowry Prohibition Act, as the case may be. Suffice it to observe that the Act is piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage.

13. In view of the above discussions made above, this court does not find any ground to quash the criminal proceedings initiated against the petitioners on the basis of impugned FIR.

14. Resultantly, the petition fails and is dismissed with no order as to costs.

15. A copy of this order be sent to the trial court for necessary compliance of the directions and proceeding further with the matter as per provisions of law.

Application dismissed.

I.L.R. [2016] M.P., 1214
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No. 593/2015 (Indore) decided on 24 August, 2015

SARVAN & anr. ... Applicants
Vs.
STATE OF M.P. ... Non-applicant

Govansh Vadh Pratishedh Rules (MP), 2012, Rules 5 & 6 and Criminal Procedure Code, 1973 (2 of 1974), Section 451 - Confiscation by District Magistrate - Manner of appeal - Interim custody of seized vehicle **- District Magistrate is at liberty to initiate proceedings for confiscation of vehicle after conclusion of trial by the concerned Magistrate - Till then seized vehicle given on interim custody to the applicants, if they are registered owner of the vehicle or to the registered owner of the vehicle as the case may be upon certain condition. (Para 17)**

गौवंश वध प्रतिषेध नियम (म.प्र.), 2012, नियम 5 व 6 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 – जिला दण्डाधिकारी द्वारा जब्ती – अपील

की रीति – जब्त वाहन की अंतरिम अभिरक्षा – संबंधित दण्डाधिकारी द्वारा विचारण समाप्त किये जाने के पश्चात, जिला दण्डाधिकारी वाहन जब्ती कार्यवाही प्रारंभ करने हेतु स्वतंत्र है – तब तक जब्त वाहन कतिपय शर्तों पर, जैसी कि स्थिति हो प्रार्थीगण को, यदि वे वाहन के पंजीकृत स्वामी हों, अथवा वाहन के पंजीकृत स्वामी को, अंतरिम अभिरक्षा पर दिया जावे।

Cases referred :

2013 (5) MPHT 233, 2012 (2) MPLJ 661, 2004 (4) SCC 159, MCRC No. 1296/2015 dated 13.07.2015, 2000 (1) JLJ 304, 2008 (1) JLJ 427.

Umesh Sharma, for the applicants.
Yogesh Mittal, for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This application under section 482 of Cr.P.C. is directed against the order passed by learned 11th Additional Sessions Judge, Ujjain in Criminal Revision No.94/2014 dated 30.12.2014.

2. The facts giving rise to this application are that on 27.09.2012 about 12:05 am, the Incharge of Police Station – Jeeran, received a source information that in vehicle bearing registration No.MP-44-LA-0302, three cows and one calf were being transported towards Dhulia for slaughtering them. The vehicle was intercepted on Neemuch Mandsaur Highway in front of Harkiya Khal police post. When the vehicle was searched, three cows and one calf were recovered from the vehicle. During investigation, the vehicle and the cow progeny were seized. Learned District Magistrate, Neemcuh (sic:Neemuch) was intimated about the seizure who passed the order dated 17.02.2014 by which the vehicle and the cow progeny were ordered to be confiscated. Against this order, present applicants filed an appeal before the Commissioner, Ujjain, which was also dismissed by order dated 17.02.2014 and against this order, the revision was filed which was disposed of by learned 11th Additional Sessions Judge by the impugned order.

3. Aggrieved by this order, present application is filed placing reliance on the judgment of this Court in the case of *Raees Vs. State of MP* reported in 2013(5) MPHT 233 in which it was held that while the confiscation proceeding was going on, the vehicle may be handed over on interim custody under section 451 of Cr.P.C.

4. However, in this case, the vehicle is already ordered to be confiscated by the two courts below and also revision filed before the Sessions Court has been dismissed by the impugned order, therefore, following the questions arise in this case for consideration (i) whether, under *MP Govansh Vadh Pratishedh Adhiniyam and Rules* made thereunder known as *MP Govansh Vadh Pratishedh Rules*, 2012 confiscation proceeding can continue parallel to the criminal proceeding pending before the Court of Judicial Magistrate; and (ii) whether, an order, ordering confiscation of the vehicle and cow progeny can only be passed after conclusion of trial before the Judicial Magistrate in which it was held that offence under the Act was committed and the vehicle was used for transporting cow progeny for slaughtering.

5. To begin with, we may go through *MP Govansh Vadh Pratishedh Rules*, 2012 (hereinafter referred as the Rules), Rules 5 and 6 provided as under:-

> 5. Confiscation by District Magistrate- In case of any violation of section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef as per the provisions of section 100 of Criminal Procedure Code. 1973 (No.2 of 1974) in following manner:-
>
> (i) He shall take possession of the vehicle;
>
> (ii) He shall intimate the Veterinary Department to take in custody of the cow-progeny and beef.
>
> (iii) The beef of cow-progeny shall be disposed of by the department by such procedure as he deems fit.4
>
> 6. Manner of Appeal- Any person aggrieved by an order of confiscation under sub-section (5) of section 11 of the Act, may prefer an appeal in writing to the Divisional Commissioner within thirty days of the date of knowledge of such order. Every appeal shall be made under sub-section (1) of section 11-A of the Act.

6. The corresponding provisions in the Forest Act for seizure and confiscation of the vehicle of the forest can also be reproduced here as under:-

52. Seizure of property liable to confiscation and procedure therefor.

(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized of upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools,

vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub section (3) unless the authorised officer-

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seizure, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes,chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission."

Section 52A (Madhya Pradesh Amendment) reads as under:-

"52A. Appeal against the order of confiscation.-- (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, along with certified copy of order of confiscation to the conservator of forests (hereinafter referred to as Appellate Authority) of the forest circle in which the forest produce has been seized.

Explanation-(1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub section. (2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formed notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo motu" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody preservation or disposal (if necessary) of the subject matter of confiscation , as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority having regard to the nature of the case or the complexities, involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) On the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may raise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order on an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order in conformit with the order of Appellate Authority. Section 52B (Madhya Pradesh Amendment) reads as under:-

"52B. Revision before Court of Sessions against order of Appellate Authority.-- (1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions division whereof the headquarters of the Appellate Authority are situate.

Explanation.- In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) The Court of Sessions may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of session shall as far as may be, exercise the same powers and follows the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure , 1973 (Act No. 2 of 1974) the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

Sec. 52C of Madhya Pradesh Amendment

Bar to jurisdiction of courts etc. under certain circumstances:- (1) On receipt of intimation under Sub-section 4 of Section 52 about initiation of the proceeding for confiscation of the property by the Magistrate having jurisdiction to try the offence on account of which the seizure of the property which is subject matter of confiscation, has been made, no court, tribunal or authority (other than the authorized officers, appellate authority and the court of Sessions referred to in Section 52, 52-A, and 52-B), shall have jurisdiction to make order with regard to possession, delivery, disposal of distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding any thing to the contrary contained in this Act or any other law for the time being in force.

Explanation : where under any law for the time being in force two or more courts have jurisdiction to try forest offence, then

receipt of intimation under sub-section 4 of Section 52 by one of the courts of Magistrate having such jurisdiction shall be construed to be in receipt of intimation under that provision by all the courts and the bar to exercise jurisdiction shall operate on all such courts."

7. The provisions of Indian Forest Act and the amendment incorporated therein was considered by the Coordinate Bench of this Court in the case of *Ramniwas Vs. Game Range Chambal Santuary, Bhind, Headquarter, Ambah, District – Morena* reported in 2012(2) MPLJ 661.

8. The Court compared analogous provisions in Bengal Amendment Act, 1927 and observed by placing reliance on the judgment of Hon'ble the Supreme Court in the case of *State of West Bengal and others Vs.Sujeet Kumar Rana* 2004(4) SCC 159 in para 17 reads as under:- 17

17. The principles which can be culled out from the provisions of the 1927 Act and the judgment in *Sujeet Kumar Rana's case* (supra) are as under:-

(i) Forest Act is a Special Act;

(ii) M.P. Amendments provide a complete Code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of power. It also prescribe hierarchy of adjudicatory bodies;

(iii) Section 52-C creates a bar on the jurisdiction of courts as described in it. Because of non-obstante clause used in Section 52-C it will have an overriding effect on other laws including general provisions of Cr.P.C.;

(iv) Once intimation of initiation of confiscation proceedings is given to Magistrate, the jurisdiction ofMagistrate is ousted;

(v) Magistrate and revisions Courts can't grant interim custody of vehicle de hors the bar of Section 52-C.

(vi) Once confiscation proceeding is initiated, the jurisdiction of criminal courts in terms of Section 52- C of the 1927 Act is barred, the High Court also cannot exercise its jurisdiction

under section 482 Cr.P.C. for interim release of such vehicle/ property.

9. Thus, it may be seen that amendment in the Madhya Pradesh in Indian Forest Act provides a complete code in itself and also section 52 (c) quoted above have overriding effect on other laws including general provisions of Cr.P.C. However, in *MP Govansh Vadh Pratishedh Adhiniyam* (hereinafter referred to as the Act), such analogous provisions are not incorporated and, therefore, the Coordinate Bench of this Court in the case of *Sheikh Kalim Vs. State of MP* in MCRC No.1296/2015 dated 13.07.2015 placed reliance on the judgment of Full Court decision in the case of *Madhukar Rao Vs. State of MP and others* reported in 2000(1) JLJ 304 and also on the judgment of Hon'ble the Supreme Court in the case of *State of MP and others Vs. Madhukar Rao* reported in 2008(1) JLJ 427 and observed that when the trial Court did not find the accused guilty of alleged offence under the Act, confiscation of the property is not possible.

10. Before proceeding further, the observations made in the case of *Madhukar Rao* (supra) by the Full Bench of this Court may be quoted here with some benefit in para 18 of the judgment:-

> 18.----------
>
> If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of Clause (d) of Section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation Clause (d) of Section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation.

> This would be a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business. The power thus would be exercised by an Executive Officer and without any proof of commission of an offence. Such arbitrary and uncannalised powers cannot be allowed to any Executive Authority. That would be against basic structure of the Constitution. The Constitution envisages trial of offences by an independent judiciary. An interpretation which would render Clause (d) of Section 39(1) to be unconstitutional has to be eschewed and interpretation which makes it constitutional should be preferred. See the following observations of the Supreme Court in *Kedarnath v. State of Bihar* (AIR 1962 SC 955) :
>
> "It is well settled that if certain provisions of law, construed in one way, would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

11. The matter travelled upto Hon'ble the Supreme Court where the Supreme Court in the case of *State of MP and others Vs. Madhukar Rao* (supra) observed as under:-

> The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of section 39(1)(d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence.

12. Reverting back to the provisions of the Act, we find that section 11(5) which was inserted by the amended Act in the year 2010 and which was notified to be effective from 05.03.2012, section 11(5) of the Act is inserted by the aforesaid amendment provides thus:-

> In case of any violation of Section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny

and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and been in such manner as may be prescribed.

13. This section gives power to the District Magistrate for confiscation of the vehicle used in the offence under the Act and also the beef and the animals which were transported for slaughter. However, in section 11(5) provides that the manner in which such confiscation is to be done, should be provided by the State Government under section 17 of the Act which gives power to the State Government to frame rules for carrying out the provisions of this Act, in the year 2012 itself, Rules 5 and 6 quoted above were notified. Rule 5 provides that confiscation by the Collector should be done in the following manner and Sub Rule (i) of Rule 5 only provides that *"he shall take possession of the vehicle"*. No procedure is provided in Indian Forest Act. So far as the District Magistrate is concerned, the provisions of section 100 of Cr.P.C. cannot be applied because provisions of section 100 of Cr.P.C. pertain to search and seizure and not confiscation of the property. Search and seizure is to be done by the police officer or any person authorised by the competent authority on the spot while confiscation is to be done by the District Magistrate when the property is placed before him.

14. Therefore, in the considered opinion of this Court, the manner in which the property is to be confiscated, is not provided by the Act and the rules and, therefore, applying the principles laid down in the case of *Madhukar Rao* (supra), the District Magistrate has no power to confiscate the vehicle till it is held by the competent court of Magistrate that offence was infact committed and the vehicle was used in commission of the offence. In this view of the matter, the questions framed in para 4 may be answered thus:-

(i) The proceedings for confiscation before the District Magistrate can continue, however, no final order can be passed.

(ii) Final order in the proceedings can be passed only after conclusion of trial before the Judicial Magistrate in which it was held that offence under the Act was committed and the vehicle was used for transporting cow progeny for slaughter.

15. Consequently, the order passed by the Collector is against the principles laid down by Hon'ble the Supreme Court in the case of *Madhukar*

Rao (supra) and is liable to be set aside and so is the order passed by the Commissioner in appeal.

16. As the learned Additional Sessions Judge did not take this aspect of the matter into consideration, the order passed by learned Additional Sessions Judge is also not in line with principle laid down in aforementioned cases and liable to be set aside.

17. Accordingly, this application under section 482 of Cr.P.C. deserves to be allowed and is hereby allowed. Resultantly, the order passed by District Magistrate dated 24.06.2013 in the Case No.04/B-121/2012-13, order passed by the Commissioner, Ujjain Region, Ujjain in Case No.169/Appeal/ 2012-13 dated 17.02.2014 and the impugned order passed by learned 11th Additional Sessions Judge, Ujjain in Criminal Revision No.94/2014 dated 30.12.2014 are set aside. The District Magistrate, Neemuch, is at liberty to initiate proceedings for confiscation after conclusion of trial by the concerned Magistrate, in case, it is found that offence was committed by the accused and the vehicle in question was used in commission of the crime. Till then, the seized vehicle bearing registration No.MP-44-LA-0302 is given on interim custody to the present applicants if they are registered owner of the vehicle or to the registered owner of the vehicle, as the case may be, upon their furnishing a Supurdginama to the tune of Rs.5,00,000/- to the satisfaction of the concerned Magistrate on the following conditions:- (i) that they will not alienate or transfer the vehicle during pendency of the trial or till the confiscation proceedings are completed. (ii) that they will not commit crime under the provisions of *M.P. Govansh Vadh Pratished Adhiniyam, 2004*, till the matter is decided. (iii) that they shall also not change its appearance, colour etc. (iv) that they shall produce the vehicle whenever and where ever they are directed to do so by the criminal Court or the District Magistrate, as the case may be.

18. Breach of the conditions would entail cancellation of this order automatically.

19. With the aforesaid observations and directions, this M.Cr.C. stands disposed of.

C.c. as per rules.

Application disposed of.

I.L.R. [2016] M.P., 1227
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sujoy Paul
M.Cr.C. No. 629/2012 (Gwalior) decided on 21 September, 2015

SRI PRAKASH DESAI & anr. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 211/246 -**Charge must be specific, precise and pregnant with necessary details in order to make the accused aware as to what are specific allegations against him so that he can meet those charges and put forth his defence. (Para 10)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 211/246 – आरोप आवश्यक रुप से विनिर्दिष्ट, संक्षिप्त तथा आवश्यक विवरण सहित सारगर्भित होना चाहिए ताकि अभियुक्त को जानकारी हो सके कि उसके विरुद्ध कौन से विनिर्दिष्ट आरोप हैं जिससे कि वह उन आरोपों को समझकर अपना बचाव प्रस्तुत कर सके।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 245/482 - **Whole case of prosecution is based on the alleged use of word 'pure' on the bottle which can by no stretch of imagination amounts to misbranding - It is not the case of the prosecution that the sample taken from the petitioner was an 'imitation' - Complaint Proceedings set aside while allowing application of the petitioner under section 245 Cr.P.C. (Paras 11-13)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 245/482 – अभियोजन का संपूर्ण प्रकरण बोतल पर 'शुद्ध' शब्द के अभिकथित उपयोग पर आधारित है जो कि कल्पना के किसी भी विस्तार तक मिथ्या छापकरण की परिधि में नहीं आ सकता है – अभियोजन का प्रकरण ऐसा नहीं है कि याची से लिया गया नमूना 'अनुकृति' था – याची का आवेदन अंतर्गत धारा 245 दं.प्र.सं. मंजूर करते हुए परिवाद की कार्यवाही अपास्त की गई।

C. Prevention of Food Adulteration Act (37 of 1954), Section 13(2) -**After Shelf life of the product is over, remedy under section 13(2) of Prevention of Food Adulteration Act is of no use to the accused. (Para 12)**

ग. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) – उत्पाद की जीवनावधि पूर्ण होने के पश्चात, खाद्य अपमिश्रण निवारण अधिनियम की धारा 13(2) के अंतर्गत उपलब्ध उपचार अभियुक्त के किसी उपयोग का नहीं।

Cases referred :

129 (2006) DLT 522, 2012 (4) MPHT 26, AIR 1992 SC 604, (2014) 8 SCC 340, Cr. Application No. 3439/2006 decided on 21.06.2010 (Bom. High Court), AIR 1967 SC 970, (1999) 8 SCC 190, 2008 (3) Scale 563, 2011 (1) FAC 41.

Surendra Singh with *Sourabh Agarwal,* for the applicants.
Amit Bansal, Dy. G.A. for the Non-applicant/State.

ORDER

SUJOY PAUL, J. :- This petition filed under Section 482 of the Code of Criminal Procedure (CrPC), challenges the order dated 11.8.2011 passed by JMFC, Ganj Basoda, whereby the application of the petitioner filed under Section 245 (1) CrPC (Annexure P/9) is rejected by the court below.

2. Draped in brevity, the admitted facts are that on 16.5.2001, the complainant/Food Inspector visited the premises of retailer at Ganj Basoda and obtained the sample of Kinley Packaged Drinking Water. The sample was sent to public analyst. The said analyst opined that the sample is misbranded as per the Prevention of Food Adulteration Act, 1954 (for short, the "PFA Act"). Based on the said report, the instant complaint was filed. The court below took cognizance of the matter and other party was summoned. In the said case, the analyst's report dated 25.6.2005 is filed (Annexure P/4). In the report, it is mentioned that "sample is clear free from suspended matter". However, in the opinion, it is mentioned that sample is "misbranded".

3. Shri Surendra Singh, learned senior counsel contended that the public analyst's report is vague. It does not specify as to how product was 'misbranded'. Thus, the petitioner filed an application for discharging him under Section 245(1) CrPC (Annexure P/9).

4. In reply to this application, it is stated by the complainant that "prosecution was lodged as on the label of Kinley Packaged Drinking Water the word *'pure'* was mentioned, which is not permissible and hence, the

application filed by the accused is liable to be dismissed".

5. Learned senior counsel criticized the order dated 11.8.2011, whereby the aforesaid application of petitioner was rejected by the court below. It is urged that neither prosecution nor the court below was aware as to how product can be treated as "misbranded". He submits that the sample was taken on 16.5.2001 whereas complaint was filed on 22.9.2003. It is evident from the declaration mentioned in statutory Form VI under Rule 12 (Annexure P/3) that the shelf life of the water bottle in question was only for six months. The bottle in question was packed on 12.4.2001. He submits that the court below opined that if the petitioner was not satisfied with the report of public analyst, he could have invoked Section 13(2) of the PFA Act and should have got his product examined in Central Food Laboratory. He submits that since shelf life of the product came to an end before filing of complaint, the petitioner could not have invoked Section 13(2) of PFA Act. In nutshell, he challenged the impugned order and prosecution on following grounds:-

(i) The use of word "pure" does not fall within the ambit of "misbranding".

(ii) As per the letter of Directorate General of Health Service, dated 20.9.2001, the permission was accorded to use the word "pure" on the packed bottle till 31.12.2001. Thus, the petitioner used the same during the permissible limit.

(iii) Remedy under Section 13(2) of the PFA Act was not available to the petitioner because of inordinate delay in filing the complaint.

(iv) The complaint proceedings cannot be permitted to continue unless it is made clear as to what is the exact nature of accusation against the petitioner. On the basis of vague and tangent allegation, which does not fall within the ambit of "misbranded", the complaint proceeding can not be permitted to continue.

In support of contentions, learned senior counsel relied on certain High Court judgments.

6. *Per Contra,* Shri Amit Bansal, learned Deputy Government Advocate supported the order passed by the court below. It is urged that the court below earlier passed the order dated 11.8.2011 and opined that the petitioner has not made any effort to get the product tested from Central Food Laboratory and, therefore, he has waived his right. This order of court below dated 11.8.2011 has attained finality. Thus, the petitioner cannot be permitted to raise the same point again. In addition, Shri Bansal relied on rule 41 of the Prevention of Food Adulteration Rules, 1955 (for short, the "Rules"), and submitted that as per this rule, the use of word "pure" is prohibited. Lastly, it is urged that at this stage no interference is warranted. There are disputed questions of fact, which can be decided by the court below after recording evidence.

7. No other point is pressed by the parties.

8. I have heard learned counsel for the parties and perused the record.

9. Delhi High Court in *Pepsico India Holdings Pvt. Ltd. vs. The Bureau of Indian Standards and others* (129 (2006) DLT 522), considered the question whether use of words "pure", "crisp", "refreshing", "purified" and "purity guaranteed" contravene any provision of law ? Hon'ble Vikramajit Sen, J. (as His Lordship then was) considered the dictionary meaning of said words and opined that use of the words "pure", "crisp", "refreshing", "purified" and "purity guaranteed" on a label pertaining to packaged drinking water does not offend any provision of law. The said judgment of Delhi High Court is followed by this Court in 2012 (4) MPHT 26 *(Shri Prakash Desai vs. State of MP).* Interestingly, the said case (M.Cr.C.No.11475/2011) was filed by the present petitioner and was pertaining to same product, i.e., Kinley Pure Drinking Water. After considering the judgment of Delhi High Court, this Court opined that even if allegations made against the petitioner in the complaint are taken at their face value and accepted in their entirety, no offence under the PFA Act would be made out. Thus, by applying the ratio of AIR 1992 SC 604 *(State of Haryana vs. Bhajanlal)*, this Court set aside the complaint proceedings.

As per the judgment of *Pepsico India Holdings Pvt. Ltd.* (supra), followed by this Court in *Shri Prakash Desai* (supra), it is clear that use of word "pure", by no stretch of imagination, can amount to "misbranding". Thus,

in my judgment, the petitioner should not be compelled to undergo the rigmarole of criminal proceedings. Apart from this, the letter dated 20.9.2001 of Directorate General of Health Service makes it clear that the petitioner was even otherwise entitled to use the word "pure" till 31.12.2001. Admittedly, the sample was taken before the said date on 16.5.2001. For this reason also, the complaint has no basis.

10. This is trite law that charge must be specific, precise and pregnant with necessary details in order to make the accused aware as to what are specific allegations against him so that he can meet those charges and put forth his defence. See (2014) 8 SCC 340 *(Chandra Prakash vs. State of Rajasthan).*

11. Admittedly, in the present case, the whole case of prosecution is based on the alleged use of word "pure" on the bottle. As analyzed above, the said action of the petitioner does not fall within the ambit and scope of "misbranded". Thus, the prosecution is like house of cards and cannot sustain judicial scrutiny.

12. Shri Bansal, learned Deputy Government Advocate heavily relied on Rule 41 of the Rules. Rule 41 reads as under:-

> *"41. Imitations not to be marked "pure".-- The word "pure" or any word or words of the same significance shall not be included in the label of a package that contains an imitation of any food."*
>
> *(Emphasis supplied)*

A plain reading of this rule makes it clear that it is applicable to "imitations". It is not the case of the prosecution that sample taken from the petitioner was an "imitation". Thus, the said rule is of no assistance to the respondent.

12. The court below opined that if the petitioner was not satisfied with the report of public analyst, he should have invoked Section 13 (2) of the PFA Act. This point is no more *res integra.* The Bombay High Court in *Shivkumar alias Shiwalamal Narumal Chugwani Proprietor of Kanhaiya General Stores vs. State of Maharashtra,* (Criminal Application No.3439/2006, decided on 21.6.2010) dealt with this aspect. In the said case, the complaint

was instituted by Food Inspector after a reasonable period from the date of taking sample. Pertinently, the complaint was filed after the shelf life of the product. When this action was challenged by contending that valuable right under Section 13 (2) of the PFA Act was lost and prosecution has become worthless, the complainant urged that the delay was for administrative reason. This administrative delay cannot at all mitigate the valuable right of accused to have a sample reanalyzed or retested from the Central Food Laboratory. The Bombay High Court after considering AIR 1967 SC 970 *(Municipal Corporation of Delhi vs. Ghisa Ram)*; (1999) 8 SCC 190 *(State of Haryana v. Unique Farmaid (P) Ltd.);* 2008 (3) Scale 563 *(Medicamen Biotech Ltd. v. Rubina Bose)*, opined that the valuable right of accused persons under Section 13(2) of the PFA Act is violated because the complaint was filed after shelf life of the product. The justification of delay on the basis of administrative reasons and limitation of three years for filing complaint was not accepted by the High Court. For this reason also, the impugned order cannot sustain judicial scrutiny. This judgment of Bombay High Court was put to test before Supreme Court in *State of Maharashtra vs. Shivkumar @ Shiwalamal N. Chugwani*, reported in 2011 (1) FAC 41 (Special Leave to Appeal (Cri) No. 6332/ 2010). The said SLP was dismissed on merits by Supreme Court on 13th September, 2010. Suffice it to say that after shelf life of a product is over, remedy under Section 13(2) of the PFA Act is of no use to the accused. Even if by order dated 11.8.2011, the court below rejected similar contention of the petitioner, it is of no help to the respondent. In view of the law laid down in *Shivkumar @ Shiwalamal N. Chugwani* (supra) and affirmed by Supreme Court, the said objection pales into insignificance.

13. As per forgoing analysis, impugned order and complaint proceedings have become vulnerable. Accordingly, the impugned order dated 11.8.2011 is set aside. The application of petitioner preferred under Section 245(1), CrPC, (Annexure P/9) is allowed. Consequently, complaint Case No.494/ 2003 (renumbered as 534/2004) is set aside.

14. Petition is allowed. No cost.

Application allowed.

I.L.R. [2016] M.P., 1233
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sheel Nagu
M.Cr.C. No. 1340/2015 (Gwalior) decided on 24 September, 2015

HASIB KHAN ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent jurisdiction - **For quashing a criminal proceeding or FIR or complaint in exercise of inherent jurisdiction, nature and gravity of offence, effect on society or public at large, stage of settlement and whether continuation of proceeding would tantamount to abuse of process of law is to be taken into consideration - Principles are not exhaustive but elucidative. (Para 4)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित अधिकारिता – अंतर्निहित अधिकारिता का प्रयोग करते हुए किसी दाण्डिक कार्यवाही अथवा एफ.आई.आर. अथवा परिवाद को अभिखण्डित करने हेतु अपराध की प्रकृति एवं गंभीरता, समाज एवं जन साधारण पर उसका प्रभाव, समझौते का प्रक्रम एवं इस पर विचार किया जाना चाहिए कि क्या ऐसी कार्यवाहियों का जारी रहना विधि की प्रक्रिया के दुरुपयोग के समान होगा – सिद्धांत सर्वांगपूर्ण नहीं परंतु व्याख्यात्मक है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashment of Proceedings - Compromise - Family Dispute - **Rival parties members of same family, closely related and ready to settle disputes - Held - It will be futile, vexatious, leading to abuse the process of court, if they are allowed to continue even at the appellate stage - First Information Report quashed. (Para 5)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – कार्यवाहियों का अभिखण्डन – समझौता – पारिवारिक विवाद – विरोधी पक्षकार एक ही परिवार के सदस्य होकर निकट संबंधी है तथा विवाद को सुलझाने हेतु तैयार है – अभिनिर्धारित – यदि अपील के प्रक्रम पर भी कार्यवाहियों को जारी रहने दिया जाता है, तो यह व्यर्थ, संतापजनक एवं न्यायालयीन प्रक्रिया के दुरुपयोग की ओर अग्रगामी होगा – प्रथम सूचना प्रतिवेदन अभिखण्डित।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 482

***-Quashment of Proceedings - Compromise - Serious Offence* - Nature and gravity of offence, circumstances leading to commission of offence, nature of the injuries sustained, part of body where injury is inflicted, weapon used, evidence of prosecution to establish a prima facie case and willingness of parties to settle their disputes are balancing elements to be taken into account while considering application for quashing in such cases. (Para 4)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – कार्यवाहियों का अभिखण्डन – समझौता – गंभीर अपराध – ऐसे प्रकरणों में कार्यवाहियों के अभिखण्डन हेतु प्रस्तुत आवेदन पर विचार करते समय अपराध की प्रकृति एवं गंभीरता, अपराध कारित होने की परिस्थितियां, चोटों की प्रकृति, शरीर का भाग जहां चोट पहुंचाई गई, प्रयुक्त शस्त्र, प्रथम दृष्ट्या प्रकरण गठित करने हेतु अभियोजन साक्ष्य एवं विवाद को सुलझाने हेतु पक्षकारों की रजामंदी संतुलनकारी तत्व हैं जिन पर ध्यान दिया जाना चाहिए।

Faisal Ali Shah, for the applicant.
B.K. Sharma, G.A. for the Non-applicant/State.

JUDGMENT

Sheel Nagu, J. :- In this petition filed under section 482, Cr.P.C. invoking inherent powers of this Court, applications bearing I.A. No.1225/2015 and I.A. No. 1226/2015 are moved for compounding the offence punishable u/S.498A/34 of IPC which is non-compoundable offence as per section 320 Cr.P.C.

2. The brief facts leading to the instant litigation are stated as under:

Marriage between Petitioner no. 1/husband and Respondent no. 2/ wife was solemnized on 24/05/2000. It is alleged that the family members of the Petitioner no. 1/husband started harassing and assaulting Respondent no. 2/ wife for dowry. The copy of FIR (Annexure P/1) reveals that the respondents attempted to burn the body of the Respondent no. 2/ wife by pouring kerosene oil, where after she was thrown out of her matrimonial home. Even after the alleged incident, dowry demands and threats to burn the body of Respondent no. 2/ wife continued which led to the registration of the FIR bearing Crime No. 92/2006 on 25/03/2006 u/S. 498A and 34 IPC.

The petitioners suffered conviction for the offence punishable u/S. 498A and 34 IPC and sentenced to one year R.I. with fine by the learned trial court. The

matter is pending in shape of appeal before the learned ASJ, Sironj as Cr. Appeal No. 110/2014. At this stage the rival parties have settled their disputes against each other and wish to live together peacefully as husband and wife.

2.1 The statements of the rival parties, (all the accused and as well as the complainant), are recorded, which disclose that parties do not wish to pursue the prosecution(appellate stage) as they have settled their scores against each other. The genuineness of the statements of the rival parties has been verified by the Principal Registrar in the note-sheet dated 11.08.2015, which is on record.

3. The law with respect to the powers of the High Court in quashing a criminal proceedings or FIR or complaint in exercise of its inherent jurisdiction has evolved through catena of judicial pronouncements by the Apex Court. While laying down the guiding principles, Apex Court held that inherent powers of the High Court under section 482 Cr.P.C. are distinct and different from the powers given to a criminal court for compounding the offences under section 320 Cr.P.C. and have to be exercised with great caution and circumspection to secure the ends of justice, and prevent abuse of the process of any court.

[*See*: *State of Karnataka v. L. Muniswamy:* (1977) 2 SCC 699; *Mahesh Chand v. State of Rajasthan:* 1990 Supp SCC 681; *Simrikhia v. Dolley Mukherjee*: (1990) 2 SCC 437; *State of Bihar v. P.P. Sharma*: 1992 Supp(1)SCC222; *State of Haryana v. Bhajan Lal*:1992Supp(1)SCC335; *Janata Dal v. H.S. Chowdhary*: (1992)4SCC305; *Dharampal v. Ramshri:* (1993)1SCC435; *CBI v. Duncans Agro Industries Limited* : (1996)5SCC591; *Arun Shankar Shukla v. State of U.P.*:(1999)6SCC146; *G. Sagar Suri v. State of U.P.* : (2000)2SCC636; *Murugesan v. Ganapathy Velar*: (2001)10SCC504; *State of Karnataka v. M. Devendrappa* :(2002)3SCC89; *B.S. Joshi v. State of Haryana*: (2003) 4SCC675; *Jetha Ram v. State of Rajasthan*: (2006) 9SCC255; *Madan Mohan Abbot v. State of Punjab*: (2008)4SCC582; *Nikhil Merchant v. CBI*: (2008) 9SCC677; *Ishwarlal v. State of M.P.*: (2008) 15SCC671; *Ishwar Singh v. State of M.P.:* (2008) 15SCC667; *Manoj Sharma v. State*: (2008)16SCC1; *CBI v. A. Ravishankar Prasad*:

(2009) 6SCC351; *Rumi Dhar v. State of W.B.*: (2009) 6SCC364; *Devendra v. State of Uttar Pradesh*: (2009)7SCC495; *Sushil Suri v. CBI*: (2011) 5SCC708; *Shiji v. Radhika*:(2011)10SCC705; *Rajiv Saxena v.State*: (2012) 5SCC627; *Gian Singh v. State of Punjab*: (2012) 10SCC303; *Ashok Sadarangani v. UOI*:(2012) 11SCC321; *Jayrajsinh Digvijaysinh Rana v. State of Gujarat* : (2012) 12SCC401; *Narinder Singh v. State of Punjab*: (2014) 6SCC466; *State of M.P. v. Deepak*: (2014)10SCC285; *Manohar Singh v. State of Madhya Pradesh*: AIR 2014 SC 3649; *Kulwinder Singh Vs. State of Punjab*: (2007) 4 CTC 769].

4. Thus, the law laid by the Apex Court is summarized as under. The following guiding principles can be deduced from the various judicial pronouncements supra. These principles are though not exhaustive but elucidative for appropriate adjudication of the applications for compounding of non-compoundable offences, by invoking inherent powers under Section 482 Cr.P.C.

4.1 Nature and gravity of the Offence

The offences as provided under Indian Penal Code and other special statues can be broadly divided into the following two categories:

A) The minor offences and offences bearing civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute like those pertaining to property disputes between close relations etc., which have a belaboured dimension of criminal liability.

B) The offences involving mental depravity/moral turpitude, like murder, rape, highway robbery, dacoity, etc., offences against the State enshrined in Chapter VII of IPC (relating to army, navy and air force) and socio-economic offences under special statutes like the Prevention of Corruption Act etc. which are based on the principles of strict liability and presumption of guilt are heinous offences which are serious in nature. The impact of these offences visits not only the victim but also the society at large with adverse consequences. Thus, ordinarily, such offences ought not to be permitted to be compounded.

C) Some of the offences affecting the human body as contained in Chapter XVI of IPC though fall in the category of heinous and serious offences can be considered as exceptions to the general rule. In cases of sudden quarrel/ altercation between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence affecting human body in shape of attempt to murder u/S. 307 IPC or any other serious/non-compoundable offence. Therefore, only because FIR/charge-sheet incorporates such an offence should not, by itself, be a ground to reject the petition under section 482 Cr.P.C. filed for seeking permission for settlement between the parties. The following elements may be examined for striking a delicate balance between the two conflicting interests:

(i) Nature and gravity of the offence;

(ii) Circumstances leading to the commission of the offence;

(iii) Nature of the injury/ies sustained;

(iv) Whether such injury is inflicted on the vital/non-vital part of the body;

(v) Weapon used;

(vi) Whether alleging of any graver offence is for the sake of it or the prosecution has collected sufficient evidence to establish prima facie case;

(vii) Willingness of the parties to settle their dispute/s against each other and the settlement between the parties would lead to more good; better relations between them and would prevent further occurrence of such encounters between the parties, etc.

4.2 Society vis-à-vis Individual

The repercussions of the commission of the offences must be examined on the basis of the effects caused on the society at large and against an individual/victim or the family of the victim. The offences which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society must not be ordinarily allowed to be compounded.

4.3 Stage of settlement

The stage/timing of the settlement plays a crucial role. In the cases where the settlement is arrived at immediately after the alleged commission of offence where the matter is still under investigation and even the charge-sheet has not been filed or where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, liberal view may be adopted based on benevolence in accepting the settlement to quash the criminal proceedings/investigation.

On the contrary, in the cases involving heinous and serious offences where prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, or where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, the inherent powers should be exercised sparingly as the convict has been found guilty of the crime.

4.4 Effects of continuation of criminal proceedings

It should also be examined as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case/s. In other words, considerations should be based on whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law

5. The factual matrix herein reveals that rival parties are members of the same family closely related to each other. It is common knowledge that when offences arise from dispute between members of same family, the genesis and cause of the same more often than not is based on impulse than intent. Thus, it would be futile and rather vexatious to allow the present proceedings even at the appellate stage to continue, since it will lead to abuse of the process of court.

6. This Court has duly considered the fact that in the instant case proceedings in the appeal against conviction are pending before learned ASJ, Sironj. However, looking to the facts and circumstances involved herein and that good sense has prevailed between the parties, allowing settlement between the parties even at the appellate stage would be in the interest of justice and to

eschew discord and disharmony on the matrimonial front.

7. In view of the above, I.A. No.1225/2015 and I.A. No. 1226/2015 filed under section 320 Cr.P.C. are allowed.

The FIR bearing Crime No. 92/06 Police Station Sironj, Distt. Vidisha and the consequential prosecution (at appellate stage) in connection with offence/ s u/S.498A of IPC pending against petitioners is quashed.

8. Accordingly, this petition stands disposed of.

9. No cost.

Application disposed of.

I.L.R. [2016] M.P., 1239
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice M.C.Garg
M.Cr.C. No. 18540/2014 (Jabalpur) decided on 6 October, 2015

JASPAL SINGH SODHI ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

*A. **Penal Code (45 of 1860), Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Framing of charges** -* **Allegation of mis-behaviour against applicant - Applicant is brother of complainant's husband - Applicant not living in the matrimonial home of complainant and is living outside Sagar, presently at Satna - Prior to that he was in Bombay - Held - No overt act has been assigned against applicant in statement recorded u/s 161 of Cr.P.C. - Accordingly, application allowed, criminal proceedings against the applicant are quashed. (Paras 4, 6 & 7)**

क. दण्ड संहिता (1860 का 45), धारा 498-ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किये जाना – आवेदक के विरुद्ध दुर्व्यवहार का अभिकथन – आवेदक फरियादी के पति का भाई है – आवेदक फरियादी के दांपत्य गृह में निवासरत नहीं, एवं वर्तमान में सागर के बाहर, सतना में निवासरत है – इसके पहले वह बॉम्बे में था – अभिनिर्धारित – दं.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित कथन में आवेदक के विरुद्ध कोई भी प्रत्यक्ष कृत्य प्रकट नहीं किया गया है – तदनुसार, आवेदन मंजूर, आवेदक के विरुद्ध दाण्डिक

कार्यवाहियां अभिखण्डित।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent Powers - Jurisdiction* - Held - High Court can pass appropriate order under Section 482 of Cr.P.C. in cases where there is misuse of process of law. (Para 6)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्तियां – अधिकारिता – अभिनिर्धारित – ऐसे प्रकरणों में जहां विधि की प्रक्रिया का दुरुपयोग हुआ है, उच्च न्यायालय दं.प्र.सं. की धारा 482 के अंतर्गत उचित आदेश पारित कर सकता है।

Cases referred :

(2008) 10 SCC 681, 2006 (1) MPLJ 322.

Sadan Kumar Karan, for the applicant.
Vijay Soni, P.L. for the non-applicant No.1/State.
Sanjay Patel, for the non-applicant No.2.

(Supplied: Paragraph numbers)

ORDER

M.C. GARG, J. :- This petition under section 482 of the Cr.P.C. has been filed by petitioner Jaspal Singh Sodhi arrayed as accused in Criminal Case No. 1741/2014 (Crime No. 146/2014 of Police Station Cantt, District Sagar) and charge has been framed against him under Section 498-A of the IPC.

2. The petitioner is elder brother of Iqbal Singh Sodhi who is husband of the complainant. This case has been registered against the petitioner based on the First Information Report made by the complainant wherein she has made following allegations :-

> मैं बंगला नं. 27 केंट सागर मे रहती हूं घरूकाम करती हूं। मेरी शादी वर्ष 1994 में इकबाल सिंह सोढी के साथ हुई थी मेरे एक बच्ची सिमरत सोढी उम्र 18 साल एक बालक सिमरजीत सिंह उम्र 13 साल है। मेरे पति इकबाल सिंह सोढी पहले एम.आर. थे वर्ष 2009 में उन्हे नोकरी से निकाल दिया गया था उसके बाद से वह लगातार प्रताडित कर मारपीट करने लगे तो मैं अपने भाई रनबीर सिंह के यहां इंदौर में अपने बच्चों के सहित चली गई थी मेरे सास–ससुर ने फोन करके मुझसे कई बार कहा कि यही अपने घर पर आ

जाओ तो मैं दिसम्बर 2013 में अपने ससुराल सागर आ गई। तो मेरे पति पुनः मुझे एवं बच्चों को प्रताड़ित करने लगे। कल दिनांक 4.4.14 के रात्रि करीबन 9.00 बजे की बात है मेरे पति इकबाल सिंह ने मुझे गंदी गंदी गालियां देकर चप्पल से मारपीट की जो मुझे चेहरे में, सिर में चोट आई दर्द है। मैं अपने घर से बाहर की ओर भाग आई। और अपने भाई रनवीर सिंह के मित्र सतीष मिश्रा निवासी गोपालगंज को फोन पर घटना की सूचना दी तो वह आये और मेरे पति को समझाया। फिर मैने घटना की जानकारी अपने भाई को दी उनसे परामर्श करने के बाद जसपाल सिंह सोढी मुझे और मेरे बच्चों को भगाने की कह रहे थे आज थाना रिपोर्ट करने सतीष मिश्रा एवं अपनी बच्ची सिमरत के साथ आई हूं रिपोर्ट करती हूं कार्यवाही की जावे।

The statements of the complainant recorded under section 161 of the Cr.P.C.. Are as under :-

मेरे पति इकबाल सोढी पहले एम.आर. थे वर्ष 2009 में उन्हें नौकरी से निकाल दिया गया था तो मेरे पति का कहना है कि तुम्हारी वजह से मुझे नौकरी से निकाला है उसके बाद से मेरा पति मुझे लगातार प्रताडित कर मारपीट कर बाथरूम में बंद कर देता था, मैं सोचती थी कि मेरे पति सुधर जायेंगे बदलाव आ जायेगा इसलिए मैने रिपोर्ट नहीं की थी। पति इकबाल का साथ मेरा देवर जसपालसिंह भी देता था मैं अपने भाई रनबीरसिंह के यहा इंदौरन में अपने बच्चों के सहित चली गई थी। मेरे सास–ससुर ने फोन करके मुझसे कई बार कहा कि यही अपने घर पर आ जाओ तो मैं दिसंबर 2013 में अपने ससुराल सागर आ गई। तो मेरे पति पुनः मुझे एवं बच्चों को प्रताडित करने लगे। कल दिनांक 4.4.13 के रात्रि करीबन 9:00 बजे की बात है मेरे पति इकबाल सिंह ने मुझे छिनार रंडी की गंदी गंदी गालियां देकर चप्पल से मारपीट की जो मुझे चेहरे में, सिर में चोट आई दर्द है। मैं अपने घर से बाहर की भाग आई

3. The complainant filed a criminal complaint before the competent Court at Sagar in which the Judicial Magistrate First Class, Sagar vide order dted (sic:dated) 16.8.2014 framed charge against the petitioner under Section 498-A of the IPC. Thereafter, the petitioner approached the revision Court against the order of framing of charge but the 4th Additional Sessions Judge, Sagar vide impugned order dated 3.11.2014 dismissed the revision petition. It is against that order that the present petition under section 482 of the Cr.P.C. has been filed.

4. According to the petitioner, a bare reading of the complaint and the statements under Section 161 of the Cr.P.C. clearly goes to show that the petitioner has been falsely implicated. It is also submitted that the petitioner is not living in the matrimonial home and is living outside Sagar. In fact he is presently living in Satna. Prior to that he was in Bombay. Copy of transfer letter is annexed herewith as Annexure A/3.

5. On the other hand, learned counsel appearing for the respondent No.2 submits that in view of the order passed by the revisional Court dismissing the revision petition of the petitioner, no case can be entertained on the basis of the allegations made by the petitioner under Section 482 of the Cr.P.C. Once there are allegations made against the petitioner in the complaint, the Court has to proceed on the basis of the allegations so made. He has relied upon a judgment of the Apex Court in the case of *Sanghi Brothers (Indore) Pvt.Ltd. Vs. Sanjay Choudhary & others* reported in (2008) 10 SCC 681 wherein in Paras 13 and 14, it has been observed as under:-

> 13. After analysing the terminology used in the three pairs of sections it was held (in Antulay case-(1986) 2 SCC 716) that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie case is to be applied.
>
> 14. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed.

6. Learned counsel for the petitioner submits that the jurisdiction of this Court under Section 482 of the Cr.P.C. is wide. This Court can pass appropriate orders in case there is misuse of process of law. It is submitted that bare reading of the statements made by the complainant leaves no room

for doubt that the complainant has given the name of the present petitioner also as one of the accused only for malafide intention and just to pressurize the husband's family somehow according to her terms. He has relied upon a judgment of Single Bench of this Court in *Kailash Chandra Maheshwari Vs. State of M.P.* reported in 2006(1) MPLJ 322 wherein it has been held that :-

> 16. On meticulous analysis of the case it is manifestly clear that the criminal proceeding against the petitioners is frivolous and suffers with malafide. The allegations made against the petitioners appear to be inherently improbable, absurd and malicious.
>
> 17. A Court of law cannot remain a silent spectator and cannot be made a tool of gratifying personal vengeance of any party. Tendency to wreak vengeance against all the family members and relatives of husband has to be checked and deserves to be nipped in the bud. In cases where the facts available on record prima facie indicate at the stage of framing charge that criminal proceedings have been initiated by the wife or her family members for wreaking her vengeance against all the family members of her husband, the trial Court should carefully examine the material on record and should not frame the charge against the persons, against whom the criminal proceeding prima-facie appears to be maliciously instituted and the allegations being absurd and inherently improbable.
>
> 18. For the reasons stated above I am of the considered view that the factual position clearly shows that the continuance of the criminal trial against the petitioners would be sheer abuse of process of law and therefore, power under section 482 of Criminal Procedure Code should be exercised. Consequently, the position is allowed and the order of framing charges against the petitioners is set aside and the accused/petitioners are discharged.

7. Having given my thoughtful consideration on the submissions and also gone through the orders passed by the Courts below and complaint made by

the respondent No.2 as well as statement made by her under section 161 of the Cr.P.C., I have no doubt but to hold that in this case implication of the present petitioner is only as an afterthought and just to pressurize the whole family. The Hon'ble Supreme Court has taken note of similar efforts made by the complainant in matrimonial case wherein it has now become a custom to array all the members of the family including outside relations whereas matrimonial dispute arises between the husband and the wife. Such dispute certainly is on account of the allegation of cruelty but such dispute also arises when there is an involvement of any third party and also on account of the attitude and conduct of the wife in the family, who is not willing to live in matrimonial home alongwith the joint family and only wants to stay in a separate home alongwith her husband. The money dispute arises in case there are sisters to be married and the husband may not be in a position to meet the demands of the complainant/wife. In the present case, it is not in dispute that the petitioner is not a permanent resident of Sagar but is working a Sales Representative and for the purpose, he has to go to various places. Earlier he was in Bombay and now he is staying at Satna. I appreciate and give full credence to the counsel arguing the case on behalf of the petitioner. At this stage, this Court is not required to look into defence of the accused but certainly taking into consideration the complaint itself, it very clearly goes to show that the name of the present petitioner has been added only as an afterthought and also statement recorded under section 161 of the Cr.P.C. also goes to show that no overtact has been assigned against the petitioner which may make out a case under section 498-A of the IPC. I am convinced that the implication of the present petitioner would be abuse of process of Court.

8. Accordingly, this petition is allowed and the proceedings undertaken against the petitioner are quashed. The petitioner is discharged of the offence framed against him. His bail bonds are discharged.

9. It is made clear that nothing stated by me would affect the merits of the case qua other accused persons.

C.C. as per rules.

Application allowed.

I.L.R. [2016] M.P., 1245
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice C.V. Sirpurkar
M.Cr.C. No. 9404/2015 (Jabalpur) decided on 16 October, 2015

CHHOTA @ AKASH & ors. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

Penal Code (45 of 1860), Section 324 - Causing hurt by dangerous weapons or means - **Applicant clawed the neck of complainant with his nails - Whether human nails are dangerous weapon - There is difference between teeth and nails - Teeth are capable of chopping away parts of human body whereas nails are weaker than a tooth - They are not capable of exerting same amount of pressure as teeth - Human nail cannot be placed on same footing as tooth - Hurt caused by human nail may not qualify injury caused by means of an instrument - Charge framed u/s 324 or 324/34 not sustainable and thus quashed - Trial Court directed to proceed in respect of other offences.** **(Paras 8 to 13)**

दण्ड संहिता (1860 का 45), धारा 324 – घातक हथियार अथवा माध्यम से उपहति कारित की जाना – प्रार्थी ने अपने नाखूनों से शिकायतकर्ता की गर्दन जकड़ ली – क्या मानव नाखून घातक हथियार हैं – दांतों एवं नाखूनों में भिन्नता होती है – दांत मानव शरीर के अंगों को काटने में समर्थ होते हैं जबकि दांत की तुलना में नाखून कमजोर होते हैं – वे एक दांत जितना दबाव डालने में असमर्थ होते हैं – मानव नाखूनों को दांत के समान स्थिति में नहीं रखा जा सकता – मानव नाखून द्वारा कारित उपहति किसी औजार के माध्यम से पहुंचाई गई चोट की भांति अर्हता प्राप्त नहीं कर सकती – धारा 324 अथवा 324/34 के अंतर्गत विरचित आरोप कायम रखे जाने योग्य न होने से अभिखंडित – विचारण न्यायालय को अन्य अपराधों के संबंध में कार्यवाही करने हेतु निदेशित किया गया।

Cases referred :

AIR 1970 Patna 322, 1974 CR.L.J. 867, 1984 CR.L.J. 1551, (1972) 13 Guj. L.R. 848.

Pramod Singh Tomar, for the applicants.
Divesh Jain, G.A. for the non-applicant/State.

ORDER

C.V. SIRPURKAR, J. :- This Miscellaneous Criminal Case has been instituted on an application under section 482 of the Code of Criminal Procedure, filed on behalf of applicants/accused persons Chhota @ Akash, Vipin and Veeru. It is directed against the order dated 25-02-2015 passed in Criminal Revision No.11/2015 by the Court of VII Additional Sessions Judge, Sagar, affirming the order passed by the Judicial Magistrate First Class, dated 16-12-2014 in Criminal Case No. 2596/2014 framing charges against the applicants under sections 323, 294, 506 & 324 read with section 34 of the Indian Penal Code.

2. As per prosecution case, amongst other things, applicant/accused person Vipin clawed the neck of Atul with his nails. The only point that has been raised on behalf of the applicants during arguments is whether an injury caused by human nail can be said to have been caused by means of an instrument for stabbing or cutting, making causing of such injury punishable under section 324 of the Indian Penal Code?

3. No authorities have been cited on either side in this regard; therefore, the Court shall proceed to consider this question by interpreting the relevant part of section 324 of the Indian Penal Code which reads as follows:

324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(Emphasis supplied)

4. Though, no authorities are available on the question whether human nails can be deemed to be an instrument for stabbing or cutting, at least four authorities are available on the point that human teeth are instruments for cutting

within the meaning of section 324 of the Indian Penal Code. In the case of *Chaurasi Manjhi and another vs. State of Bihar*, AIR 1970 Patna 322, learned Single Bench of Patna High Court held as follows:

2. The relevant words in Sec. 324 of the Penal Code are :- "Whoever ..... voluntarily causes hurt by means of any instrument for..... cutting ..... shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

The question is whether tooth is an instrument for cutting within the meaning of Section 324 of the Penal Code. There is no authority on the point either way. Some indication of it is to be found in an unreported decision of the Bombay High Court given by Beaumont, C.J. and Sen, J., in the book of Ratanlal and Dhirajlal "Law of Crimes", under Section 326 of the Penal Code. The case noticed there is that where a mistress refused to accompany her paramour, who got enraged and bit off the tip of her nose and dislocated one of her teeth, a sentence of two months' rigorous imprisonment was enhanced to one of fourteen months. It is, of course, not very clear from this line alone as to whether the biting on the tip of the hose (sic:nose) was considered as a grievous injury caused by teeth or whether the dislocation of one of her teeth was caused by some other instrument. I cannot, therefore, be sure upon that line mentioned in the annotation of the book referred to above.

3. Considering the question, however, myself with reference to the meaning of the words "instrument" and "tooth" in Webster's Third New International Dictionary. I have come to the conclusion that tooth will be an instrument for cutting. According to the said dictionary, "instrument" means "a means whereby something is achieved, performed, or furthered". Although tooth is a part of the body, but there is no difficulty in taking the view that it is a means whereby something is achieved, performed or furthered, and, therefore, it can be characterised as an instrument within the meaning of Section 324 of the Penal Code as also under Section 326, if grievous injury is caused by tooth. According to the same dictionary "tooth" means "one of the hard bony appendages that are borne on the jaws or in many of the lower vertebrates or other bones in the walls of the mouth or pharynx and serve esp. for the

prehension and mastication of food and as 'weapons of offence and defence" (the underlining (here in ' ') is mine). Reading the dictionary meaning the words "instrument" and "tooth" therefore, I have unhesitatingly come to the conclusion that for simple injury caused by tooth bite, the offender will be guilty under Section 324 of the Penal Code. If grievous injury is caused by such bite, he will be guilty under Section 326 of the Penal Code. In my opinion, therefore, petitioner Jagdish Manjhi has rightly been convicted under Section 324 of the Penal Code.

5. Allahabad High Court in the case of *Jamil Hasan Vs. State,* 1974 CRLJ 867 relying upon the case of *Chaurasi Manjhi* (supra) held that tooth is an instrument for cutting and serves as weapon of offence and defence and consequently, an injury caused by teeth bite would be an offence under section 324 or 326 depending upon whether the injury is simple or grievous, it was further observed that biting of tip of nose would be offence under section 326.

6. A division bench of Delhi High Court in the case of *Jagat Singh and Anr.vs. State,* 1984 CRLJ 1551, relying upon the judgments in the cases of *Chaurasi Manghi* (supra) and *Jamil Hasan* (supra) and held as hereunder:

"The question is whether tooth is an instrument for cutting within the meaning of S. 324 of the Penal Code. There is a difference of opinion whether the tooth is a weapon of cutting. In Jamil Hasan v. The State, 1974 Cri LJ 867 the Allahabad High Court held that tooth is an instrument for cutting. In Chaurasi Manjhi v. State of Bihar, AIR 1970 Pat 322 : (1970 Cri LJ 1235) Mr. Justice Untwalia held : "Tooth is instrument for cutting and serves as weapon of offence and defence. Injury by tooth-bite is offence under S. 324 or 326 depending upon whether injury is simple or grievous". Contrary view has been expressed in Gopalbhai Chhaganlal Soni v. State of Gujarat (1972)13 Guj LR 848. We are of the view that tooth is an instrument for cutting within the meaning of S. 324 of the Penal Code."

7. It may be seen that Patna High Court, Allahabad High Court and Delhi High Court are in agreement on the point that an injury caused by teeth bite may qualify as hurt caused by means of an instrument for cutting for the purpose of section 324 of the Indian Penal Code. However, the Gujarat High Court in

the case of *Gopalbhai Chhaganlal Soni v. State of Gujarat* (1972)13 Guj LR 848, has taken a contrary view. Though, this Court did not have benefit of going through the judgment rendered in the case of *Gopalbhai* (supra), from the view expressed by Patna High Court, Allahabad High Court and Delhi High Court, it may be deduced that to fall under the purview of section 324 of the Indian Penal Code, it is not necessary that an artificial implement, tool or a device must be used for causing injury for the purpose of section 324 IPC. Even an appendage of human body may cause an injury which may fall under the ambit of section 324.

8. However, the question to be considered in the case at hand is whether an injury caused by human nail may be deemed to be an injury caused by means of an instrument for stabbing or cutting?

9. It may be noted that there is intrinsic difference between the two sets of appendages of human body namely, the teeth and the nails. Teeth are hard, bony appendages growing out of upper and lower jaw bones and by their very nature much stronger than the nails. Whereas the upper set of teeth is fixed, the lower set, activated by strong jaw muscles, is adapted to move against the upper set facilitating a pincer like grip upon the object being bitten or chewed. As such, teeth are capable of chopping away parts of human body such as tip of nose, earlobes or in extreme cases even distal parts of small fingers. They are; therefore, capable of causing much graver injury to human body than human nails.

10. The human nail on the other hand is a thin, though hard, layer covering the outer tip of human fingers. It is made up of a translucent protein called keratin. By virtue of its constitution, it is weaker than a tooth. It is also somewhat flexible. Unless they are intentionally used for pinching, nails of fingers are ordinarily not used in coordination with each other. As a result they are not capable of exerting same amount of pressure as teeth. Therefore, in ordinary course they only cause abrasions or scratch marks. In the present case also, only an abrasion over right side of neck was found on the person of the victim.

11. Thus, a human nail cannot be placed on the same footing as tooth as a weapon of offence or defence. It cannot be deemed to be an instrument used for either cutting or stabbing. Hence, hurt caused by human nail may not qualify

as an injury caused by means of an instrument for the purposes of section 324 of the Indian Penal Code.

12. In aforesaid view of the matter, learned Courts below erred in framing a charge of the offence punishable under section 324 of the IPC simply because one of the abrasions found upon the person of one of the victims was said to have been caused by nails. Thus, the charge framed under sections 324 or 324 read with section 34 of IPC against applicants/accused persons is not sustainable in the eyes of law and deserves to be quashed.

13. Consequently, this miscellaneous criminal case is allowed in part. The charge framed under sections 324 or 324 read with section 34 of IPC framed against applicants/accused persons is quashed. Learned trial Court shall proceed with the trial in respect of other offences.

Application partly allowed.