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.4

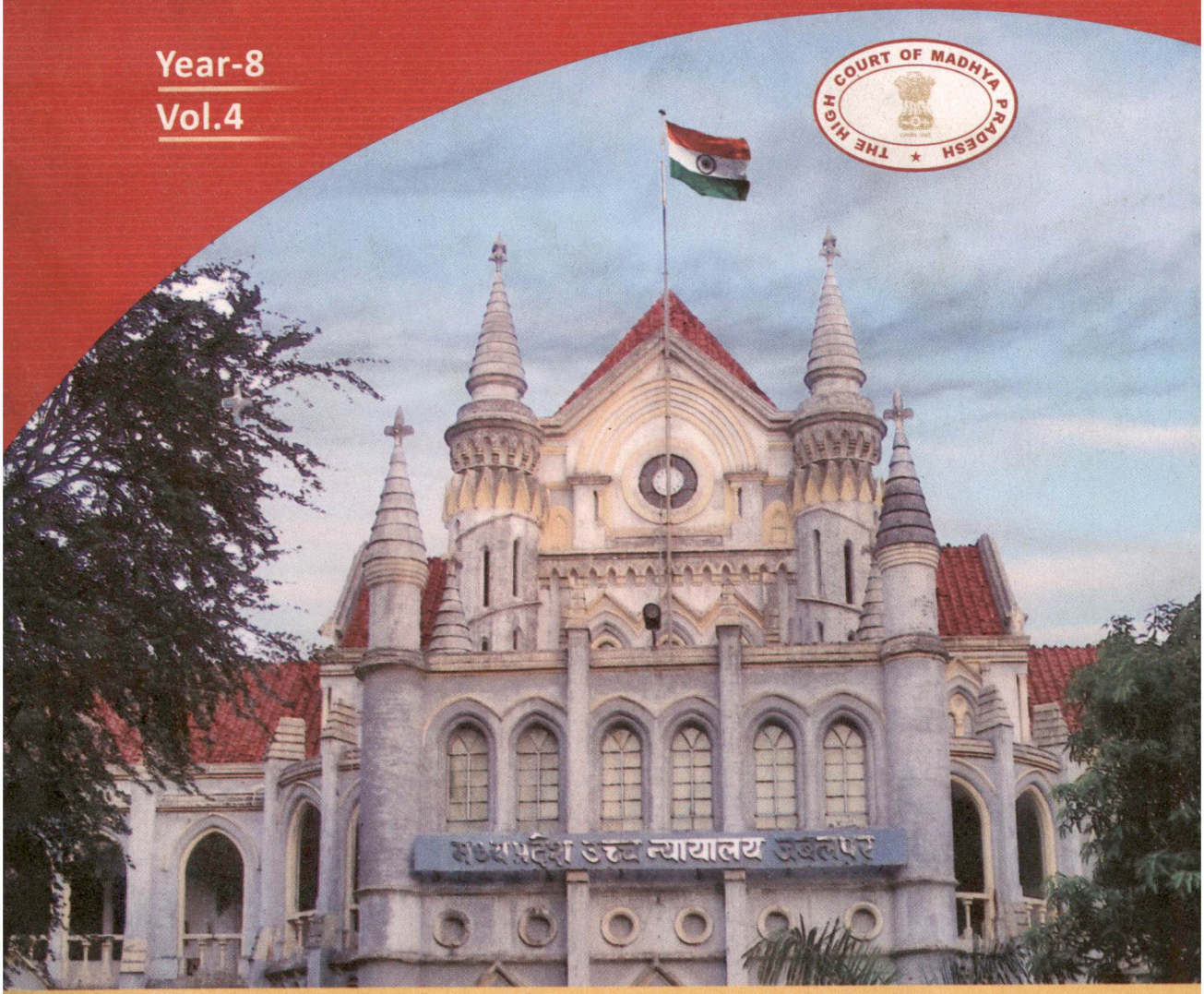

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TABLE OF CASES REPORTED

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

TABLE OF CASES REPORTED

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THE INDIAN LAW REPORTS M.P. SERIES, 2016

(VOL-4)

JOURNAL SECTION

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

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

[Received the assent of the President on the 8th September, 2016 and published in the Gazette of India (Extraordinary) Part II, Section 1, dated 08.09.2016, Page no. 1-6]

An Act further to amend the Constitution of India.

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

1. Short title and commencement. *(1)* This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Insertion of new article 246A. After article 246 of the Constitution, the following article shall be inserted, namely:—

"246A. **Special provision with respect to goods and services tax.** (1) Notwithstanding anything contained in articles 246

and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.".

3. Amendment of article 248. In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

4. Amendment of article 249. In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

5. Amendment of article 250. In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

6. Amendment of article 268. In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

7. Omission of article 268A. Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. Amendment of article 269. In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

9. Insertion of new article 269A. After article 269 of the Constitution, the following article shall be inserted, namely:—

"269A. **Levy and collection of goods and services tax in course of inter-State trade or commerce.** (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall

be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.".

10. Amendment of article 270. In article 270 of the Constitution,—

(i) in clause (1), for the words, figures and letter "articles 268, 268A and 269", the words, figures and letter "articles 268, 269 and 269A" shall be substituted;

(ii) after clause (1), the following clauses shall be inserted, namely:—

"(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been

used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).".

11. Amendment of article 271. In article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under article 246A," shall be inserted.

12. Insertion of new article 279A. After article 279 of the Constitution, the following article shall be inserted, namely:—

"279A. **Goods and Services Tax Council.** (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister..... Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance ..... Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may

be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof.".

13. Amendment of article 286. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;

(B) in sub-clause *(b)*, for the word "goods", at both the places where it occurs, the words "goods or services or both" shall be substituted;

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;

(iii) clause (3) shall be omitted.

14. Amendment of article 366. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;';

(ii) after clause (26), the following clauses shall be inserted, namely:—

'(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;'.

15. Amendment of article 368. In article 368 of the Constitution, in clause (2), in the proviso, in clause *(a)*, for the words and figures "article 162

or article 241", the words, figures and letter "article 162, article 241 or article 279A" shall be substituted.

16. Amendment of Sixth Schedule. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause *(c)*, the word "and" occurring at the end shall be omitted;

(ii) in clause *(d)*, the word "and" shall be inserted at the end;

(iii) after clause *(d)*, the following clause shall be inserted, namely:—

"*(e)* taxes on entertainment and amusements.".

17. Amendment of Seventh Schedule. In the Seventh Schedule to the Constitution,—

(a) in List I —Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(b) in List II—State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

18. Compensation to States for loss of revenue on account of introduction of goods and services tax. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

19. Transitional provisions. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

20. Power of President to remove difficulties. *(1)* If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the

President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section *(1)* shall, as soon as may be after it is made, be laid before each House of Parliament.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

APPOINTMENTS TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Rajeev Kumar Dubey on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Rajeev Kumar Dubey took oath of the High Office on 13.10.2016.

HON'BLE MR. JUSTICE RAJEEV KUMAR DUBEY

Born on October 11, 1960. Did B.Sc., LL.B. Joined Judicial Service on November 7, 1985 as Civil Judge, Class-II. Was promoted as Civil Judge Class-I on August 30, 1991. Was posted at Neemuch as ACJM on October 7, 1994 and as CJM at Dewas in the year 1995. Promoted as officiating District Judge in Higher Judicial Service on May 30, 1997 and posted at Dewas as III ADJ. Was granted Selection Grade Scale w.e.f. 01.08.2003. Was posted at Chhatarpur as Special Judge SC/ST (P.A.) Act and N.D.P.S. Act in the year 2006. Was posted at Jhabua as District & Sessions Judge in the year 2010. Was granted Super Time Scale w.e.f. 19.10.2012. Was posted at Jabalpur as O.S.D. in Vigilance Cell, High Court of M.P. in the year 2014. Was posted at Jabalpur as Principal Registrar (Vig.), High Court of M.P. on 01.04.2014. Was posted at Bhopal as District & Sessions Judge from 01.04.2015 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

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

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We congratulate Hon'ble Smt. Justice Anjuli Palo on her appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Smt. Justice Anjuli Palo took oath of the High Office on 13.10.2016.

HON'BLE SMT. JUSTICE ANJULI PALO

Born on May 19, 1961. Did B.Sc., LL.B. Joined Judicial Service on November 5, 1985 as Civil Judge, Class-II. Was promoted as Civil Judge, Class-I on August 12, 1991. Was posted at Chhatarpur as CJM on September 16, 1994. Promoted as officiating District Judge in the Higher Judicial Service on June 9, 1997 and posted at Barwani as II ADJ. Was granted Selection Grade Scale w.e.f. 01.10.2003. Was appointed as President, District Consumer Forum, Guna in the year 2006. Was posted at Jabalpur as Special Judge SC/ST (P.A.) Act and NDPS Act in the year 2009. Was posted at Dindori as District & Sessions Judge in the year 2012. Was granted Super Time Scale w.e.f. 01.01.2013. Was posted at Shivpuri as District & Sessions Judge in the year 2014. Was posted at Damoh as District & Sessions Judge from 01.10.2015 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

We wish Hon'ble Smt. Justice Anjuli Palo, a successful tenure on the Bench.

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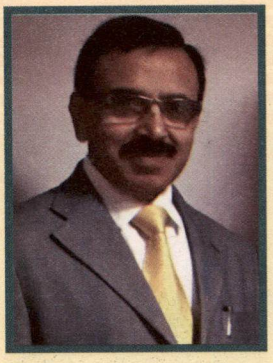
We congratulate Hon'ble Mr. Justice Virender Singh on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Virender Singh took oath of the High Office on 13.10.2016.



HON'BLE MR. JUSTICE VIRENDER SINGH

Born on April 15, 1961. Did B.A., LL.B. Joined Judicial Service on October 28, 1985 as Civil Judge, Class-II. Was promoted as Civil Judge, Class-I on August 29, 1991. Was posted at Lahar, District Bhind as ACJM on August 28, 1995 and was posted at Shajapur as CJM on November 10, 1995. Promoted as officiating District Judge in the Higher Judicial Service on May 31, 1997 and posted at Morena as II ADJ. Was appointed as Legal Advisor Lokayukta Organization at Bhopal in the year 2003. Was granted Selection Grade Scale w.e.f. 01.07.2004. Was posted at Shahdol as Special Judge SC/ST (P.A.) Act in the year 2008. Was appointed as Additional Secretary, Law and Legislative Affairs Department, H.Q. New Delhi in the year 2010. Was granted Super Time Scale w.e.f. 15.01.2013. Was posted at Ujjain as District & Sessions Judge in the year 2013. Was posted at Jabalpur as O.S.D. High Court of M.P. in the month of March 2014 and thereafter posted as Principal Registrar (Judicial) High Court of M.P. in the month of April 2014. Was appointed as Secretary, Law and Legislative Affairs Department, Bhopal in the month of October 2014 and thereafter appointed as Principal Secretary, Law and Legislative Affairs Department, Bhopal in the month of November 2014 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

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

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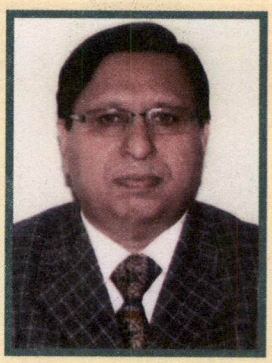
We congratulate Hon'ble Mr. Justice Sunil Kumar Awasthi on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Sunil Kumar Awasthi took oath of the High Office on 13.10.2016.



HON'BLE MR. JUSTICE SUNIL KUMAR AWASTHI

Born on June 04, 1959. Did B.Com., LL.B. Joined Judicial Service on October 15, 1985 as Civil Judge, Class-II. Was promoted as Civil Judge, Class-I on August 29, 1991. Was posted at Itarsi, District Hoshangabad as ACJM on November 10, 1994 and as CJM at Betul in the year 1996. Promoted as officiating District Judge in the Higher Judicial Service on June 09, 1997 and posted at Barwaha as ADJ. Was granted Selection Grade Scale w.e.f. 16.09.2004. Was posted at Dhar as Special Judge SC/ST (P.A.) Act in the year 2006. Was appointed as President, District Consumer Forum, Gwalior in the year 2010. Was posted at Bhind as District & Sessions Judge in the year 2011. Was granted Super Time Scale w.e.f. 15.01.2013. Was posted at Jabalpur as District Judge (Inspection) High Court of M.P. (Jabalpur Zone) in the month of March 2014 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

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

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We congratulate Hon'ble Mr. Justice Vijay Kumar Shukla on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Vijay Kumar Shukla took oath of the High Office on 13.10.2016.

HON'BLE MR. JUSTICE VIJAY KUMAR SHUKLA

Born on June 28, 1964 in Teonthar, District Rewa M.P.. Did B.A. and LL.B.. Enrolled as an Advocate on 27.03.1987 on the rolls of State Bar Council of M.P.. Was assigned the work of Government Advocate from the year 1994 to 2000. Also worked as Deputy Advocate General from the year 2007 to 2009 in M.P. High Court, Jabalpur. Was standing counsel for M.P. Financial Corporation, M.P. State Agro Industries Development Limited and many local bodies. Mainly practiced in Constitutional, Civil and Service matters. Practiced in the High Court of Madhya Pradesh for twenty eight years.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

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

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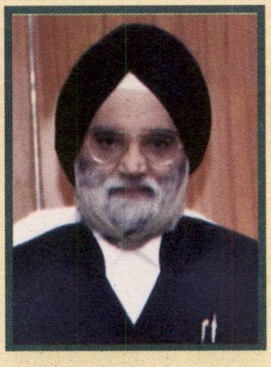
We congratulate Hon'ble Mr. Justice Gurpal Singh Ahluwalia on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Gurpal Singh Ahluwalia took oath of the High Office on 13.10.2016.



HON'BLE MR. JUSTICE GURPAL SINGH AHLUWALIA

Born on February 20, 1966. Did B.A. and LL.M.. Was enrolled as an Advocate on 04.07.1988 on the rolls of State Bar Council of M.P.. Has appeared before Hon'ble Supreme Court, High Court of Madhya Pradesh, Jabalpur, High Court of Mumbai, High Court of Gujarat, High Court of Punjab and Haryana, High Court of Chhatisgarh, State Administrative Tribunal, Jabalpur, Central Administrative Tribunal, Jabalpur, Debts Recovery Appellate Tribunal, Allahabad, Debts Recovery Tribunal, Jabalpur. Was elected as Executive Member in the Madhya Pradesh High Court Bar Association Jabalpur for the period 1994-1995. Worked as State Panel Lawyer from December 1994 till February, 1996. Has worked as Deputy Government Advocate from March 1996 till February 1997. Was Government Advocate from March 1999 till June 2003. Also worked as Deputy Advocate General from June 2003 to February 2004. Was Standing Counsel for S.P.E. in M.P. Lokayukt Organization, from 2006 till July 2009 and also worked as Special Public Prosecutor for CID Nagpur in the year 1997 for representing State of Maharashtra before Hon'ble High Court. Has also worked as Chief Editor, ILR (M.P. Series) in the High Court of Madhya Pradesh at Jabalpur. Practiced in the High Court of Madhya Pradesh for 27 years, 7 months.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

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

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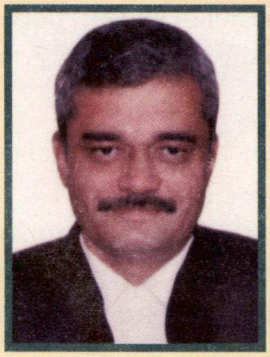
We congratulate Hon'ble Mr. Justice Subodh Abhyankar on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Subodh Abhyankar took oath of the High Office on 13.10.2016.



HON'BLE MR. JUSTICE SUBODH ABHYANKAR

Born on January 3, 1969 at Bhopal. Did B.Sc. (Maths) from Benazir College, Bhopal. After shifting to Indore did LL.B. from Gujarati Law College, Indore in the year 1996. Enrolled as an Advocate in the month of January, 1997 on the rolls of State Bar Council of M.P.. Practiced at High Court of Madhya Pradesh at Indore Bench. Practised in every branch of law, Civil, Criminal and Constitutional and have also dealt with the cases relating to Central Excise and Customs and also appeared in PILs. Practiced in the High Court of Madhya Pradesh for 19 years.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 13.10.2016.

We wish Hon'ble Mr. Justice Subodh Abhyankar, a successful tenure on the Bench.

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OVATION TO THE NEWLY APPOINTED JUDGES GIVEN ON 13-10-2016 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 my distinguished honor and privilege to welcome 7 distinguished legal luminaries who are at the threshold of donning the chair as Judges of this Hon'ble Court.

This great Institution is indeed enriched by the elevation of Your Lordships Shri Justice Rajeev Kumar Dubey, Hon'ble Smt. Justice Anjuli Palo, Hon'ble Shri Justice Virender Singh, Hon'ble Shri Justice Sunil Kumar Awasthi, Hon'ble Shri Justice Vijay Kumar Shukla, Hon'ble Shri Justice Gurpal Singh Ahluwalia & Hon'ble Shri Justice Subodh Abhyankar.

The need for able minds to don the chairs as judges of this Hon'ble Court has been felt like never before. With steep rise in the backlog of cases and the ever increasing burden of expectations from the Indian Judiciary, your lordships have a Herculean task at hand. Not only your lordships usher renewed expectations but you also shall be the flag bearers of hope and aspirations of millions of people who look up to the Indian Judiciary for justice and fair play. Armed with the constitutional authority to "do complete justice" and to grant any relief "in the interest of justice", your lordships are expected to not only uphold the letter of law but to also act as courts of equity and good conscience.

Albert Einstein once said and I quote: "In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same."

The life of a judge is equivalent to that of a hermit and the quest for justice entails tremendous struggles and sacrifices.

In the words of Martin Luther King, Jr. "Human progress is neither automatic nor inevitable. Every step toward the goal of justice requires sacrifice, suffering and struggle; the tireless exertions and passionate concern of dedicated individuals".

As it is said that "with great power comes great responsibility" and

as Confucius said ***"the superior man is modest in speech but exceeds in his actions"***. Hence equanimity and equilibrium are some attributes which your lordships shall be expected to maintain.

I have had the pleasure of charting the progress of some of your lordships right from their initial days in the profession and it is indeed heartwarming to see you climb the ladder of success by sheer grit and determination. I have all the reasons to believe that your lordships shall continue to remain as motivated and focused as you have been throughout your careers either as practicing lawyers or judges of the lower judiciary.

Your lordships are *"no spring chickens"* and all of you have burnt the mid night oil for decades together to reach the position you have attained today. It is now the ripe and opportune moment to truly blossom as exemplary judges and jurists of this great institution.

Your lordships' elevation is not a result of any good fortune or omen rather it is a reward of the great work ethic and unwavering professional temperament exemplified by your kindselfs.

I sincerely hope and pray that the professional consistency shown by your lordships shall be your partner throughout your tenure. However I must hasten to add that your lordships shall be required to go that extra mile to succeed as a Judge.

A Judge must have the grace to hear patiently, to consider diligently, to understand rightly and to decide justly with a sense of humility.

Mahatma Gandhi aptly describes the life and duties of the judge and I quote :

"I shall not fear anyone on Earth.
I shall fear only God.
I shall not bear ill will toward anyone.
I shall not submit to injustice from anyone.

I shall conquer untruth by truth. And in resisting untruth, I shall put up with all suffering."

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

There is no better service to the society then dedicating one's life by being an important cog in the giant wheel of "justice delivery system".

May your lordships don the attributes of steadiness, humility, integrity, fairness and uprightness throughout your tenure as distinct members of the bench.

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

May the Divine light be with you forever.

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

My Lords, it is just six month that have passed, 07th April, 2016 to 13th of October, that today seven more Judges have taken oath as Judges of High Court of Madhya Pradesh. This elevation and appointment of seven Judges in the High Court of Madhya Pradesh is going to help the litigants in disposal of cases.

Judges who have taken oath again are from the profession of law and from higher judicial services of Madhya Pradesh.

My Lord Mr. Rajeev Kumar Dubey, was born on 11.10.1960, joined judicial service on 07.11.1985 as Civil Judge and was granted super time scale with effect from 19.10.2012. You have worked in different capacities at different places and today you have taken oath as Judge of High Court of Madhya Pradesh.

My Lord Mrs. Anjuli Palo, was born on 19.05.1961, joined judicial service on 05.11.1985, and was granted super time scale with effect from 01.01.2013. You have worked in different capacities at different places and today you have taken oath as Judge of High Court of Madhya Pradesh. My Lord in your elevation and appointment as Judge of the High Court of Madhya Pradesh, there is a uniqueness and significance where both husband and wife are judges of the same High Court.

My Lord Mr. Virender Singh, was born on 15.04.1961, joined judicial

service on 28.10.1985 and you were granted super time scale with effect from 15.01.2013. You have served in various capacities in Madhya Pradesh and today you have taken oath as Judge of High Court of Madhya Pradesh.

My Lord Mr. Sunil Kumar Awasthi, was born on 04.06.1959, joined judicial service on 15.10.1985, and was granted super time scale on 15.01.2013. You have worked in different capacities at various places in M.P., and today you have taken oath as Judge of High Court of Madhya Pradesh.

My Lords Mr. Rajeev Kumar Dubey, Mrs. Anjuli Palo, Mr. Virender Singh, Mr. Sunil Kumar Awasthi your elevation and appointment as Judges of the High Court of Madhya Pradesh gives you an opportunity to serve the litigant public of Madhya Pradesh. The work you will have to do now is completely different from the work you have done earlier being District Judges. You all must widen your vision.

My Lord, Mr. Vijay Kumar Shukla, was born on 28.06.1964, and got himself enrolled as an Advocate on 27.03.1987 with the State Bar Council of M.P.; from that date you are practicing in High Court of Madhya Pradesh, and you have attained varied experience during your professional life that is going to help the litigant public. We at the bar will miss the amiable nature, however this loss is bound to be a gain to the litigant public.

My Lord, Mr. G.S. Ahluwalia, was born on 20.02.1966, and got himself enrolled as an Advocate on 04.07.1988 with the State Bar Council of M.P., and your Lordship is working in the profession from that date. Lordship has variegated experience and while working as lawyer and presenting cases in High Court of Madhya Pradesh, High Court of Mumbai, High Court of Gujarat, High Court of Punjab & Haryana, High Court of Chhattisgarh, State Administrative Tribunal, Jabalpur, Central Administrative Tribunal, Jabalpur, Debts Recovery Appellate Tribunal Allahabad, Debts Recovery Tribunal Jabalpur. Your Lordship has also have experience of conducting trials under Preventions of Corruption Act & Murder in different trial Court of State of M.P. My Lord, Justice Ahluwalia has been executive member of the High Court Bar Association Jabalpur for the period 1994-95, you have been Deputy Government Advocate, then Government Advocate and was Deputy Advocate General from June 2003 to February 2004. You have been a Special Public Prosecutor for CID Nagpur in the year 1997 for representing the State of Maharashtra before the Hon'ble High Court. You have also worked as Chief

Editor ILR in the High Court of M.P., Jabalpur.

My Lord, Mr. S.V. Abhyankar, was born on 03.01.1969, and is practicing for past 19 years, after getting yourself enrolled as an Advocate on January 1997 with State Bar council of M.P. Your father, Late Shri V.N. Abhyankar was an Advocate at Bhopal. Your Lordship's wife Mrs. Neelam Abhyankar is also practicing in the High Court of Madhya Pradesh at Indore.

Your Lordship's Father-in-law Justice V.S. Kokje (Retired) has been Judge of this High Court and thereafter he was transferred to the Rajasthan High Court, and retired in the year 2001, and later on appointed as Governor of Himachal Pradesh.

Your Lordship has been practicing in criminal, civil, constitutional, taxation, central excise & custom and service matters.

I, remember at this time observation made by one of the Hon'ble Judges of the Apex Court. Quote "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. There are two sides of a coin". Let me present to your Lordships some lovely thinking on Judge by Justice Felix Frankfurter, who was the famous Judge of Supreme Court of America, he observed as under :-

"The position of a judge has been likened by justice Felix Fankfurter as ***"an oyster anchored in one place, unable to take the initiative, unable to go after things, restricted to working or digesting the fortuitous eddies and currents of litigation may bring his way."***

"What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of infront of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility."

I, on my own behalf and on behalf of High Court Bar Association

congratulate all your Lordships on your elevation and appointment as Judges of High Court of Madhya Pradesh and pray to God and wish that your tenure as Judge be successful and lawyer and litigants, who have cases in your court go away saying that there is a judge who believes in justice and has delivered justice.

Shri Vijay Shankar Pandey, Vice President, High Court Advocates' Bar Association, Jabalpur, said :-

Today is the day of great importance in the annals of the High Court, when as many as 7 Judges are entering into the High Judicial Officers to subserve the eagerly awaited fulfillment of the need. I stand here to welcome you all on behalf of Madhya Pradesh High Court Advocate; Bar Association and to speak few words in your honour.

Hon'ble Mr. Justice Rajeev Kumar Dubey

My Lord Shri Rajeev Kumar Dubey, you were born on 11.10.1960. You joined Judicial Service on 07.11.1985 as Civil Judge Class-II, and were promoted as Civil Judge Class-I on 30.08.1991, ACJM on 07.10.1994 and officiating District Judge in Higher Judicial Service on 30.05.1997. You were granted selection grade scale w.e.f. 01.08.2003 and the Super Time Scale w.e.f. 19.10.2012. You worked in different capacities at Bhind, Ujjain, Agar, Neemuch, Dewas, Rewa, Biaora, Guna, Chhatarpur, Jhabua, Jabalpur, Bhopal.

Hon'ble Smt. Justice Anjuli Palo

My Lord Smt. Anjuli Palo, you were born on 19.05.1961. You were appointed as Civil Judge Class-II on 05.11.1985, and were promoted as Civil Judge Class-I on 12.08.1991, CJM/ACJM on 16.09.1994. You were promoted as officiating District Judge in Higher Judicial Service on 09.06.1997 and were granted Selection Grade Scale w.e.f. 01.10.2003 and the Super Time Scale w.e.f. 01.01.2013. Your Lordship worked in different capacities at Jabalpur, Jagdalpur, Durg, Satna, Chhatarpur, Barwani, Chhindwara, Bhopal, Guna, Dindori, Shivpuri, Damoh. You were presently posted as District and Sessions Judge, Damoh. It is necessary to mention here that, your husband Shri S.K. Palo is also Hon'ble Judge of this High Court. Your daughter Shubhangi Dutt Palo is also in judicial services and is a Civil Judge.

Hon'ble Mr. Justice Virender Singh

My Lord Shri Virender Singh, you were born on 15.04.1961. You joined Judicial Service on 28.10.1985 as Civil Judge Class-II and were promoted as Civil Judge Class-I on 29.08.1991, ACJM/CJM on 28.08.1995. You were promoted as officiating District Judge in Higher Judicial Service on 31.05.1997 and granted Selection Grade Scale on 01.07.2004 and the Super Time Scale on 15.01.2013. You worked in different capacities at Bhind, Rewa, Datia, Seodha, Gohad, Gwalior, Lahar, Shajapur, Morena, Katni, Bhopal, Shahdol, New Delhi, Ujjain, Jabalpur. Presently you were posted as Principal Secretary, Law and Legislative Affairs Department, Govt. of M.P., Bhopal.

Hon'ble Mr. Justice Sunil Kumar Awasthi

My Lord Shri Sunil Kumar Awasthi, you were born on 04.06.1959 (Four June Nineteen Fifty Nine). You joined Judicial service on 15.10.1985 as Civil Judge Class-II and promoted as Civil Judge Class-I on 29.08.1991, CJM/ACJM on 10.11.1994. You were promoted as Officiating District Judge in Higher Judicial services on 09.06.1997 and were granted Selection Grade Scale on 16.09.2004 and the Super Time Scale on 15.01.2013. You worked in different capacities at Jabalpur, Mandla, Kawardha, Khandwa, Itarsi, Betul, Barwah, Narsinghpur, Indore, Rewa, Dhar, Gwalior and Bhind and as the District Judge (Inspection) High Court of M.P.

Hon'ble Mr. Justice Vijay Kumar Shukla

My Lord Shri Vijay Kumar Shukla, you were born on 28.06.1964 (Twenty Eight June Nineteen Sixty Four). You were enrolled as an Advocate on 27.03.1987 and have been practicing in the High Court of Madhya Pradesh since last 27 years and worked in association with Sr. Advocate Shri R.N. Singh. Your father Shri P.N. Shukla is a retired Class-I Government Officer of State Civil Services. You have four brothers and your wife is Smt. Chandrika Shukla, who is enrolled as an Advocate. You have two sons, Jay Shukla, Advocate, who is practicing with Sr. Advocate, R.N. Singh and younger son Sujoy Shukla is studying. Your Lordship worked in the office of Advocate General as Government Advocate from 1994 to 2000 and Deputy Advocate General from 2007 to 2009. You have been the Secretary of High Court Advocate Bar Association for 2 terms. You have actively practiced in Constitutional and Service matters before High Court of M.P.

Hon'ble Mr. Justice G.S. Ahluwalia

My Lord Shri G.S. Ahluwalia, you were born on 20.02.1966 (Twentieth February Nineteen Sixty Six). You were enrolled as an Advocate on 04.07.1988 and practiced in the High Court of Madhya Pradesh for the last about 28 years. You worked in association with former Judge of this Hon'ble Court, Hon'ble Shri S.C. Pandey. You are blessed with a son Yashpal Ahluwalia, who is studying in Class 12th. You appeared before Hon'ble Supreme Court and many High Courts in the Country, beside the High Court of M.P. and Tribunals. You have successfully conducted many Trials before the Trial Courts. You were also associated with the office of Advocate General of M.P. as Deputy Government Advocate, Government Advocate and Deputy Advocate General. You were Standing Counsel for the Lokayukta Organization of M.P. and as a Special Public Prosecutor of C.I.D. Maharashtra. Till your present appointment, you were the Chief Editor of I.L.R. of Madhya Pradesh series.

Hon'ble Mr. Justice Subodh Vasudev Abhyankar

My Lord Shri Subodh Vasudev Abhyankar, you were born on 03.01.1969 (Third January Nineteen Sixty Nine). You were enrolled as an Advocate in 1997 and practiced in the High Court of Madhya Pradesh for about 19 years. Your father the Late V.N. Abhyankar was also an Advocate at Bhopal. Your mother Smt. Ranjana Abhyankar was a Teacher. Your wife Smt. Neelam Abhyankar is also practicing in the High Court of M.P. at Indore Bench. Hon'ble Shri V.S. Kokje, (Former Judge of this Hon'ble Court & also Former Governor of State of Himachal Pradesh) is your father-in-law. You also conducted Trials and appeared before Tribunals, beside the High Court of Madhya Pradesh.

My Lords, you all have taken oath today and entered the arena of dispensation of Justice. Justice is not only disposal of cases, within four corners of the written law, but it must always have the elements of mercy, compassion and sense of empathy. In the 'Merchant of Venice', William Shakespeare, the Great Playwrighter, observed and I quote :

The quality of Mercy is not strain'd, it droppeth as the Gentle Rain from haven upon the place beneath. It is twice blest, it blesseth

him that gives and him that takes" I (un quote).

So also the Ex-President of America, the **Great Abraham Lincon,** said and **I quote.**

"I have always found that mercy bears richer fruits than strict justice"

I (un quote).

My lord's with my 28 years experience as practicing Advocate, and the Ex-Deputy Advocate General, I have found that the people have come to the Court, many time expecting that, which the law cannot grant, but the mercy can. Therefore, this is the occasion, while wishing you all, a successful tenure of the office ahead, I would expect from your Lordships, a kind treatment to the sufferings teeming litigants.

May God bestow on your Lordships, all His blessings for a successful career as Judges of this Court.

Thank you.

Shri Ganga Prasad Tiwari, Chairman, State Bar Council of Madhya Pradesh said :-

मैं इस शुभ अवसर पर पदभार ग्रहण कर रहे सभी नवनियुक्त अतिरिक्त न्यायाधिपतिगणों का मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से एवं स्वयं अपनी ओर से हार्दिक स्वागत करता हूँ, एवं न्यायाधिपति श्रीमति अंजुली पालो छिंदवाडा में भी पदस्थ रहीं है, अतः मैं उन्हें छिंदवाडा के समस्त अधिवक्ताओं की ओर से भी उनका हार्दिक स्वागत करता हूँ, मैं नवनियुक्त अतिरिक्त न्यायाधिपतिगणों से अपेक्षा करता हूँ कि उनके अनुभव ज्ञान व बुद्धि कौशल से प्रदेश के पक्षकारगण लाभान्वित होंगें।

आज वर्तमान में न्यायालयों में लंबित प्रकरणों की संख्या में उत्तरोत्तर वृद्धि हो रही है। इस का मुख्य कारण प्रकरणों की बहुलता व निराकरण में कमी के साथ–साथ न्यायालय की जटिल न्यायप्रणाली एवं न्यायाधीशों की संख्या में कमी होना है। यह न्यायिक प्रणाली के लिये अच्छा संकेत नहीं है। इस संदर्भ में विचार करना आवश्यक होगा।

वर्तमान समय में न्यायाधीशों की संख्या में कमी है। इस संबंध में राज्य अधिवक्ता परिषद् ने केन्द्र सरकार को पत्र लिखा था जिसका सकारात्मक उत्तर मिला है, लेकिन अभी भी बाईस न्यायाधीशों के पद रिक्त है जिनकी तुरंत पूर्ति होना आवश्यक है।

मैं इस अवसर पर मध्यप्रदेश राज्य अधिवक्ता परिषद् की ओर से, प्रदेश के समस्त अधिवक्ता

जगत की ओर से और स्वयं अपनी ओर से पुनः सभी नवनियुक्त न्यायाधिपतियों को हार्दिक बधाई देते हुये उनका अभिनंदन करता हूँ और उनके यशस्वी कार्यकाल हेतु शुभकामनायें देता हूँ।

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

सम्माननीय कार्यवाहक मुख्य न्यायमूर्ति, सम्माननीय न्यायमूर्तिगण, सम्माननीय नव नियुक्त न्यायमूर्तिगण, सभागार में उपस्थित विधि अधिकारीगण स्नेही जन एवं अधिवक्तागण।

आज अवसर है, नवनियुक्त न्यायाधीशगण के स्वागत, वन्दन अभिनन्दन का लम्बी प्रतीक्षा के पश्चात् अवसर आया है जब सात न्यायाधीशगण पद एवं गोपनीयता की शपथ लेकर न्यायाधीश के पद पर पदस्थ हुए हैं।

न्यायाधीशगण श्री राजीव कुमार दुबे, श्रीमति अन्जुली पालो, श्री वीरेन्दर सिंह एवं श्री सुनील कुमार अवस्थी पदोन्नत होकर म.प्र. उच्च न्यायालय में न्यायाधीश के पद पर पदस्थ हुए हैं आप सभी को न्यायाधीश के रूप में कार्य करने का लम्बा अनुभव है, अपने अनुभव, परिश्रम एवं कार्यकुशलता के बल पर निरन्तर सफलता की सीढ़ियाँ पार कर इस गरिमामय पद पर पदारूढ़ हुये हैं, आप सभी के अनुभव का लाभ प्रकरणों के शीघ्र निराकरण में पक्षकारों को प्राप्त होगा।

न्यायाधीश श्री सुबोध वासुदेव अभ्यंकर, जिन्हें लगभग 19 वर्षों का वकालत का अनुभव है, पिता स्व. व्ही. एन. अभ्यंकर से वकालत के गुण एवं माँ से अच्छी शिक्षा दीक्षा विरासत में प्राप्त कर इन्दौर बार में स्थान प्राप्त कर योग्यता के आधार पर आपका चयन सही समय पर हुआ है। न्यायाधीश के पद पर आसीन होने के पश्चात् एक लम्बी पारी खेलने का अवसर है। न्याय की प्रतीक्षा में रत न्याय की चाहत वालों को आपसे बड़ी आशा है।

न्यायाधीश श्री विजय कुमार शुक्ला एवं श्री जी.एस. अहलूवालिया का हृदय से स्वागत करता हूँ, आपने लम्बे समय तक हम सभी के साथ अधिवक्ता के रूप में काम किया है, समय चक्र परिवर्तित हुआ है, अधिवक्ता से न्यायाधीश के पद पर पदस्थ होकर न्याय दाता की श्रेणी में हैं, आपसे इस संस्कारधानी को, जबलपुर के इस बार को एवं प्रत्येक पीड़ित व्यक्ति को बहुत उम्मीद है।

आज जब उच्च न्यायालय में लंबित प्रकरणों का अंबार है न्यायालय में प्रतिदिन दो सौ से भी अधिक प्रकरण लग रहे हैं जिनके निराकरण का दबाव न्यायाधीशगण पर है, पक्षकारों को अपने प्रकरण की बारी का इंतजार है ऐसे समय में आप सभी की नियुक्ति निश्चित ही प्रकरणों के शीघ्र निराकरण में सहयोग प्रदान करेगी।

इस अवसर पर जबलपुर का बार आप सभी से अपेक्षा करता है कि आप निर्णय पारित नहीं करेंगे, अपितु न्याय प्रदान करेंगे, जिसे पाकर पक्षकारों का दिल खुशियों से भर जावे और प्रतीक्षा के पश्चात् उसके मुख से वाह वाह की ध्वनि गुंजारित हो, तभी न्यायाधीश के पद की सार्थकता होगी और पीड़ित, शोषित, दुखित बंधुओं के कष्ट का निवारण हो सकेगा।

मैं आज इस अवसर पर आप सभी को अपनी ओर से भारत सरकार की ओर से केन्द्र के सभी विधि अधिकारी की ओर से बधाई देता हूँ एवं अपेक्षा करता हूं कि आप सभी निरंतर प्रगति की नई उंचाईयों को छुएं एवं प्रदेश के मान एवं गौरव की पताका फहरायें।

'धन्यवाद'

Smt. Indira Nair, President, Senior Advocates Council, said :-

We have all assembled here to welcome the newly elevated Judges from Higher Judicial Services as well as from Bar. I am not repeating the caliber and achievements of each one of my Lords, which are already narrated by the earlier speakers. I only have to say that I agree with them.

As My Lords are aware we have high tradition and conventions. Jabalpur Bar is considered as one of the best Bars who always respect the Court and always cooperate with the Bench. Dispensation of justice can be done only if both the Bench and Bar cooperate. We will have to work together with mutual trust and respect.

My Lords, Madhya Pradesh has special problem since we have large tribal population who are poor, illiterate and are alienated from the main stream of life. They have rich culture and social set up. While bringing them into the main stream of life, we have to protect these aspects so that their traditions will continue unaffected. Your lordships can do much in this field.

My Lords, judiciary is an important pillar of democracy. Lots of problems face society today like terrorism, lack of trust and confidence between various religious sectors and minority communities. Our tradition teaches tolerance, our philosophy preaches tolerance and our Constitution practices tolerance. Let us not dilute it. Judiciary has a vital role to play in instilling confidence with the minority. The fear that they are alienated and there is nobody to look after their interest has to be addressed.

Majority of these social problem exist because of the emergence of nucleus family. The children are left alone at home since the parents are busy with their work and there is no one at home to teach them the values of life which has been eroded considerably. Institution of marriage is crumbling and family life is at peril. Family Courts are flooded with cases. Majority of these problems arise out of this situation, says sociologists and psychologists.

Judiciary has a great role to play in this sphere of life also. My Lords, I am aware that your lordships have to work within the frame work of "delayed justice" and "hurried justice". Whatever that may be, the outcome should be dispensation of justice. Punishment must redress crime, reparation must address civil wrong, damages must restore wrongful gains.

My Lord Chief Justice S.A. Bobde, when he was elevated as Chief Justice of this Court, while replying to the welcome speech mentioned as under :-

"It is said Judges do what others avoid doing, i.e., making decisions. It would be unnatural for a Judge to become very popular. In every case some body loses and somebody wins".

Therefore, duty is cast on my Lords to dispense justice without fear or favor. The law is meant for the common man and it covers the whole range of human behavior.

My Lords have to work with the aim of bringing justice to the common man and instill confidence in the justice delivery system. They look up to the Courts for getting justice and I know my Lords will not disappoint them.

I, on my behalf and on behalf of the Senior Advocates Council pray Almighty that he will give all the strength, motivation and spirit to your Lordships to dispense justice without fear or favour, so that instead of resorting to muscle power, the society will look up to the Courts with confidence for redressal of their grievance.

I welcome you all once again.

Reply to Ovation, by Hon'ble Mr. Justice Rajeev Kumar Dubey :-

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

First of all, I thank the Almighty God for bestowing upon me the pious responsibility to serve this August office.

I am sincerely grateful to the then Hon'ble Chief Justice Shri A.M. Khanwilkar and Hon'ble the Acting Chief Justice Shri Rajendra Menon, who considered me worthy of appointment to this High institution. I am also grateful

to the collegium of Hon'ble the Supreme Court of India.

Ever since I joined the Judicial service and while working at different places like Bhind, Ujjain, Agar, Neemuch, Dewas, Rewa, Biaora, Guna, Chhatarpur, Jhabua, Jabalpur and Bhopal, I got competent and efficient support of the members of the Bar. In discharging the duties of this High Office, I would therefore expect whole hearted support of the members of the Bar. I assure you all that on my part, I shall make every endevour to come up to your expectations.

I express my sincere gratitude towards my colleagues, personal staff and members of the Bar Associations of all the Districts where I had been posted as a Judge, who had always extended their fullest cooperation to me during my tenure.

I also express my heartiest gratitude towards my parents who taught me values of life. I am also grateful to my father in law and mother in law, who helped me in difficult times and cared for me like their son. I thank my daughter Aparna and son Ashish whose love and affection always motivates me to work hard. I also thank my other family members, friends & well wishers because of whose blessings, I happen to be here to hold this office of High esteem. I am deeply grateful to my wife Smt. Sunita Dubey without whose care, support and sacrifices I could not have achieved success in my career.

I express innermost thanks to all and promise that I will endeavour my level best to uphold the dignity of this esteemed office and to keep the High values and traditions.

Once again, thank you one and all.

Reply to Ovation, by Hon'ble Smt. Justice Anjuli Palo :-

First of all, I thank the Almighty God for showering his blessings on me.

I must express my heartiest gratitude to my Lord the then Chief Justice Hon'ble Shri A.M. Khanwilkar, presently Judge Supreme Court of India and Hon'ble member judges of the collegium which includes Hon'ble Shri Justice Ajit Singh, presently Chief Justice of Gauhati High Court, and Hon'ble Shri Justice Rajendra Menon, presently Acting Chief Justice of High Court of M.P.,

and Hon'ble Members of the collegium of Supreme Court for reposing confidence on me.

I am very grateful to Hon'ble the Acting Chief Justice Shri Rajendra Menon, who has administered the oath to me. His Lordship has been very kind to all the subordinate Judicial Officers.

I do not have adequate words to express my gratitude to the esteemed speakers for the kind and affectionate words spoken about me on this occasion. I can only assure you that I will make my honest and sincere efforts to fulfill my duties of this noble job.

I pay my homage with esteem regards to my father-in law Late Capt. Shri G.D. Palo, and I am extremely grateful to my family members of paternal side and in-laws as well, who are present today to bless me. They have not only generously showered their love and affection on me, but rendered all round support and moral courage to me, at every moment of my career as a judge.

My father Shri J.S. Saxena and my mother Late Smt. Shobha Saxena, have taught me, how to aim high for my dreams and achieve them, how to balance myself through life's turbulents. We believe that "straight roads do not make skillful driver". I am thankful to them, for without their guidance I would not have made it possible.

My husband Shri Justice S.K. Palo, is a loving father and perfect man. He has always been a source of inspiration and best guide for me to tread in the same path successfully. In my life his commitment is impeccable, his care for us is flawless.

The additional responsibilities of family, being a perfect wife, a caring mother, and at the same time discharging the duties of my office was never a burden on my shoulder, because his strong support has been always with me. There are so many things my heart wants to say for him. All that can be summed up in just 3 words- "Thanks for everything".

My life's biggest happiness is that, I have an awesome family. My son-in-law Nishant Datt, Advocate, elder daughter Shubhangi Palo Datt, Civil Judge, my son Shubhashish working as an Engineer with "Accenture" at Google Office Hyderabad and younger Shefali, pursuing M.B.A. degree from Symbiosis, Pune and my lovely grand son Yuvaan, are always my strength of

life. They motivate me to discharge my duties perfectly.

Thanks to all of you for erasing the word 'impossible' from the dictionary of my life. You have made my life a dream come true.

I take this opportunity to thank my teachers who taught me, my esteemed seniors and my esteemed colleagues for their kind guidance. I thank all members of Bar Associations and my staff where ever I was posted during my tenure of 31 years of service in the subordinate judiciary.

This is a glorious moment for me. 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.

Thank you very much to all of you.

" Jai Hind."

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

I am highly gratified and overwhelmed, by your generous words.

I am honoured to be standing before you and to have this opportunity to thank everyone for their incessant support and guidance.

First of all I'm grateful to the Almighty for the grace that he has showered upon me and for bestowing upon me the responsibility to serve this august office.

I now wish to acknowledge and sincerely thank My Lord the then Chief Justice Hon'ble Shri Justice A.M. Khanwilkar and the Members of the collegium, Hon'ble Shri Justice Rajendra Menon, now the Acting Chief Justice of this High Court and Hon'ble Shri Justice Shantanu Kemkar as he then was and now the Judge of the Bombay High Court for considering me worth appointment to this august office. I am in deep gratitude and also wish to take this moment to thank Honourable Mr. Justice Ajit Singh, Hon'ble Mr. Justice Alok Aradhe, Hon'ble Mr. Justice Jitendra Maheshwari, Hon'ble Mr. Justice S. S. Jha, Hon'ble Mr. Justice Sanjay Yadav and the other judges and former judges of this Court, my brother District Judges and brother Judges of subordinate Judiciary and members of the Bar for their guidance, cooperation and good wishes.

I am also grateful to Hon'ble the Chief Justice of India and Members of the collegium of the Supreme Court and other Hon'ble Judges who have been very kind to me.

I, now wish to thank all the guiding lights of my life, my late father and my mother who gave my life a direction to move and an aim to achieve and the fatherly figure in my life my late eldest brother Shri Ranjit Singh who sacrificed his comforts to create a secure and favourable environment for me to grow and achieve.

I am also highly grateful to my youngest sister Rashmi, who is not with us today but her dream lives on and has finally come true; and all my brothers and sisters for their constant encouragement and support.

Here I would like to say that we all started our journey from the bottom and I feel complacent to acclaim that we have reached the pinnacle of our career and will continue to do so.

The intense love, support and encouragement of my parent-in- laws, brother and sister-in law, co-brother deserves a special mention.

I am also thankful to my only and lovely child-Harnoor for her love and affection, which gives me inspiration to work hard.

Lastly, but not the least, I am grateful to my wife for putting up with me constantly understanding and supporting me throughout. Her silent presence has always been a boon.

And as the quote goes- with great power comes great responsibility, I hope and resolve to fulfill all my duties with sincerity and integrity, however, for this I hope for the cooperation of all the bar members, to help me serve my best to this institution.

I now wish to conclude by thanking all those, who have made me able to be standing here today and those who have been that charming gardeners in making me blossom as a human being and as a veteran.

Thank you all once again.

Reply to Ovation, by Hon'ble Mr. Justice Sunil Kumar Awasthi :-

I am flattered and grateful for the excess of generosity, warm affection

and kind words expressed this morning. I assure all of you that I shall discharge my responsibilities with best of my capability and full of devotion.

Thirty-One years ago on October Fifteenth, 1985, I Joined as a Civil Judge Class II here and after completion of training, I continued at Jabalpur for three years. The goodwill and affection of the Jabalpur Bar had made my work an immense pleasure.

Above all, I feel obliged and express my gratitude to Hon'ble the then Chief Justice Shri A.M. Khanwilkar presently Judge of Supreme Court of India and the member of the collegium Hon'ble Shri Justice Rajendra Menon now the Acting Chief Justice of this Court and Hon'ble Shri Justice Shantanu S. Kemkar presently the Judge of Bombay High Court for recommending my name for elevation to this august Office.

Today's ceremonies are not empty rituals. The practice to administer the Oath of Allegiance and Office in public is not only a matter of formal procedure but is a public witnessing of the making of solemn promises for the performance of which the oath taker will be responsible not only to this Court and this country but also to his Creator.

As has become customary, I, now, would like to acknowledge some of the people who have supported me over the years and helped me take up this position. The first people I wish to acknowledge are my parents, Late Shri Shiv Prasad Awasthi and Smt. Shyama Awasthi. Had they been alive today, they would have been one of the happiest person to witness this solemn occasion. I am sure that I have their blessings from their heavenly abode.

One person who deserves special mention is my dear elder brother Late Anil Kumar Awasthi, who himself was a member of M.P. Judiciary but left us at the age of 45 years. It was his brotherly love and able guidance which shaped my career and led to today's achievement.

I would like to pay sincere regards to all my Teachers, Seniors and Colleagues who has always been rendering assistance and proper guidance to me.

I am extremely grateful to my elder brothers, sisters, in laws, all relatives, friends and colleagues who have come here to shower their blessing and good wishes to me.

I am thankful to all the officers of the Registry whom I have worked for last two & half years.

Last but not the least, I would like to acknowledge the unwavering faith, support and cooperation of my wife Dr. Vibha Awasthi, my daughter Miss Ankita and my son Anunay Awasthi. Without their dedication, care and trust in my abilities, I would not be standing here today.

Once again I would like to extend thanks to all of you for the warm welcome.

Jai Hind.

Reply to Ovation, by Hon'ble Mr. Justice Vijay Kumar Shukla :-

Hon'ble the Acting Chief Justice Shri Rajendra Menon, Hon'ble brother Judges lady wives of Hon'ble Judges, Hon'ble Advocate General Shri Ravish Agrawal, Former Hon'ble Judges Shri P.P. Naolekar, Shri V.S. Kokje, Shri S.C. Pandey, Shri K.K. Trivedi, Shri Ganga Prasad Tiwari, Chairman State Bar Council, Shri S.C. Datt Chairman Ad-Hoc Committee, High Court Bar Association, Shri Vijay Pandey Vice President High Court Advocates' Bar Association, Shri J.K. Jain Assistant Solicitor General, Mrs. Indira Nair President, Senior Advocate Council, Senior Advocates, members of the Bar, Registry, my family members and friends.

I am grateful for the words of praise spoken about me. I start with the following prayer :-

गुरू ब्रम्हा गुरू विष्णु। गुरू देवो महेश्वरा।।
गुरू साक्षात परम ब्रम्हा। तस्मयी श्री गुरूवे नमः।।

In my life, 'Guru' words connotes three meanings, first 'Guru' is the 'almighty '(God)' who had given me birth as a human being and bestowing upon the pious responsibility of rendering Justice. Secondly 'Guru' means my parents who have not only brought up me but also taught me high moral standards and values of life.

Thirdly 'Guru' would mean for me, my senior Shri R.N. Singh, Sr. Advocate and Aunty Smt. Sushila Singh. At the age of twenty three years I joined his chamber, I would rather say my second family at Jabalpur. My two

children, Jai Shukla and Sujay Shukla born after complicated major surgery and they were first received in this world by Aunty Smt. Sushila Singh in her lap. I was fortunate to have younger brother Mrigendra Singh, sisters Smt. Mridula Singh and Smt. Renu Singh from the said family. My senior always taught me that be a good 'human being', it does not matter whether you succeed or not in the profession.

On this occasion, I remember some memorable moments of my professional life, "my first appearance before the Hon'ble Justice P.C. Pathak and first praise for argument of mine by Late Shri P.S. Nair, Sr. Advocate".

I must express my gratitude to some former judges of this court from whom, I learnt basics and humbleness. I cannot name all of them but some of them are Hon'ble Justice Shri D.M. Dharmadhikari, Hon'ble Justice Shri Naolekar, Hon'ble Justice Shri Dipak Misra, Hon'ble Justice Shri Arun Mishra, Hon'ble Justice Shri Abhay Sapre, Hon'ble Justice Shri A.K. Patnaik, Hon'ble Justice Shri A.M. Khanwilkar, Hon'ble Justice Shri S. Kemkar, Hon'ble Justice Shri K.K. Trivedi. I would not name the sitting Hon'ble Judges of this court at this moment but I am really thankful to them for their guidance. I must thank to senior advocates Shri Ravish Agrawal, Shri S.C. Dutt, Shri Rajendra Tiwari, Shri M.L. Jaiswal, Shri V.S. Shroti, Shri R.P. Agrawal, Smt. Nair and Shri T.S. Ruprah for extending their guidance and blessings.

I also express my gratitude to the Advocate Generals, under whose able guidance, I discharged my duties as law officer namely Late Shri P.L. Dubey, Shri Anoop Choudhary, Late Shri S.L. Saxena, Shri Vivek Tankha Shri R.N. Singh and Shri R.D. Jain.

I would be failing in my duty if I do not mention name of my wife Smt. Chandrika Shukla for her full co-operation and support in my life I am grateful to my brothers Shri Kamlesh Shukla, Shri Rajesh Shukla, Rakesh Shukla and co-brothers Shri Shashi Mishra, Shri Sunil Pandey and my all relatives. I am also thankful to my childhood friends Shri Kamal Shrivastava, Shri Sajal Shrivastava, Shri Ajay Mishra, Shri Ajay Sharma, Shri A.P. Singh, Shri Sushil Tiwariji. What has impressed me in my long practice of 28 years in theory of natural law propounded by Jurist Cicero in defining law as *"Law is the highest reason, implanted in nature which commands what ought to be done and forbids the opposite, the origin of Justice is to be found in law. For law is its natural force, it is the mind and reason of intelligent man, the standards*

by which justice and injustice are measured".

I am reminded of the words quoted by Shri Rajendra Tiwari Sr. Advocate, in one ovation.

"No judge really performs his functions adequately, unless the case before him is adequately presented".

A Lawyer pleads for the right and just cause against the threatening injustice and a judge has to remain engaged in the quest of truth to deliver justice. Thus the Bench and Bar, twin together perform a duet of divine assignment without fear or favour.

I once again express my gratitude to all of you for the greetings and wishes showered on me.

Thank you.

Reply to Ovation, by Hon'ble Mr. Justice Gurpal Singh Ahluwalia :-

First of all, I express my sincere thanks to Hon'ble Shri A.M. Khanwilkar, the then Chief Justice, presently Judge of Supreme Court of India, Hon'ble Acting Chief Justice Shri Rajendra Menon Ji and Hon'ble Shri Justice S.S. Kemkar Ji for having considered me for this august office.

I am overwhelmed and grateful for the kind words showered upon me. This has once again reminded me of the expectations of the Bar, from me, as a Judge of the High Court.

I am highly indebted to my parents, who inculcated high values of life, and I am thankful to my wife and my son who never demanded anything which was beyond my capacity and control.

I bow down to all my teachers and my Guru Hon'ble Shri Justice S.C. Pandey, a former Judge of this Court under whose able guidance I started my legal journey and I am fortunate that today he and Mrs. Pandey are present here to give their blessings.

I would like to assure every one that my endeavour would be to do justice without fear or favour, as I know that every matter involves the question of life and liberty of the citizen of India and I will try to protect the same within

the framework of the Constitution of India and the laws. I pray to the Almighty God to give me enough strength and courage to discharge my duties.

I thank all of you and expect that I would get the cooperation of the Senior and Junior lawyers because with the help and co-operation of the Bar, it becomes very easy to dispense justice.

Once again, I thank you all.

Jai Hind.

Reply to Ovation, by Hon'ble Mr. Justice Subodh Abhyankar :-

A very good morning to all of you present here today.

I am thankful for all the praises bestowed upon me and I am blissfully aware of the fact that I have to meet the expectations of the bar, the bench and the litigants in terms of those lines only. Standing here today, it is all coming back to me as if it was yesterday only when in 1997 I stood in the middle of the Indore District Court, wondering if I would ever be able to secure a brief and wondering if I would ever able to make a living from this profession. This was probably for two reasons, one, that I was born and brought up at Bhopal and secondly, I did not know a soul in Indore who could trust me with a single brief. To tell you the truth what kept me going were the lines from Bismil Azimabadi's 'sarfaroshi ki tamanna', a patriotic poem which has been immortalized by the great Ramprasad Bismil and they are :-

"खेंच कर लाई है सब को कत्ल होने की उम्मीद,
आशिकों का आज जमघट कूचः ए–कातिल में है
सरफ़रोशी की तमन्ना अब हमारे दिल में है"

This feeling, I am sure is the best driving force, especially for the young members of the Bar whose struggle at every step of the court procedures and practice appear to be perennial. And after all of those years at the Bar, just when I was beginning to believe that I have survived, I was asked to change the sides and begin a new inning and for this I am indebted to Hon'ble the then Chief Justice Shri A.M. Khanwilkar, now a Supreme Court Judge and the Hon'ble judges of the collegium and also the Apex Court collegium for having trusted me with the appointment on this post where I would be able to serve

the masses in an effective manner.

I owe it all to my Guru late Shri J.P. Gupta, Senior Advocate, Gwalior who was an institution in himself and with whom I had a brief association at his Indore office where he used to visit occasionally in those days. But I am happy that from that small window of opportunity I was able to perceive the best of his wisdom and vast experience, which immensely helped me to set the direction of my practice. In his absence from Indore, I tagged along with Shri S.K. Vyas, now a Senior Advocate and Shri P.K. Gupta, Ex- President, Indore High Court Bar Association both of whom also belong to the same office and have guided and supported me at my infant stage. I have learned a great deal of Trial court and High Court work from them for which I would always remain obliged.

I am also indebted to the senior and junior members of the Indore High Court Bar Association for illuminating my path throughout this journey and owe my special gratitude to Late Shri G.M. Chaphekar, Sr. Advocate and late Shri Jaisinghji, Sr. Advocate both of whom always treated me with utmost affection and would always remain special to me. I am also grateful to Shri Ashok Chitale, Sr. Advocate and Shri B.L. Pavecha with whom I have had the pleasure of working in many cases.

I have no words to express my gratitude to my friends Ajay Mittal, Ex-President, Sendhwa Bar Association of District Barwani and Shri Ramesh Nair, who was an Advocate and Central Excise consultant in those days who is presently adorning the post of Hon'ble Member (Judicial) at CESTAT, Mumbai. I met with both of them by chance only but their continued support during all these years, right from the very beginning of my carrier when I was a total alien in the legal fraternity at Indore, is simply amazing.

At this juncture I fondly remember my father late Shri V.N. Abhyankar, advocate who along with my mother Smt. Usha Abhyankar had an unwavering faith in me and made me believe in myself. It is only because of their blessings that I am here today. My father wanted me to be accessible to all the classes of litigants, which, I believe helped me a lot to put my foot in the profession and to face the competition.

I am equally indebted to Mrs. Leena and Justice Shri V.S. Kokje my in-laws who also believed in me while giving their daughter's hand in my hand

in those Sarfaroshi ki Tamanna's days. But I feel sorry for my wife Neelam, as she being a lawyer herself could never complain to me regarding my working hours but her assistance and contribution on both the fronts of practice and the family is immeasurable. My daughter Kruttika and son Sanjeet have always been my driving force, their incessant talks and their fights have always kept me fresh and alert at home.

Both my elder sisters Dr. Manisha Deshmukh and Swati Kelkar and their husbands Dr. Satish Deshmukh and Dr. Dhananjay Kelkar from Pune have always been supportive to me and have given me the strength to go on and strive hard in my life.

I am thankful to my juniors Nilesh Joshi, Vibhash Khedekar, Adity Choudhary for all their support.

Above all, I am grateful to all my clients who allowed me to contest their cases and for having faith in me. You have really made my day.

Lastly, I look forward to my new assignment with a lot of anticipation mixed with a sense of public duty, and I hope that with the cooperation of the members of the bar I would be able to accomplish the task placed on my shoulders to the best of my capabilities. I also extend my best wishes to the judges sworn in today with me and hope that they would prove to be indispensable assets to this great institution. Thank you all.

Jai Hind.

NOTES OF CASES SECTION

Short Note (DB)

**(18)*

Before Mr. Justice P.K. Jaiswal & Mr. Justice J.K. Jain

W.P. No. 7420/2014 (Indore) decided on 18 January, 2016

GAYATRI PROJECT LTD. & anr. ...Petitioners

Vs.

NARMADA VALLEY DEVELOPMENT DEPARTMENT & anr. ...Respondents

Constitution - Article 226 **- Contract for work of execution of canal - Time schedule - Delay on the part of Contractor - Penalty was imposed - The dispute whether there was any delay on the part of the petitioners or on behalf of the respondents can not be decided in the writ jurisdiction.**

संविधान – अनुच्छेद 226 – नहर के कार्य निष्पादन हेतु संविदा – समय सारणी – ठेकेदार की ओर से विलंब – शास्ति अधिरोपित की गई – यह विवाद कि क्या विलंब याचीगण की ओर से कारित किया गया था अथवा प्रत्यर्थीगण की ओर से रिट अधिकारिता के अंतर्गत विनिश्चित नहीं किया जा सकता ।

The order of the Court was delivered by: **P.K. JAISWAL, J.**

Cases referred:

2007 (4) MPLJ 610, 2008 MPLJ 202, 2005 (4) MPLJ 325.

Vivek Dalal, for the petitioners.
Vivek Patwa, for the respondents.

Short Note

**(19)*

Before Mr. Justice Sanjay Yadav

W.P. No. 12934/2015 (Jabalpur) decided on 27 August, 2015

PRESIDENT, WORKING JOURNALIST UNION ...Petitioner

Vs.

DIRECTOR, RAJASTHAN PATRIKA PVT. LTD. ...Respondent

A. Industrial Disputes Act (14 of 1947), Section 9 A - Transfer **- Not being the condition of service - For effecting it, notice by employer not obligatory.**

क. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 9 ए – स्थानांतरण – सेवा की शर्त नहीं – स्थानांतरण को प्रभावशील करने के लिए नियोक्ता द्वारा नोटिस दिया जाना बाध्यकारी नहीं है।

B. Industrial Disputes Act (14 of 1947), Sections 33(1) & 9 A - Transfer during pendency of industrial dispute before authorities - Protection u/S 33(1) of the Act 1947 not available unless established that the transfer is the condition of service.

ख. औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 33(1) व 9 ए – प्राधिकारियों के समक्ष औद्योगिक विवाद के लंबित रहने के दौरान स्थानांतरण – अधिनियम 1947 की धारा 33(1) के अंतर्गत संरक्षण उपलब्ध नहीं जब तक कि यह स्थापित न किया जाए कि स्थानांतरण सेवा की शर्त है।

Anoop Shrivastava, for the petitioner.
Anil Khare with *H.S. Chhabra,* for the respondent.

Short Note

****(20)***

Before Mr. Justice S.A. Dharmadhikari

W.P. No. 2813/2012 (Gwalior) decided on 19 May, 2016.

R.N.S. SIKARWAR ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Constitution - Article 226 & 14 - Principles of Natural Justice - Issue involved - Whether the derogatory remarks made against a subordinate officer and directions to initiate police action against him while setting aside the order made by him in a quasi-judicial proceeding is sustainable without affording him an opportunity of hearing - Held - No - Such remarks were uncalled for since it causes serious prejudice to the petitioner - However, the Court, without expressing any opinion on the merits of the order, further held that this will not foreclose the right of the disciplinary authority to proceed with without being influenced from such derogatory remarks.

संविधान – अनुच्छेद 226 व 14 – नैसर्गिक न्याय के सिद्धांत – अंतर्ग्रस्त मुद्दा – दया अधीनस्थ अधिकारी के विरूद्ध अनादर सूचक टिप्पणियाँ एवं उसके द्वारा अर्द्ध न्यायिक कार्यवाही में दिया गया आदेश अपास्त करते हुए उसके विरूद्ध पुलिस कार्यवाही आरंभ करने के निदेश, उसे सुनवाई का अवसर दिये बिना, कायम

रखे जाने योग्य है – अभिनिर्धारित – नहीं – उक्त टिप्पणियों की आवश्यकता नहीं थी क्योंकि यह याची को गंभीर प्रतिकूल प्रभाव कारित करते हैं – अपितु, आदेश के गुणदोषों पर कोई अभिमत प्रकट किये बिना न्यायालय ने आगे अभिनिर्धारित किया कि इससे, अनुशासनिक प्राधिकारी का अनादर सूचक टिप्पणियों से प्रभावित हुए बिना, कार्यवाही करने का अधिकार पुरोबंधित नहीं होगा।

Cases referred:

(2012) 6 SCC 491, W.P. No. 89/2002 decided on 05.09.2006,

D.P. Singh, for the petitioner.
Sudha Shrivastava, P.L. for the respondent/State.

Short Note (DB)

****(21)***

Before Mr. Justice R.S. Jha & Mr. Justice M.K. Mudgal

W.P. No. 1546/2016 (Gwalior) decided on 1 March, 2016

R.S.A. BUILDERS & CONST. (M/S.) ...Petitioner

Vs.

STATE OF M.P. & ors. ...Respondents

Constitution - Article 226 and Minor Mineral Rules, M.P. 1996, Rule 68 **- Condition inserted in Rule 68 after 23.03.2013 is mandatory in nature - Every quarry permit holder & Contractor to obtain 'No Mining Dues' Certificate from the Mining Officer/Officer-in-charge concerned after due verification of documents submitted by the Contractor/quarry permit holder - Amendment in Rule 68 cannot be waived or diluted.**

संविधान – अनुच्छेद 226 एवं गौण खनिज नियम, म.प्र. 1996, नियम 68 – दिनांक 23.03.2013 के पश्चात् नियम 68 में अन्तःस्थापित की गई शर्त आज्ञापक स्वरूप की है – प्रत्येक खदान अनुज्ञापत्र धारक एवं ठेकेदार उसके द्वारा प्रस्तुत दस्तावेजों के सम्यक् सत्यापन उपरांत संबंधित खनन अधिकारी/प्रभारी अधिकारी से 'खनन अदेयता प्रमाण पत्र' अभिप्राप्त करेगा – नियम 68 में किए गए संशोधन को अधित्यक्त अथवा शिथिल नहीं किया जा सकता।

The order of the Court was delivered by: **R.S. Jha, J.**

Cases referred:

1987 JLJ 743: (AIR 1987 MP 74), 2005 Arb WLJ 379(MP), 2007 (3) MPHT 433 (DB) : (AIR 2007 (NOC) 2586 (MP)), 2008 (2) MPLJ 40, AIR 2015 MP 90.

Anuj Gupta, for the petitioner.
Arvind Dudawat, Addl. A.G. for the respondents/State.

Short Note (DB)
****(22)***
Before Mr. Justice R.S. Jha & Mr. Justice M.K. Mudgal
W.P. No. 1686/2016 (Gwalior) decided on 4 March, 2016

SURESH CHAND GUPTA (M/S.) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Minor Mineral Rules, M.P. 1996, Rule 68(1) - Effect of Amendment in third Proviso **- The statutory provision, as amended in the month of March 2013, now requires every quarry permit holder or contractor to obtain 'no mining dues' certificate from the Mining Officer/Officer in charge concerned after due verification of documents submitted by the Contractor/ quarry permit holder - Interpretation of statute - *Per incuriam* - Binding effect - The judgments relied by the petitioner were rendered either prior to the amendment or without noticing the amended provisions, they have lost their binding force with the efflux of time.**

गौण खनिज नियम, म.प्र. 1996, नियम 68(1) – तृतीय परंतुक में संशोधन का प्रभाव – माह मार्च, 2013 में संशोधित कानूनी उपबंध के अनुसार, अब प्रत्येक खनन अनुज्ञप्ति धारक अथवा ठेकेदार, द्वारा यह अपेक्षित है कि वह उसके द्वारा प्रस्तुत दस्तावेजों के सम्यक् सत्यापन उपरांत, खनन अधिकारी/संबंधित भारसाधक अधिकारी से 'खनन अदेयता' प्रमाण पत्र अभिप्राप्त करे – कानून का निर्वचन – *अनवधानता के कारण* – बाध्यकारी प्रभाव – याची द्वारा विश्वास प्रकट किये गये निर्णय या तो संशोधन के पूर्व अथवा संशोधित उपबंधों की ओर ध्यान दिये बिना दिये गये हैं अतः समय के साथ वे निर्णय अपना आबद्धकर बल खो चुके हैं।

The order of the Court was delivered by: **R.S. JHA, J.**

Cases referred:

W.P. No. 4658/2012 decided on 13.04.2012, 1987 JLJ 743: (AIR 1987 MP 74), 2005 Arb WLJ 379(MP), 2007 (3) MPHT 433 (DB) : (AIR 2007 (NOC) 2586 (MP), 2008 (2) MPLJ 40, W.A. No. 357/2012 decided on 18.03.2013, AIR 2015 MP 90.

Vivek Jain, for the petitioner.
Vishal Mishra, Dy. A.G. for the respondents/State.

I.L.R. [2016] M.P., 2639
SUPREME COURT OF INDIA
Before Mr. Justice J. Chelameswar &
Mr. Justice Abhay Manohar Sapre
C.A. No. 5038/2009 decided on 8 February, 2016

SURJEET SINGH BHAMRA ...Appellant
Vs.
BANK OF INDIA & ors. ...Respondents

A. ***Bank of India Officer Employees (Discipline & Appeal) Regulations 1976, Regulation 4(1) & Bank of India Voluntary Retirement Scheme 2000 - Interpretation of Statutes - Deeming fiction - Non-compliance of any act by Authority*** **- Benefit thereof - No such benefit can accrue in favour of an employee automatically by fiction - Scheme must contain a clause for conferral of such benefit.(Para 41)**

क. बैंक ऑफ इण्डिया अधिकारी कर्मचारी (अनुशासन एवं अपील) विनियम, 1976, विनियम 4(1) एवं बैंक ऑफ इण्डिया स्वैच्छिक सेवानिवृत्ति योजना, 2000 – कानूनों का निर्वचन – अभिगृहीत कल्पना – प्राधिकारी द्वारा किसी कृत्य का अननुपालन – उसका लाभ – मात्र कल्पना के आधार पर कर्मचारी के हित में स्वतः ही ऐसा कोई लाभ प्रोद्भूत नहीं हो सकता – ऐसे लाभ को प्रदत्त करने हेतु योजना में खण्ड अन्तर्विष्ट होना चाहिए।

B. ***Bank of India Officers Employees (Discipline & Appeal) Regulations 1976, Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 - Nature of Scheme*** **- Employee has to apply for voluntary retirement within stipulated time and also the Bank is required to decide the same within stipulated time - The employee applied within time, but the bank decided it beyond the time fixed under the Scheme - Held - Filing an application by employee within particular date is mandatory, whereas it is directory for the Bank to pass order on the application by a specific date and complete all the formalities. (Para 39)**

ख. बैंक ऑफ इण्डिया अधिकारी कर्मचारी (अनुशासन एवं अपील) विनियम, 1976, विनियम 4(1) एवं बैंक ऑफ इण्डिया स्वैच्छिक सेवानिवृत्ति योजना, 2000 – योजना की प्रकृति – कर्मचारी को स्वैच्छिक सेवानिवृत्ति हेतु आवेदन नियत अवधि के भीतर करना चाहिए एवं बैंक द्वारा भी उसका विनिश्चिय नियत अवधि में किया जाना अपेक्षित है – कर्मचारी ने समयावधि के भीतर आवेदन किया, परंतु बैंक ने योजना में नियत समयावधि के पश्चात् उसे विनिश्चित किया –

अभिनिर्धारित – निश्चित तिथि के पूर्व कर्मचारी द्वारा आवेदन प्रस्तुत किया जाना आज्ञापक है, जबकि एक विनिर्दिष्ट तिथि तक उक्त आवेदन पर आदेश पारित कर समस्त औपचारिकताएँ पूर्ण करना बैंक हेतु निदेशात्मक है।

C. *Bank of India Officers Employees (Discipline & Appeal) Regulations 1976, Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 - Departmental Enquiry - Legality* - Bank issued memo on 08.09.2000 stating irregularities committed by the employee, which was replied by the employee on 18.10.2000 - Voluntary Retirement Scheme floated on 01.11.2000 stipulating that application can be filed before 14.12.2000, and cut off date for the Bank to complete formalities was 30.12.2000 - Employee applied therefor on 16.11.2000 - Served with the charge sheet on 02.03.2001 and admitted charges on 13.03.2001 - He was punished on 20.03.2001 - Voluntary retirement was accepted vide order dated 19.06.2001 - Held - Punishment was legal - Reasons - On 02.03.2001 appellant was employee of the bank and he could be subjected to departmental enquiry as per rule - He was served with the memo prior to floating of the Scheme - According to the Scheme, the application for voluntary retirement could be considered only after conclusion of disciplinary proceedings - The relationship of employee and employer continued till 19.06.2001. (Paras 43 to 45)

ग. बैंक ऑफ इण्डिया अधिकारी कर्मचारी (अनुशासन एवं अपील) विनियम, 1976, विनियम 4(1) एवं बैंक ऑफ इण्डिया स्वैच्छिक सेवानिवृत्ति योजना, 2000 – विभागीय जाँच – वैधता – बैंक ने कर्मचारी द्वारा कारित की गई अनियमितताओं का उल्लेख करते हुए दिनांक 08.09.2000 को सूचना पत्र जारी किया, जिसका उत्तर कर्मचारी द्वारा दिनांक 18.10.2000 को दिया गया – स्वैच्छिक सेवानिवृत्ति योजना दिनांक 01.11.2000 को इस प्रावधान के साथ जारी की गई कि आवेदन दिनांक 14.12.2000 के पूर्व तक प्रस्तुत किए जा सकते हैं, तथा बैंक द्वारा समस्त औपचारिकताएँ पूर्ण करने हेतु अंतिम तिथि 30.12.2000 थी – कर्मचारी ने इस हेतु दिनांक 16.11.2000 को आवेदन किया – उस पर आरोप पत्र दिनांक 02.03.2001 को तामील कराया गया तथा दिनांक 13.03.2001 को उसने आरोप स्वीकार किए – उसे दिनांक 20.03.2001 को दण्डित किया गया – आदेश दिनांक 19.06.2001 द्वारा उसकी स्वैच्छिक सेवानिवृत्ति स्वीकार की गई – अभिनिर्धारित – दंड वैध था – कारण – दिनांक 02.03.2001 को अपीलार्थी बैंक का कर्मचारी था तथा नियमानुसार उसकी विभागीय जाँच की जा सकती थी – योजना के लागू होने के पूर्व ही उस पर सूचना पत्र की तामील की गई थी – योजना के अनुसार, स्वैच्छिक सेवानिवृत्ति हेतु आवेदन केवल अनुशासनिक कार्यवाहियों के समापन उपरांत ही

विचार में लिया जा सकता था – कर्मचारी एवं नियोक्ता का संबंध दिनांक 19.06.2001 तक निरंतर रहा।

D. Bank of India Officers Employees (Discipline & Appeal) Regulations 1976, Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 - Departmental Enquiry - Admission - Charges were admitted - No need to held any enquiry into charges - Charges stood proved on admission. **(Para 48)**

घ. बैंक ऑफ इण्डिया अधिकारी कर्मचारी (अनुशासन एवं अपील) विनियम, 1976, विनियम 4(1) एवं बैंक ऑफ इण्डिया स्वैच्छिक सेवानिवृत्ति योजना, 2000 – विभागीय जाँच – स्वीकारोक्ति – आरोप स्वीकार किए गए थे – आरोपों की जाँच की कोई आवश्यकता नहीं – स्वीकार किए जाने से आरोप प्रमाणित।

Cases referred:

(2003) 3 SCC 433, (2007) 8 SCC 593.

JUDGMENT

The Judgment of the Court was delivered by : **ABHAY MANOHAR SAPRE, J. :-** This appeal is filed against the final judgment and order dated 09.05.2007 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 171 of 2006 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant preferred against the judgment and order dated 20.04.2006 of the Single Judge of the High Court in Writ Petition No. 3842 of 2002 by which the Single Judge dismissed the writ petition of the appellant wherein the challenge was to the order dated 20.03.2001 passed by the Chief Manager, Bank of India (respondent No.3 herein) imposing the punishment of reduction of his basic pay by five stages on the appellant.

2. In order to appreciate the issue involved in this appeal, it is necessary to set out the relevant facts in brief infra.

3. The appellant was an employee of the Bank of India. He was posted as Branch Manager, Panagar Branch, Jabalpur Region from 04.07.1996 to 26.05.1999. According to the appellant, during his tenure, the profits of the said Branch were increased from 2 lakhs to 30 lakhs, deposits were increased from 6 crores to 11 crores and advances were increased from 2 crores to 4 crores. The appellant also claimed that the NPA of the Branch fell down from

57 lakhs to 20 lakhs. The appellant claimed that due to his good performance, his Branch won the award of Best Branch of the Year.

4. On 08.09.2000, a memo was issued by the Chief Regional Manager, Bank of India, Jabalpur to the appellant mentioning therein that during his tenure as Manager of Panagar Branch, certain irregularities/lapses were reported in disbursement of loans. The details of several irregularities alleged to have been committed by the appellant were mentioned in the memo. The appellant was asked to submit his reply. On 18.10.2000, the appellant submitted his reply to the Chief Regional Manager, Jabalpur.

5. On 01.11.2000, the respondent-Bank announced Voluntary Retirement Scheme, 2000 (in short 'Scheme') with a view to lay off approx. 6000 extra employees. Accordingly, offers were made to the staff in general for opting voluntary retirement pursuant to the Scheme on or before 31.12.2000.

6. In response to the said Scheme, the Bank received 7600 applications as against 6000. The appellant also applied for voluntary retirement on 16.11.2000. The appellant on 05.01.2001 was informed that his application is in the process.

7. On 02.03.2001, the appellant was served with the charge-sheet. The charges were in relation to the irregularities which were mentioned in the memo dated 08.09.2000.

8. The appellant filed his reply on 13.03.2001 to the charge-sheet and accepted all the charges contained therein unconditionally.

9. By order dated 20.03.2001, the Chief Manager, Dewas Branch and Disciplinary Authority, passed an order awarding the consolidated penalty of reduction in the pay of the appellant by five stages in the time scale for a period of 3 years and on the expiry of such period, the reduction was to have the effect of postponing the future increments of his pay to the extent in terms of Regulation No.4(1) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (in short "the Regulations").

10. After passing of the order of punishment, the Chief Regional Manager accepted the appellant's application for voluntary retirement by letter dated 19.06.2001. In this way, the appellant stood retired from the services of Bank w.e.f. 19.06.2001.

11. Being aggrieved by the said order of punishment, the appellant preferred a departmental appeal before the Zonal Manager, Bank of India, Ujjain Zone. By order dated 21.06.2002, the Appellate Authority dismissed the appeal.

12. Challenging the said order, the appellant preferred writ petition being W.P. No.3842 of 2002 before the High Court. The Single Judge of the High Court by order dated 20.04.2006, dismissed the writ petition.

13. Against the order of the Single Judge, the appellant filed an intra court appeal being W.A. No. 171 of 2006 before the High Court. The Division Bench of the High Court by impugned order dated 09.05.2007 dismissed the appeal and upheld the findings of the Single Judge.

14. Aggrieved by the said order, the appellant-employee has preferred this appeal by way of special leave before this Court.

15. Heard Mr. Mehul M. Gupta, learned counsel for the appellant and Mr. S. Gopakumaran Nair, learned senior counsel for the respondents.

16. Mr. Mehul M. Gupta, learned Counsel for the appellant-employee while assailing the legality and correctness of the impugned order urged many-fold submissions. In the first instance, learned counsel contended that the High Court erred in dismissing the appellant's writ petition and his intra court appeal thereby erred in upholding the punishment order dated 20.03.2001 passed by the Bank.

17. It was his submission that once the appellant applied for voluntary retirement by ensuring compliance of the requirements of the Scheme then it was obligatory on the part of the Bank to have passed an order either by accepting or rejecting the appellant's application on or before 31.12.2000 as prescribed in the Scheme.

18. Learned counsel pointed out that since the Bank failed to pass any order on the appellant's application on or before 31.12.2000, its effect was that the appellant's application was deemed accepted by "deeming fiction" and as a consequence thereof, the appellant stood retired from the services of the Bank on 31.12.2000.

19. Learned counsel contended that in these circumstances, the relationship of employer and employee between the appellant and the Bank came to an

end on 31.12.2000 and, therefore, the Bank had no right to take any action against the appellant much less to serve any charge-sheet and hold an inquiry into those charges and impose a punishment by passing order dated 20.03.2001.

20. Learned counsel further urged that though the order of voluntary retirement was issued by the Bank on 19.06.2001 yet according to him such order was deemed to have been passed on 31.12.2000 because in terms of the Scheme, an order of acceptance or relieving or rejection of voluntary retirement was required to be passed by the Bank on or before 31.12.2000. In other words, the submission was that since the compliance of several clauses of the Scheme was mandatory for the Bank and, therefore, if the Bank failed to pass any order on the application by 31.12.2000, it only meant that either the application stood automatically allowed on 31.12.2000 or the order passed on 19.06.2001 by which the appellant's application had been accepted was deemed to have been passed on 31.12.2000. In either way, therefore, the appellant's retirement, according to learned counsel, came into force w.e.f. 31.12.2000 and not from 19.06.2001.

21. Learned counsel then submitted that the punishment imposed on the appellant is not legally sustainable because the disciplinary proceedings which culminated in passing the punishment order were initiated by the Bank after 31.12.2000, i.e. on 02.03.2001, when the relationship of employee and employer between the parties had already ceased due to acceptance of appellant's application for voluntary retirement on 31.12.2000 and hence the Bank had no right to initiate any disciplinary proceedings on and after 31.12.2000 against the appellant.

22. Learned counsel lastly submitted that since on assurance of the Bank, the appellant admitted the charges and, therefore, the Bank ought not to have imposed any punishment on acceptance of appellant's application for voluntary retirement. It was also urged that in any case, looking to the past performance and unblemished career of the appellant and having regard to the gravity of the charges, the punishment inflicted on the appellant is excessive and, therefore, liable to be quashed.

23. In reply, learned counsel for the respondent (Bank) while supporting the impugned order urged that no interference in the impugned order is called for and the grounds on which punishment was upheld by the High Court deserve

to be upheld by this Court and lastly, the grounds urged by the learned counsel for the appellant in support of this appeal also have no merit.

24. Learned counsel elaborated his submission by contending that the reading of the Scheme as a whole would go to show that firstly, the appellant was not eligible for consideration because disciplinary proceedings were in contemplation against him and later initiated also and even if, he was held eligible to apply pursuant to the Scheme yet according to learned counsel, the Bank was within their rights to pass orders on his application made for voluntary retirement only on conclusion of disciplinary proceedings and which the Bank also rightly passed by accepting the application on 19.06.2001.

25. Learned Counsel further pointed out that the Scheme did not provide any consequence in case if the applications submitted by employees remain pending on 31.12.2000. It was urged that in the absence of any specific consequences not being provided in the Scheme in relation to pending applications on 31.12.2000, there could be no deemed acceptance of such applications on 31.12.2000 as was urged by the learned counsel for the appellant. It was more so as the learned counsel pointed out that the Scheme had provided that no voluntary retirement of any employee would come into force unless an order is passed by the Bank on his application. In other words, the submission was that every application made by the employee was required to be disposed of by passing an order by the Bank and, therefore, so long as the order had not been passed, the applications would remain pending.

26. Learned counsel urged that the Scheme was directory in its compliance insofar as the Bank was concerned and, therefore, the Bank was within its rights to decide the pending applications even after 31.12.2000 regardless of any time constraint on the Bank in deciding such applications. Learned counsel urged that the principle of "deeming fiction" in these circumstances had no application to the Scheme for want of any specific clause in the Scheme providing such fiction.

27. Learned counsel further pointed out that since the appellant was in services of the Bank till 19.06.2001, the Bank was within their rights to issue charge-sheet and conclude the disciplinary proceedings before 19.06.2001 and which the Bank did when it served the charge-sheet on the appellant on 02.03.2001 and passed the punishment order on 20.03.2001 on the basis of admission made by the appellant admitting the charges leveled against him.

28. Lastly, learned counsel submitted that in the light of his above-mentioned submissions coupled with the fact that there was no challenge to the order dated 19.06.2001 by which the appellant's application for voluntary retirement was accepted, no case is made out by the appellant for quashing the punishment order dated 20.03.2001 which was rightly confirmed by the Appellate Authority, Writ Court and lastly by the Division Bench.

29. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no substance in the submissions of learned counsel for the appellant.

30. In our considered opinion, the fate of the appeal largely depends upon answering three questions, viz., firstly, whether the Scheme in question and, in particular, its relevant clauses are mandatory or directory for ensuring their compliance by the appellant and the Bank; Secondly, what is the effect of the Scheme on the rights of the appellant and the Bank for deciding the legality of the punishment order impugned in these proceedings; and lastly, whether any case is made out to set aside the punishment order.

31. At the outset, we may state that the appellant did not challenge the order dated 19.06.2001 passed by the Bank, by which his application for voluntary retirement was accepted but confined his challenge in these proceedings only to the order dated 20.03.2001 by which he was awarded punishment of reduction of his basic salary in five stages in time scale for a period of 3 years and its consequential effect in pay fixation as detailed in the order.

32. Since the learned counsel for the parties have extensively referred to the various clauses of the Scheme to show its object and effect for deciding the legality of the punishment order, we consider it apposite to refer to these clauses infra:

> **"BANK OF INDIA VOLUNTARY RETIREMENT SCHEME-2000**
>
> **A. ELIGIBILITY:**
>
> **All permanent employees of the Bank with 15 years of service or 40 years of age, as on 01.11.2000.**
>
> **The following employees are not eligible for Voluntary**

Retirement under the Scheme:-

a) Specialists Officers/Employees who have executed service bonds and have not completed it, Employees/Officers serving abroad under Special Arrangements/Bonds, will not be eligible for VRS (the Board of Directors may however waive this, subject to fulfillment of this bond/other requirements).

b) Employees against whom disciplinary proceedings are contemplated/pending or are under suspension.

c) Employees appointed on contract basis.

d) Any other category of employees as may be specified by the Board.

F) The Competent Authority may accept or reject the application of an employee for voluntary retirement keeping in view the organizational requirements or any administrative reason and the decision of the Competent Authority shall be final. No voluntary retirement shall come into effect unless the Competent Authority has passed orders accepting the application of the employees to retire voluntarily under the Scheme.

G) Acceptance and Relieving/Rejection:

On acceptance of the application for voluntary Retirement of an employee by the Competent Authority, the acceptance as well as the date of relieving shall be communicated to the employee through for controlling office/s. the employee shall stand relieved on the date stipulated in the above communication. The entire process of acceptance and relieving shall be concluded not later than 31.12.2000.

In case, the application for voluntary Retirement of an employee is rejected by the Competent Authority, an order giving reasons for the same shall be passed by

the Competent Authority and communicated to the employee through the controlling office, on or before 31.12.2000.

I. EFFECTIVE DATE:

The Scheme will be effective from 15.11.2000 and will be in operation for a period of 1 month i.e. up to 14.12.2000 and can be withdrawn at the discretion of the Bank at any time without assigning any reason.

J. RIGHT TO AMEND/ALTER :

The Bank reserves the right to alter and/or amend the above conditions of the Scheme. The applications made under the Scheme will be irrevocable and the employees will not have the right to withdraw the application once submitted."

33. Mere perusal of the afore-quoted clauses would go to show that the application for voluntary retirement was to be filed by the employee on or before 14.12.2000 and on such application being filed, the employee had no right to withdraw the application. The Scheme provided that any employee against whom some disciplinary proceedings are contemplated or pending or if he is under suspension then he is not eligible to apply for voluntary retirement under the Scheme. The Scheme further provided that the Bank is required to pass orders on the application (accepting or rejecting) and complete all proceedings arising therefrom on or before 31.12.2000. The Scheme also provided that no voluntary retirement of an employee would come into effect unless the Bank passes an order on the application.

34. Before we examine the questions arising in the case, it is necessary to see the law, which applies to the case in hand.

35. A three-Judge Bench of this Court in *Balwant Singh & Ors. vs. Anand Kumar Sharma & Ors.*, (2003) 3 SCC 433 while examining the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act explained as to under what circumstances, the duty cast upon a private party is said to be mandatory and why it is said to be directory for any public functionary. This is what was held in paragraph 7 of this decision:

"7. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p. 111 it is stated as follows:

> **"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."**

36. Later, a question arose in the case of *Visitor, AMU & Ors. vs. K.S. Misra,* (2007) 8 SCC 593 as to whether a clause in a Statute of the Benaras Hindu University which *inter alia* provided for doing certain act within a specified time by the party concerned, if it is not done within the time specified in a particular clause of the Statute then whether such clause would be construed as being directory or mandatory in nature and secondly, what would be the effect if the Statute did not provide for any consequence to accrue in the event of non compliance of such clause or when the Statute provided for some consequence in the event of non-compliance.

37. Justice GP Mathur speaking for the Bench examined the issue in the light of the aforementioned principle laid down in the case of *Balwant Singh*

(supra) and after quoting the principle in paragraph 12 applied the same to examine the relevant clause of the case and held as under:

> **"12. A three-Judge Bench in *Balwant Singh v. Anand Kumar Sharma* has explained in what circumstances the duty cast upon a private party can be said to be mandatory and para 7 of the Report reads as under: (SCC p. 436, para 7)**
>
> **....."Principle quoted".....**
>
> **Therefore, in accordance with the law laid down in the above authority, the provisions of Statutes 61(6)(iv)(b) and (c) should be treated as mandatory as it is a private party who has to do a particular act within a specified time."**

38. When we apply the aforesaid principle of law for interpreting the clauses of the Scheme in question then we find that the Scheme is partly mandatory and partly directory. In other words, it is mandatory in compliance of some clauses so far as the employee is concerned, whereas it is directory in compliance of some clauses so far as the Bank is concerned.

39. This is clear when we see the clause, which provides for filing an application by the employee by a particular date. This clause is mandatory in its compliance for the employee because if an employee does not file the application before the due date then he has no right to file the application thereafter, whereas the clause which requires a Bank to pass the orders on the application by a specified date and complete all the formalities, it is directory in its compliance.

40. In other words, it is not mandatory for the Bank to necessarily complete all the formalities before the due date specified in the clause and if the Bank fails to do it within the time but completes the formalities after the specified date, it would be permissible for the Bank to do so and the act so done would be regarded as being in conformity with the requirement of the Scheme.

41. This we say for several reasons. Firstly, the Scheme does not provide any consequence as to what would follow, if the Bank does not ensure compliance within the time fixed in the clause. Secondly, the appellant being a private individual, if he is required to do some act within a specified time

prescribed in the Scheme then it is mandatory for him to do so within the time specified. Thirdly, the Bank being a public functionary is required to perform public functions and hence while discharging such functions, if the Scheme has not provided any consequence for non-compliance of the act within time, then the Scheme would not be construed as mandatory but it would be construed as directory insofar as the Bank is concerned. Fourthly, since the Scheme has not provided for accrual of any benefit in employee's favour by "deeming fiction" in the event of non-compliance on the part of the Bank then no such benefit can accrue in favour of an employee automatically by fiction as a result of any non-compliance. In other words, in order to enable an employee to claim any benefit by "deeming fiction" on account of non-compliance of any act by the Bank under the Scheme, it is necessary for the employee to show that the Scheme contains a clause for conferral of such benefit on the employee by "deeming fiction". There is no such clause in the Scheme and lastly, when the Scheme has provided that the voluntary retirement of any employee would come into effect only when the order is passed on the application of an employee then there is no question of any application being accepted by "deeming fiction". In other words, when the Scheme has provided passing of a specific order by the Bank for accepting the application for voluntary retirement then the application cannot be held as accepted by "deeming fiction".

42. In view of foregoing reasons, we are of the considered opinion that the Scheme in question is partly mandatory for its compliance so far as the employee (appellant) is concerned whereas it is directory for its compliance so far as the Bank (respondent) is concerned. There can be no dispute for the legal proposition that the Scheme can be partially mandatory and partially directory.

43. In the light of what we have held above, we find from the facts of this case that on 08.09.2000, the Bank issued a memo to the appellant wherein the Bank set out the irregularities alleged to be committed by the appellant. They were replied by the appellant on 18.10.2000. The Scheme, however, came into force on 01.11.2000 which, *inter alia*, provided that the application for voluntary retirement can be made before 14.12.2000. The cut-off date for the Bank for completing all the formalities was 30.12.2000.

44. The appellant applied for voluntary retirement on 16.11.2000 whereas he was served with the charge-sheet on 02.03.2001. He, however, admitted

the charges on 13.03.2001. This resulted in imposition of punishment on the appellant on 20.03.2001. It was followed by acceptance of his application for voluntary retirement by the Bank on 19.06.2001.

45. In our considered opinion, the Bank was within its rights to issue a charge-sheet to the appellant on 02.03.2001 because firstly, on 02.03.2001, the appellant was in the employment of the Bank and, therefore, he could be subjected to face disciplinary proceedings as per the Rules. Secondly, since the memo was served on the appellant prior to introduction of the Scheme, the disciplinary proceedings were rightly initiated by serving a charge-sheet on the appellant after coming into force of the Scheme on 01.11.2000. Thirdly, in terms of the Scheme, the appellant's application could be considered only after conclusion of disciplinary proceedings and, therefore, the Bank was right in considering the application and eventually accepting it on 19.06.2001. Fourthly, the relationship of employee and employer between the appellant and the Bank continued till 19.06.2001 and, therefore, the Bank was within its rights to take any action under the service rules against the appellant up to 19.06.2001. It is not in dispute that the Bank took all the disciplinary actions prior to 19.06.2001 and then accepted the application for voluntary retirement on 19.06.2001. Such action, in our view, was just, legal and proper.

46. In the light of foregoing reasons, we cannot accept the submission of learned counsel for the appellant when he contended that the appellant stood deemed retired on 31.12.2000 because no order was passed or/and communicated to him by the Bank on or before 31.12.2000 on his application for voluntary retirement and, therefore, the Bank had no right to initiate any disciplinary proceeding and pass the punishment order against the appellant after 31.12.2000. This submission is devoid of any merit and is accordingly rejected.

47. Coming to the next question as to whether the punishment imposed on the appellant was legal or not. Learned counsel for the appellant was not able to point out any illegality or perversity in the disciplinary proceedings or in the punishment order dated 20.03.2001.

48. As a matter of fact, since the appellant admitted the charges leveled against him in the charge-sheet, there was no need for the Bank to have held any inquiry into the charges. When the charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant

as prescribed in the Rules. We, therefore, find no ground to interfere in the punishment order as we also find that having regard to the nature and gravity of the charge, the punishment imposed on the appellant appears to be just and proper, calling no interference therein.

49. The next submission of the learned counsel for the appellant that since the appellant had unblemished career throughout in his service period, the disciplinary proceedings initiated against the appellant were not called for and deserve to be quashed also have no substance.

50. Suffice it to say, once the appellant admitted the charges, appropriate punishment as prescribed in the Rules could be inflicted on him. It was for the Appointing Authority to have taken into account the seriousness of the charge and overall performance of the appellant while imposing punishment. It was done by the authorities concerned in this case as would be clear from mere perusal of the punishment order. The relevant para of the punishment order reads as under:

> **"The acts of misconduct committed by you are serious in nature but keeping in view facts and circumstances of the case, I have decided to take a lenient view in the matter and to impose upon you Consolidated Major Penalty of reduction in pay by five stages in a time scale for a period of three years with the further direction that you will not earn your normal increments of pay during the period of such reduction and reduction will have the effect of postponing your future increments to that extent in terms of clause 4(f) of Bank Of India Officer Employees' [Discipline and Appeal] Regulations, 1976.**
>
> **I have considered your past record and all other extenuating/mitigating circumstances of the case. After a careful consideration, I find that the ends of justice would meet by imposition of the aforesaid consolidated penalty on you. I order accordingly."**

51. In the light of foregoing, the submission of the learned counsel for the appellant on the question of imposition of punishment and on the issue of quantum has no substance and is accordingly rejected.

52. In view of the foregoing discussion, all the three questions framed above are answered against the appellant and in favour of the Bank.

53. The appeal thus fails and is accordingly dismissed. As a consequence, the impugned order is upheld though on reasons other than the one given by the High Court. No costs.

Appeal dismissed.

I.L.R. [2016] M.P., 2654
WRIT APPEAL

Before Mr. Justice P.K. Jaiswal & Mr. Justice J.K. Jain
W.A. No. 575/2015 (Indore) decided on 19 January, 2016

SAMRATH INFRABUILD (I) PVT. LTD., INDORE ...Appellant
Vs.
BANK OF INDIA & anr. ...Respondents

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Sections 2(O), 4B, 13(2), 13(4) & 17 - Constitution - Article 226 - **If a Bank or financial institution forms an opinion that an account of a borrower has become an Non Performing Assets (NPA) - Such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution - Further the question whether the account has been correctly classified as a NPA or not is a factual dispute and appellant has an alternative efficacious remedy of appeal available u/S 17 of the SARFAESI Act. (Para 15)**

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54), धाराएँ 2(ओ), 4बी, 13(2), 13(4) व 17 – संविधान – अनुच्छेद 226 – यदि एक बैंक अथवा वित्तीय संस्था यह अभिमत बना लेती है कि किसी उधार लेने वाले का खाता, गैर निष्पादक आस्तियाँ बन गया है – उक्त अभिमत, संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता का प्रयोग करने वाले न्यायालय में विचार योग्य नहीं है – इसके अतिरिक्त, यह प्रश्न कि क्या खाते को सही रूप से गैर निष्पादक आस्तियों के तौर पर श्रेणीबद्ध किया गया है अथवा नहीं, तथ्यात्मक विवाद नहीं है और अपीलार्थी के पास, SARFAESI अधिनियम की धारा 17 के अंतर्गत, अपील का वैकल्पिक प्रभावकारी उपचार उपलब्ध है।

Cases referred:

2011 (2) MPLJ 224, 2015 (4) SCC 770, 2004 (4) SCC 311, LPA

254/2015 & CM No. 7754/2015 decided on 21.05.2015 (Delhi High Court), IV (2014) BC (Banking Cases) (D.B.) (Mad.) Page 37.

A.K. Chitle with *Arpit Oswal*, for the appellant.
P.B. Sankaran Nair with *P. Nair,* for the respondents.

ORDER

The Order of the Court was delivered by ;
P.K. JAISWAL, J. :- By this intra court appeal, under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, the appellant (original petitioner) is assailing the order dated 3.11.2015, passed by the writ court in W.P.No.5311/2015, whereby the learned writ court considering the fact that bank has taken action against the borrower and also taken a symbolic possession of the collateral security and a notice under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'SARFAESI Act, 2002') and thereafter, bank has taken action under Section 13 (4) of the SARFAESI Act, 2002, no case for interference is made out as the appellant do have a remedy of approaching before the Debts Recovery Tribunal (hereinafter referred as 'DRT') under Section 17 of the Act of 2002, dismissed the writ petition with a liberty to approach the DRT.

2. The writ petition filed by the appellant/petitioner under Article 226 and 227 of the Constitution, the appellant had claimed the following relief :-

> *"7.1 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem it fit be issued calling for the record pertaining to this matter from the respondents for the kind perusal of this Hon'ble Court.*
>
> *7.2 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued thereby quashing and setting aside the impugned action of the Respondent No.1 classifying the Account of the petitioner as NPA with effect from 28.12.2015 and action taken pursuant thereto being contrary and in gross violation of RBI circular and SARFAESI Act.*

7.3 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued thereby quashing and setting aside the impugned notice/ order dated 13.01.2015 passed by Respondent No.1 classifying the petitioner's account SMA-II.

7.4 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued thereby quashing & setting aside the impugned notice/order dated 26.5.2015 (Annexure P/11) passed by Respondent No.1 which is issued in pursuant to the classification of petitioner's Account NPA.

7.5 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued to the Respondent to decide the representation/objection of the petitioner dated 22.7.2015 objectively after availing proper opportunity of hearing to the petitioner before proceeding further in the matter.

7.6 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued directing respondents not to take any coercive steps against the petitioner, further to give an opportunity of hearing before passing any order/ proceedings further against the petitioner.

7.7 This petition be allowed with costs.

7.8 Any other or further relief which this Hon'ble Court deems fit be also granted."

3. The appellant applied to the respondents for fund based and non-fund based credit facilities against the security of hypothecation of tippers and mortgage of immovable property for purchase of 20 tippers. First disbursement of part term loan I of Rs.12,00,00,000/- (Rs.Twelve Crores only). The credit facility was enhanced from time to time. On 20.10.2014, the respondent – Bank issued fresh sanction, accepting the request of appellant for enhancing credit facility providing for credit facility / security cover totaling to Rs.3478 lacs, thereby modifying the terms and condition of earlier sanctions. The bank

issued notice under Section 13 (2) of the SARFAESI Act, 2002 to the appellant, intimating the appellant that his account was classified as Non Performing Assets (NPA) *w.e.f.* 28.12.2014, in accordance with the directions / guidelines issued by the Reserve Bank of India. Clause 3 & 4 of notice is relevant which reads as under :-

> *"3. As you have defaulted in timely repayment of your dues to the Bank the account is classified as Non-Peforming Asset w.e.f. 28.12.2014 in accordance with the directions/guidelines issued by the Reserve Bank of India.*
>
> *4. For the reasons stated above, we hereby give you notice under Section 13(2) of the above noted act and call upon you to discharge in full your liabilities by paying to the Bank sum of Rs.379147246.04 (contractual dues with upto date interest upto the date of notice) with interest as stated on page number that it will be entirely at your risks as to costs and consequences, exercise the powers vested with the Bank under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the secured assets mentioned above."*

4. As per notice under Section 13(2) of the SARFAESI Act, 2002, the total dues on the date of notice was Rs.379147246.04. The appellant challenged the said action by filing the writ petition under Article 226 and 227 of the Constitution of India. The learned Single Judge considering the fact that the respondent – Bank had already taken action under Section 13(4) of SARFAESI Act, 2002, has dismissed the writ petition on the ground that the appellant should file an appeal under Section 17 of SARFAESI Act, 2002, relying on the judgment of the Division Bench of this Court in the case of *Velocity Ltd., Indore V/s. State Bank of India* reported as 2011(2) M.P.L.J. 224.

5. Learned Senior counsel for the appellant has drawn our attention to the relief/s claimed in the writ petition and submitted that classifying the account of the appellant as NPA *w.e.f* 28.12.2014 and action taken pursuant thereto being contrary and gross violation of RBI circular and SARFAESI Act, 2002. The classification of the NPA's of the account of the appellant – company

was wholly without jurisdiction and was in gross violation of the RBI circular and this fact has not been considered by the learned Single Judge while dismissing the writ petition on the ground of alternative remedy. He has also submitted that the case of *Velocity Ltd., Indore* (Supra) is distinguishable on facts. To support his contention he has drawn our attention to Section 2 (o) of the SARFAESI Act, 2002, Clause 3 of notice under Section 13(2), Section 4(B), letters issued by the Bank and circular issued by the RBI from time to time and the decision of the Apex Court in the case of *Keshavlal Khemchand & Sons Pvt. Ltd. & Ors. V/s. Union of India & Ors.* reported as 2015 (4) SCC 770, *Mardia Chemicals Ltd. V/s. Union of India & Ors.* reported as 2004 (4) SCC 311 and submitted that pre-requisite condition for proceedings under Section 13(2) was not satisfied and classification of the appellant's account as NPA is contrary to Section 2(o) of the SARFAESI Act, 2002. He has submitted that the action of the Bank is without jurisdiction and, therefore, even if there is any alternative remedy, which is in the facts and circumstances of the present case is not available to the appellant and the same does not bar the appellant to challenge the action of the Bank, the learned writ court committed a legal error in dismissing the writ petition on the ground of alternative remedy under the statutory remedy under Section 17 of SARFAESI Act, 2002.

6. In reply, Shri Nair, learned counsel for the respondents has submitted that in the case of *Mardia Chemicals Ltd. V/s. Union of India & Ors.* (Supra), the Apex Court had made it very clear that dues or disputes regarding classification of NPA's should be considered and resolved by some internal mechanism. Thus, the jurisdiction of the courts for adjudication of disputes regarding classification has been totally excluded. He has also drawn our attention to the decision of the Division Bench of Delhi High Court in the case of *Dr. Yashwant Singh & Anr. V/s. Indian Bank & Anr.* dated 21.5.2015 (LPA 254/2015 & CM No. 7754/2015 and submitted that the writ court cannot exercise any adjudicatory function on the issue of classification of NPA by the secured creditor. Once the Bank authorities have classified as NPA, the writ court would have little or no role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act, 2002, as upheld by the Apex Court in the case of *Mardia Chemicals Ltd. V/s. Union of India & Ors* (Supra). He submits that writ petition had been filed just to delay the proceedings of the case and it does not show the bonafide of the appellant in paying the dues

of the Bank. He lastly submitted that one Sanjay Dwivedi, Director of the appellant – company, challenged the proceedings, which have been initiated under the SARFAESI Act, 2002, on account of classification of account of the appellant as NPA, suppressing the Writ Petition No.5311/2015 and had obtained the stay, the Bank after receipt of notice raised a preliminary objection and pointed out about the dismissal of the writ petition, the learned writ court by order dated 7.12.2015, dismissed the writ petition. With the aforesaid, he has submitted that the law is well settled. The learned writ court has not committed any legal error in dismissing the writ petition and directing the appellant to avail the alternative remedy under Section 17 of the SARFAESI Act, 2002 and prays for dismissal of the writ appeal.

7. We have heard the arguments at length.

8. It is not in dispute that appellant – borrower has made default in repaying the security debts and, therefore, the account of the appellant is classified as NPA and issued notice to the appellant to discharge his liability within 60 days from the date of notice, failing which the bank will exercise all or any of the rights under Sub-section (4) of the SARFAESI Act, 2002, ie., by taking possession of the secured assets and sale / transfer thereof etc.

9. The Apex Court in *Mardia Chemicals Ltd. V/s. Union of India & Ors.* (Supra) observed that the purpose of serving a notice upon borrower under Section 13(2) of the SARFAESI Act, 2002 is that a reply should be submitted by the borrower explaining the reasons as to why the measure under Section 13(4) need not be taken and creditor must apply his mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply. It is further held that once such envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served under Section 13(2), before the creditor proceed under Section 13(4) of the SARFAESI Act, 2002. The Apex Court in *Mardia Chemicals Ltd. V/s. Union of India & Ors.* (Supra) need not held the remedy of judicial review would be available against the notice under Section 13(2) of the SARFAESI Act, 2002. The Apex Court in *Mardia Chemicals Ltd. V/s. Union of India & Ors.* (Supra) has expressly ruled that the scheme of the SARFAESI Act, 2002, does not envisage any remedy between 13(2) and 13(4) stage. The

Supreme Court has further held that the borrower does not even have any right of hearing Section 13(3A). Once that is so, there can possibly be no right in favour of the borrower to seek judicial review of the decision of the creditor on the objections in the reply to the notice under Section 13(2). The sole contention of the appellant is that the decision of the Bank classifying the account of the borrower as NPA is a jurisdictional one and the remedy of judicial review is available there again.

10. The learned Single Judge in the order impugned has held that the respondent – Bank had already taken action under Section 13(4) of the SARFAESI Act, 2002. The appellant should file an appeal under Section 17 of the SARFAESI Act, 2002 and directed the appellant to approach the DRT.

11. Section 2(o) and RBI circular has been considered by the Division Bench of Delhi High Court in the case of *Dr. Yashwant Singh & Anr. V/s. Indian Bank & Anr.* (Supra). Relevant part of the judgment reads as under :-

> *"(H) It is significant that Supreme Court in Mardia Chemicals Ltd. did not hold that the remedy of judicial review would be available against a notice under Section 13(2). On the contrary the decision on the objections/ representations if any, to the notice under Section 13(2) was left to the secured creditor who has further been obliged to communicate the reasons for rejection thereof but without vesting in the borrower any remedy there against at that stage. (I) It would thus be seen that Supreme Court in Mardia Chemicals Ltd. has expressly ruled that the scheme of SARFAESI act does not envisage any remedy between the13(2) and 13(4) stage. The Supreme Court has further held that the borrower does not even have any right of hearing at the stage of Section 13(3A). Once that is so, there can possibly be no right in favour of the borrower to seek judicial review of the decision of the creditor on the objections in the reply to the notice under Section 13(2). The purpose of communicating the reasons for rejection of the objections, we reiterate, as per Mardia Chemicals Ltd., is only to furnish to the borrower the basis for the challenge under Section 17 against the action at the Section 13(4) stage. (J) The entire case of the appellant is premised*

on the argument that the decision of the secured creditor classifying the account of the borrower as NPA, is a "jurisdictional" one and the remedy of judicial review is available there against. The counsel for the appellants has however though picked up the term "jurisdictional decision" but not even attempted to argue how a jurisdictional decision is different from any other decision pursuant whereto an authority under a statute is entitled to take action as provided therein. We have wondered whether all decisions, on the making whereof an action under a statute is predicated, would be jurisdictional decisions. (K) We, at the outset only are unable to agree with such a proposition. If every decision on the taking whereof a statutory provision were to get invoked / activated, the need for the Supreme Court in the judgments relied upon by the counsel for the appellants to label the fact / decision as jurisdictional one would not have arisen. (L) Moreover, if it was to be said that every fact upon the happening/existence whereof an action under a statute can be taken or an administrative authority is entitled to take action were to be held to be a jurisdictional fact and a writ to the High Court upon the same being challenged were to be maintainable, it would imply that a writ can be filed in all cases.

(M) At least in the context of the SARFAESI Act, the same would totally nullify the purpose of enactment thereof. We therefore hold that every such fact / decision cannot be a jurisdictional one. (N) Section 13(2) permits a secured creditor to issue the notice provided thereunder to the borrower if (a) the borrower has made a default in repayment of secured debt or any installment thereof; and,

(b) the borrower"s account in respect of such debt is classified by the secured creditor as an NPA.

(O) It thus follows that a mere default in payment of the debt or any installment thereof does not ipso facto make the borrowers account an NPA.

(P) NPA is defined in Section 2(o) of the Act as an asset or account of a borrower which has been classified by a bank or financial institution as substandard, doubtful or loss asset in accordance with the directions or guidelines relating to assets classifications by the Reserve Bank of India (RBI) or by any other authority or body which is administrating or regulating the bank or financial institution concerned.

(Q) The appellants have alongwith the appeal filed a copy of the letter dated 2nd July, 2012 of the RBI to all commercial banks enclosing therewith the updated "Master Circular relating to Prudential Norms on Income Recognition, Assets Classification and Provisioning pertaining to Advances". Clause 2.1.1 thereof provides that asset become a non performing asset when it ceases to generate income for the bank and clause 2.1.2 thereof defines NPA as a loan or an advance where the interest and / or the installment of principal remains overdue for a period of more than 90 days in respect of a term loan (which the appellants admitted to have taken from the respondent bank).. Clause 2.1.3 thereof provides that bank should classify an account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter. Thus as per the said circular of the RBI, read with Section 13(2), the notice under Section 13(2) can be issued not immediately on default in payment or any instalment thereof but on such default remaining overdue for more than 90 days.

(R) What emerges thus is, whether a decision of the bank that the default on the part of the borrower in repayment has remained over due for more than 90 days or not, can be called a jurisdictional decision / fact.

(S) At this stage the plea of the appellants in this respect may be noticed. The appellants do not dispute that they availed of secured credit from the respondent bank. Their case is, (i) that as per the order dated 23rd October, 2013 of the DRT in an earlier proceeding between the parties,

the loan account was ordered to be restructured and was restructured on 10th September, 2014; (ii) that the quarter in which the loan account was so restructured ended on 31st December, 2014; (iii) that even if the appellants were in default of payment for the said quarter, 90 days therefrom ended on 31st March, 2015 and thus the action of the respondent bank of declaring account as a NPA prior thereto on 9th February, 2015 was wrong.

(T) The respondent bank in its decision on the objections/ representations of the appellants to the notice under Section 13(2) of the Act has reasoned.

(a) That the term loan had remained unpaid and was classified as a NPA on 1st December, 2009 and thereafter action under Section 13 (2) and 13(4) was initiated;

(b) there against the proceeding aforesaid in the DRT under Section 17 was filed;

(c) that in compliance with the order of the DRT, the loan account was restructured and the revised Statement of Account was communicated on 1st September, 2014 and again on 10th September, 2014;

(d) that the appellants though raised objections thereto but failed to respond with any specific error in the Statement of Account and instead filed an application in the disposed of proceedings in the DRT for recalculation of the interest and which application was dismissed on 31st January, 2015;

(e) the DRT in the said order itself directed the appellants to pay the admitted debt of Rs.19,49,043/- within 45 days;

(f) that no payment was made in the said loan accounts since 1st September, 2014 and the amount of Rs.4,63,84,456.88 had fallen due with a principal amount of Rs.3,97,34,719.77 was outstanding in one loan account and a principal amount of Rs.24,97,556.55 was outstanding in another loan account;

(g) that thus the loan account of the appellant had correctly been classified as a NPA.

(V) We see no reason to, in letters patent jurisdiction, interfere with the decision of the learned Single Judge on the challenge by the appellants to the accounts being classified NPA in accordance with RBI circular on 31st December, 2014 and fully concur with the same. (W) A jurisdictional fact is one on existence of which depends the jurisdiction of a Court, Tribunal or an Authority. If the jurisdictional fact does not exist, the Court or Tribunal cannot act (see Ramesh Chandra Sankla Vs. Vikram Cement (2008) 14 SCC 58). (X) Supreme Court in Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers (1992) 1 SCC 534 explained that error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. Applying the said fact, we hold that it is not as if it is not within the jurisdiction of the Bank to determine whether the account of the Bank is a NPA or not. The mistake if any by the Bank in holding the account to be an NPA would thus be a mistake in exercise of jurisdiction and not a mistake in assuming jurisdiction. (Y) We draw strength for the aforesaid proposition from Section 2(o) of the SARFAESI Act which vests the secured creditor with the power to classify an account as an NPA. The authority of the secured creditor in this regard cannot be questioned. Such authority of the secured creditor to classify the account of a borrower as an NPA has been recognized in Mardia Chemicals Ltd. and in Transcore Vs. Union of India (2008) 1 SCC 125. All that was observed in Mardia Chemicals Ltd. was that there must exist a specified internal channel which should settle the doubts in asset classification. The introduction of Section 13(3A) has fulfilled the said requirement also. We find a Single Judge of the Calcutta High Court in Core Ceramics Ltd. Vs. Union of India AIR 2008 Cal 88 also to have taken a view that once the bank authorities have classified an account as NPA, the writ Court would have little or no

role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act and upheld in Mardia Chemicals Ltd. and Transcore. Similarly, a Division Bench of Madras High Court in Gain-N-Nature Food Products Vs. Union of India MANU/TN/0555/2008 has held that if a Bank or financial institution forms an opinion that an account of a borrower has become an NPA, such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution because Section 13(2) does not use the expression "and his account in respect of such debt has become a Non Performing Asset" but uses the expression "and his account in respect of such debt is classified by the secured creditor as Non Performing Asset.

(ZA) As far as the judgments cited by the counsel for the appellants are concerned, they all relate to adjudicatory authorities. Arun Kumar as well as Raza Textile Ltd. supra were with respect to the jurisdiction exercised by the income tax officers; Godrej Sara Lee Ltd. supra was again with respect to the assessment by the authorities concerned under the Kerala Value Added Tax Act, 2003 and Sardar D.K. Jadav supra was with respect to the proceedings before the Jagir Commissioner under the Abolition of Jagirs Samvat, 2008. In all the said cases the adjudicatory authorities, only if having jurisdiction, were required to adjudicate the respective claims. It was in this context held that if the authority had no jurisdiction it could not proceed with the adjudication .However the creditor bank/financial institutions in exercise of powers under Section (13) of the SARFAESI Act does not exercise any adjudicatory function and after an account has been classified as NPA is not required to adjudicate anything further and is only required to take over the asset. The process under Section (13)(3A) can by no stretch of imagination be said to be adjudicatory. Moreover the question whether a borrower has committed any default in repayment and whether the

account has been correctly classified as a NPA or not is a factual dispute which even otherwise ordinarily in writ jurisdiction is not to be entertained particularly when the fora for adjudication thereof in the event of the bank taking further action, is prescribed.

(ZB) The Supreme Court in the judgments relied upon by the counsel for the appellant held that the proceedings before an authority which had no jurisdiction would not serve any purpose. However as aforesaid there are no proceedings before a bank after classifying borrower account as NPA and forum for appeal there against, if any, shifts to the DRT. Thus the judgment cited by the counsel for the appellants have no application."

12. In the case of *Gain-N-Nature Food Product V/s. Union of India* judgment/order dated 27.3.2008 the Division Bench of Madras High Court has observed as under :-

11. But as seen from the definition of the expression "Non Performing Asset", extracted above, it includes within its fold, either an asset or an account of the borrower. If a Bank or financial institution, forms an opinion that a particular asset or account of a borrower has become a "Non Performing Asset", such opinion may not be justiciable, especially in a Court exercising jurisdiction under Article 226 of the Constitution. It may not be open to this Court to conduct a roving enquiry to find out if an account or asset of a borrower could be classified as a "Non Performing Asset", with reference to the guidelines issued by the Reserve Bank of India. Section 13(2) is carefully worded. It does not use the expression "and his account in respect of such debt has become a "Non Performing Asset". Instead, the Section uses the expression "and his account in respect of such debt is classified by the secured creditor as "Non Performing Asset".Section 13(2) reads as follows:

Where any borrower, who is under a liability to a

secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4).

12. Therefore, the stress under Section 13(2) is basically on the classification of the account as a "Non Performing Asset" by the secured creditor and not on whether the account has actually become a "Non Performing Asset" or not. In other words, the Section does not leave any scope for a court to adjudicate as to whether an account has become a "Non Performing Asset" or not, with reference to the guidelines issued by the Reserve Bank of India. Therefore, the first objection taken by the petitioners is not sustainable in law.

13. In *Deccan Chronicles Holdings Ltd. & Ors. V/s. Union of India & Ors.* reported as IV (2014) BC (Banking Cases) (D.B.) (Mad.) Page 37 the Division Bench in para 39 of the such judgment has held as under :-

"39. While dealing with a legislation pertaining to a specialized field, that too, a one like economy, the Court should adopt a "dignified reluctance". While exercising its power of judicial review, a good deal of latitude is permissible in case of economic statues. The Court should be aware of the fact that the Legislature is dealing with complex problems. The economic mechanism is highly sensitive and therefore, we should constantly remind ourselves of our own limit. We do not like to take the role of a higher authority to review a decision made by an expert body on the materials placed before it. The said attempt is to be avoided, as neither the Counsels nor the Court can claim a better expertise. Such an attempt would be akin to a search by a visually impaired person to find a

black cat during right time in a dark room when the cat itself is not there....."

14. On due consideration of the aforesaid, we are of the view that law on the subject is well settled by the Apex Court in the case of *Mardia Chemicals Ltd. V/s. Union of India & Ors.* (Supra), as well as by the Delhi High Court in the case of *Dr. Yashwant Singh & Anr. V/s. Indian Bank & Anr.* (Supra) and Madras High Court in the case of *Gain-N-Nature Food Product V/s. Union of India* (Supra). The classification of NPA is not subject to judicial review. Once the Bank authorities have classified account as NPA, the writ court would have no role to play in deciding such any issue/suit. The proper course of the appellant is to challenge the action by filing a statutory appeal as directed under Section 17 of SARFAESI Act, 2002. One of the Director of the petitioner Shri Sanjay Dwivedi, also challenged the action by filing W.P. No. 7994/2015. The learned Single Judge while dismissing the writ petition of Sanjay Dwivedi has observed that he without disclosing the order dated 3.11.2015, has filed the writ petition and obtained interim relief. Order dated 7.12.2015 passed in W.P.No.7994/2015 reads as under :-

"Heard.

This writ petition has been filed by the petitioner challenging the proceedings which have been initiated under the SARFAESI Act on account of classification of account of the respondent No.2 as NPA.

In brief, the case of the petitioner is that certain loan was advanced by the respondent No.1 to the respondent No.2, in which the petitioner was guarantor and thereafter the account of the respondent No.2 has wrongly been classified as NPA and the respondent No.1 instead of proceeding against the respondent No.2, is taking action against the petitioner and his properties.

A preliminary objection has been raised by the respondent.

Having heard the learned counsel for the parties and on perusal of the record, it is found that the petitioner is not only the guarantor but is also one of the Director of

the respondent No.2 Company. The respondent No.2-Company had earlier filed the Writ Petition No.5311/2015 challenging the proceedings which were initiated under the SARFAESI Act and this Court by order dated 3.11.2015 taking note of the earlier Division Bench judgment of this Court in the matter of ***Velocity Ltd. Indore Vs. State Bank of India,*** *reported in 2011(2) MPLJ 224, has dismissed the writ petition on the ground that the action has already been taken under Section 13(4) of the SARFAESI Act and the remedy of approaching the Debt Recovery Tribunal under Section 17 of the Act of 2002 is available.* ***The petitioner without disclosing the said order has filed the present writ petition and obtained the interim relief by this Court.***

In view of the earlier detailed order passed by this Court in W.P. No.5311/2015, the present writ petition is not maintainable. Since the petitioner has an alternative efficacious remedy of appeal available under Section 17 of the SARFAESI Act, therefore, no ground is made out for entertaining the writ petition.

The writ petition is accordingly dismissed with liberty to the petitioner to avail the alternate remedy.

C.C. as per rules.

15. For the above mentioned reasons, we hold that once the bank authorities have classified an account as NPA, the writ court would have little or no role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act and upheld in *Mardia Chemicals Ltd. V/s. Union of India & Ors.* reported as 2004 (4) SCC 311. Similarly, a Division Bench of Delhi High Court and Madras High Court have held that if a Bank or financial institution forms an opinion that an account of a borrower has become an NPA, such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution. Further the question whether the account has been correctly classified as a NPA or not is a factual dispute and appellant has an alternative efficacious remedy of appeal available under Section 17 of

the SARFAESI Act, we do not find any merit in this appeal. W.A.No.575 /2015, has no merit and is, accordingly, **dismissed.**

No costs.

Appeal dismissed.

I.L.R. [2016] M.P., 2670
WRIT PETITION
Before Mr. Justice Rohit Arya
W.P. No. 8077/2014 (Gwalior) decided on 12 January, 2015

PAWAN ARORA ...Petitioner
Vs.
STATE OF M.P. & anr. ...Respondents

(Alongwith W.P. No. 8152/2014, W.P. No. 154/2015, W.P. No. 156/2015, W.P. No. 158/2015, W.P. No. 160/2015 & W.P. No. 162/2015)

***Motor Vehicles Act (59 of 1988), Sections 80(1), 80(2) & 88 and Motor Vehicles Act (4 of 1939)(Repealed), Sections 47 & 57 - Petitioners - Stage Carriage Operators* - Application for grant of permanent permit of stage carriage - Whether the provisions of Sections 80(1) and 80 (2) of the Act of 1988 and the M.P. Motor Vehicle Rules, 1994 framed thereunder in contrast to Section 47 & 57 of the Act of 1939 empowers the Competent Authority to provide for cut off date for filing of documents in relation to pending applications and new applications on or before of cut off date and also requiring application to be published for inviting objections - Held - No, the impugned acts of fixing cut off date for submission of documents and as well as inviting objections are against the provisions of Section 80(1) & 80(2) of the Act of 1988 and is in excess of the Authority of law as there is no provisions of cut off date & for invitation of objections under Sections 80(1) & 80(2) of the Act of 1988 whereas, Sections 47 & 57 of the Act of 1939 prescribes for the cut off date & inviting objections - Impugned notice & Agenda is quashed - Concerned Authority to consider the new application filed or documents filed in support of pending applications in accordance with law - Petition allowed. (Paras 11 to 18)**

मोटर यान अधिनियम (1988 का 59), धाराएँ 80(1), 80(2) व 88 एवं मोटर यान अधिनियम (1939 का 4)(निरसित), धाराएँ 47 व 57 – याचीगण – मंजिली गाड़ी

ऑपरेटर्स – मंजिली गाड़ी का स्थाई अनुज्ञापत्र प्रदान करने हेतु आवेदन – क्या अधिनियम 1939 की धारा 47 व 57 के विपरीत अधिनियम 1988 की धाराएँ 80(1) व 80(2) के उपबंध एवं इसके अंतर्गत विरचित म.प्र. मोटर यान नियम, 1994, सक्षम प्राधिकारी को लंबित आवेदनों के संबंध में दस्तावेज प्रस्तुत करने हेतु अंतिम तिथि प्रदान करने एवं अंतिम तिथि को या उसके पूर्व नये आवेदन बुलाने तथा साथ ही आपत्तियाँ आमंत्रित करने के लिए आवेदन के प्रकाशन की अपेक्षा हेतु सशक्त बनाती है – अभिनिर्धारित – नहीं, दस्तावेज प्रस्तुत करने हेतु अंतिम तिथि नियत करना तथा आपत्तियाँ आमंत्रित करना अधिनियम, 1988 की धाराएँ 80(1) व 80(2) के उपबंधों के विरूद्ध है और विधि के प्राधिकार के अतिलंघन में है क्योंकि अधिनियम, 1988 की धारा 80(1) व 80(2) के अंतर्गत अंतिम तिथि एवं आपत्ति आमंत्रण हेतु कोई उपबंध नहीं जबकि, अधिनियम, 1939 की धारा 47 व 57 अंतिम तिथि एवं आपत्ति आमंत्रण विहित करती है – आक्षेपित नोटिस व अजेन्डा अभिखंडित – संबंधित प्राधिकारी प्रस्तुत किये गये नये आवेदन या लंबित आवेदनों के समर्थन में प्रस्तुत किये गये दस्तावेजों पर विधि अनुसार विचार करे – याचिका मंजूर।

H.D. Gupta with *Santosh Agarwal & R.D. Sharma*, for the petitioner in W.P. No. 8077/2014.

K.N. Gupta with *R.D. Sharma*, for the petitioners in W.P. Nos. 8152/2014, 154/2015, 156/2015, 158/2015, 160/2015 & 162/2015.

Nidhi Patankar, G.A. for the respondents/State in all the matters.

N.K. Gupta with *Arvind Dudawat & Sanjay Sharma,* for the intervenors, Prayag Narayan Bhatele & ors. in W.P. No. 8077/2014.

ORDER

ROHIT ARYA, J. :- As common questions involved in W.P.Nos., 8077/14, 8152/14, 154/15, 156/15, 158/15, 160/15 and 162/15, they are heard together and decided by this common order. However, for the sake of convenience facts in **W.P.No.8077/14** have been dealt with.

2. By this petition under Article 226 of the Constitution of India, petitioner a citizen of India and a stage carriage operator has questioned legality, validity and propriety of impugned condition in the notice dated 15/12/2014 (Annexure P/1) passed by the respondent No.2, Secretary, State Transport Authority, M.P., Gwalior [in the purported compliance of order dated 26/11/2014 in **W.P.No.8678/13 (PIL)**, *Kashmirilal Vs. State of M.P., and others*] by a Division Bench of this Court, particularly condition No.3 whereunder an applicant aspiring for grant of permanent permit as stage carriage operator is

required to submit the documents on a cut off date in respect of the pending applications for consideration of the application fixed as 27/12/2014 which has been further extended upto 29/12/2014 by respondents'/State vide agenda No.6534/Reader/STA/2014 dated 22/12/2014 for the purpose of complying with the requirements of rule 72(3) of the Madhya Pradesh Motor Vehicle Rules, 1994 in respect of the applications filed in the years 2008, 2009 and 2011 and also fresh applications. It has also been specified that neither documents nor applications filed after 29/12/2014 shall be considered on the date of consideration of applications by State Transport Authority (STA) scheduled on 13/01/2015 and 14/01/2015, however, it appears as is informed at Bar, the schedule date of meeting by STA has been revised and now it is scheduled to be held on 19/01/2015; on following grounds:

(i) section 80 (1) of the Motor Vehicles Act, 1988 deals with the procedure for applying and granting permits but does not prescribe for any time limit in the matter of submission of applications as it provides that an application for permit of ***any kind*** may be made at *any time* and sub-section (2) thereof prescribes that the Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 80 shall not ordinarily refuse to grant an application for permit of ***any kind*** made at ***any time*** under the Motor Vehicles Act, 1988;

(ii) Hon'ble Supreme Court while holding the constitutional validity of the aforesaid section 80 and section 88 of the Motor Vehicles Act, 1988 in *Mithilesh Garg Vs. Union of India and others*, AIR 1992 SC 443 held that a bare perusal of the relevant comparative provisions of the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 (referred to as the Act of 1988) makes it clear that grant of permits under the Act of 1988 has been liberalised and an intended operator can get a permit for asking irrespective of th (sic:the) number of operators already in the field. Earlier under section 57 read with section 47(1) of the old Act, an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representations/objections in respect of

the same. Thereafter,the application, alongwith objections, was required to be decided in a quasi-judicial manner. Besides, section 47(3) of the old Act further permitted the imposition of limit on the grant of permits in any region, area or on a particular route. Therefore, the grant of permit under the old Act was controlled and regulated by statutory provisions. But under the Act of 1988, the aforesaid features have been completely effaced as contained under sections 47 and 57 of the old Act and has been completely done away with. Neither there is any provision to file objections by existing operators nor there is provision for limiting on the number of permits to be issued as there is no provision corresponding to sections 47 and 57 of the old Act in the new Act. The Apex Court while dealing with the constitutional validity of the provisions of Act of 1988 has also referred to the Statement of Objects and Reasons for the purpose of enactment of the Act of 1988 and has held that under the new Act, the process of grant of permits as contemplated under section 71(1) of the Act of 1988 has been liberalised. The RTA while considering an application for stage carriage permit shall have regard to the objects of the Act. The Apex Court while bestowing thoughtful consideration to the mandate contained in section 80 (1) & 80(2) of the Act of 1988, which is the harbinger of liberalisation, provides that a Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) shall not ordinarily refuse to grant an application for permit of *any kind* made at *any time* under the Act.

(iii) By citing the judgment of Hon'ble Apex Court in the case of *Esskey Roadways (Firm) Vs. Anandhakrishnan Bus Service,* (1994) 6 SCC 71, learned counsel submits that there cannot be any cut off date for submissions of documents in respect of the pending applications and the new applications. It is submitted that Hon'ble Apex Court held that the date of consideration is the relevant date on which the respective claims of the candidates have to be considered for award of the marks for grant of permit. Aforesaid judgment has been followed by

a learned single Judge of this Court in *Ganesh Prasad Madan Vs. State Transport Appellate Tribunal,* 2008(4) MPLJ 184 and subsequently, a Division Bench of this Court in *Padam Chand Gupta and another Vs. State Transport Authority and another,* 2014(1) MPLJ 124 held in paragraph 19 as under:

> "It is clear from the above judgments that an applicant ha (sic:has) to fulfil qualification required in the rules and in regard to availability of the vehicle at the time of passing of the order by the Regional Transport Authority."

(iv) in the absence of any provision under the Act of 1988 either for publication of application for general public and/or for inviting objections on such applications by the existing operator or others, there is no justification for publication of the application so filed or documents so annexed with the pending applications as provided in the impugned notice (Annexure P/1) and Annexure R/3 calling upon the objectors to file the objections upto 06/01/2015. As such, incorporation of the aforesaid conditions are contrary to the provisions of the Act of 1988 and the judgment of Hon'ble Apex Court in the case of *Mithilesh Garg* (supra);

(v) as a matter of fact, there is no provision under the new Act of 1988 or the Rules framed thereunder prescribing any procedure for consideration of applications for grant of permit of any kind. Respondent/State also admits the same in paragraph 3.3 of the counter-affidavit. In the past from the year 1997 upto 15/10/2014 in various scheduled meetings of STA for consideration of grant of permits new applications and the documents in the pending applications have been accepted on the day of the meeting. However, in the self-acclaimed resolution No.114/1997 dated 21/03/1997 annexed with the counter-affidavit as Annexure R/2 which is said to have laid down a procedure, has never been acted upon and the same was not in conformity with the provisions of Act of 1988. Petitioner has also brought on record, copies of orders

of STA dated 24/11/2014 for grant of permits to the routes from Sidhi to Banaras, dated 15/12/2014 from Shahdol to Allahabad and dated 15/12/2014 from Bhind to Agra to submit that in the aforesaid scheduled meetings, there was no cut off date for filing the documents and the applications. The rationale behind enactment of Act of 1988, particularly, in the context of consideration of grant of stage carriage permits is well reflected in the Statement of Objects and Reasons. The relevant paragraph thereof quoted below:

"A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939, and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport, Automative Research Association of India, and other transport organizations including the manufacturers and the general public. Besides, obtaining comments of State Governments on the recommendations of the Working Group, these were discussed in a specially convened meeting of Transport Ministers of all States and Union Territories. Some of the more important modifications so suggested related for taking care of-

(a) the fast increasing number of both commercial vehicles and personal vehicles in the country;

(b) the need for encouraging adoption of higher technology in automative sector;

(c) the greater flow of passenger and freight with the least impediments so that islands of isolations are not created leading to regional or local imbalances;

(d) concern for road safety standards, and pollution-control measures, standards for transport hazardous and explosive materials;

(e) ***simplification of procedure and policy liberalizations for private sector operations in the road transport field;*** and

(f) need for effective ways of tracking down traffic offenders."

(Emphasis supplied)

(vi) with simplification of procedure and liberalization policy for private sector operators in the road transport field suggests that controls and restrictions in the matter of regulation of grant of stage carriage permits have been done away with and have no place in the new Act of 1988, instead the thrust is for qualitative improvement in providing public transport facilities to the public at large which can be achieved only by determination of competitive claims of stage carriage operators, on the relevant date of consideration of respective applications promoting healthy competition amongst the applicants aspiring for stage carriage permits;

(vii) the impugned notice and the stipulations as contained therein besides being contrary to the Act of 1988 and the judgment of Hon'ble Apex Court in the case of *Mithilesh Garg* (supra), even otherwise is totally arbitrary and only to defeat the legitimate claims of the petitioner for grant of stage carriage permit inasmuch as, fresh applications with latest model vehicles etc., are required to be submitted upto 20/12/2014 and the documents therefor, the time was granted upto 27/12/2014. However, in respect of the applications filed earlier, it is not practically possible to provide latest model vehicles within 05 days and even remotely not possible to file the documents of new model vehicles as after purchasing new chasis, it is common knowledge that at least it will take 30 days minimum for completing the vehicle whereas new model vehicles can be procured for which time ought to have been allowed for providing the best facilities to the public at large. As such, denial thereof is violative of Article 14 and 19(1)(g) of the Constitution of India.

It is submitted that such restrictions imposed in the impugned notices

by the respondent/State as regards cut off date for submission of documents in respect of the pending applications, filing fresh applications publication of applications in public notice boards, inviting objections thereupon, in fact and in effect, before the relevant date of consideration of applications besides being in violation of the provisions of the Act of 1988 and the Rules framed thereunder, contrary to the judgment of the Hon'ble Apex Court in the case of *Mithilesh Garg* (supra) and also, violative of Article 14 and 19(1)(g) of the Constitution of India. Hence, unsustainable in the eye of law.

4. **Per contra,** the respondent/State in the counter-affidavit has laid emphasis on aforesaid exercise of inviting applications or permitting to file the documents in connection with the pending applications upto date fixed thereunder, in the light of the order passed by a Division Bench of this Court in W.P.No.8678/2013(PIL) (supra) as for several years pending applications were not considered due to controversy as regards issuance of permanent stage carriage permit and counter-signature of State of Uttar Pradesh under the bipartite agreement which stood settled by this Court in the aforesaid order. It is submitted that for fulfillment of requirements of Rule 72 (3) of the Madhya Pradesh Motor Vehicles Rules, 1994, (hereinafter referred to as the "Rules, 1994") sufficient time has been provided to the petitioners to file the applications or documents in support of the pending applications for grant of permits in respect of the routes specified in schedule B of the agreement dated 21/11/2006 between the State of Uttar Pradesh and the State of Madhya Pradesh. True it is that, there is no statutory procedure prescribed under the Act of 1988 for grant of permit but the STA is competent to adopt a procedure under resolution No.114/1997 dated 21/03/1997 (Annexure R/2) and based whereupon, notice has been issued providing cut off date for filing of the applications and the documents in the pending applications, etc., by the aspiring applicants.

5. In paragraph 3.7 of the counter-affidavit, it is submitted by respondents that besides opportunity to file the applications and documents by the applicants, date has also been fixed as 06/01/2015 inviting objections on the applications filed for grant of permits on the fixed date. It is further submitted that under section 70 of the Act of 1988, applications have to be submitted alongwith relevant documents and the details whereof have been provided under rule 72(3) of Rules, 1994. With the aforesaid, it is submitted that the respondent/STA is competent to regulate the procedure for consideration of applications and grant of stage carriage permits.

6. The respondent/State further submits that merely words used in section 80(1) & 80(2) of the Act of 1988 that an application for permit of ***any kind*** may be made at ***any time*** cannot be construed to assert that the authorities have no power to provide for cut off date for consideration of fresh applications and the documents related thereto in the pending applications to be considered on a future date by the competent Transport Authority. There is no question of violation of statutory right or fundamental rights of the petitioner under Article 14 and 19(1)(g) of the Constitution of India.

7. There is also an application, I.A.No.94/2015 filed by Prayag Narayan & others for intervention filed by certain operators supporting the stand of the respondent/State.

8. Heard counsel for the parties.

9. In the opinion of this Court, following questions emerge for determination:

(i) Whether the provisions of Act of 1988 and the Rules, 1994 framed thereunder empower the concerned authority to provide for cut off date for filing of documents in relation to pending applications and the new applications on or before a date fixed for consideration of such applications, on a date to be fixed in the scheduled meeting of STA for grant of permit?

(ii) Whether the applications so filed are required to be published for inviting objections thereto?

(iii) Whether the scope, ambit, limit and the extent of mandate contained in section 80(1) & 80(2) of the Act of 1988 in the light of the judgment of the Hon'ble Apex Court in the case of *Mithilesh Garg* (supra) and the subsequent judgments read with clause (e) of the Statement of Objects and Reasons referred to hereinabove provided for control and restrictions, i.e., provision for cut off date of filing of the application, more so, in the teeth of conscious omission of provisions as contained in section 57 of the Act of 1939 in the new Act of 1988?

(iv) Whether complaint of the petitioners violation of fundamental rights guaranteed under Article 14 and

19(1)(g) of the Constitution of India are justified?

10. Before addressing upon the aforesaid questions,it is considered apposite to refer to certain provisions of the Act, 1939 and the Act of 1988.

11. Chapter IV dealt with Control of Transport Vehicles whereunder section 46 prescribes that an application for a permit to use a motor vehicle as a stage carriage permit. Section 47 provided for procedure to be followed by RTA in considering the applications for stage carriage permits. Section 48 dealt with the power of RTA to restrict the number of stage carriages and impose conditions on stage carriage permits. Section 49 dealt with contract carriage permits. Sections 50, 51 and 52 dealt with procedure of RTA in considering the application for contract carriage permit, power to restrict the number of contract carriage & impose conditions on contract carriage permits and application for private carrier's permit. Section 53 provided procedure to be followed by RTA. Section 54 dealt with applications for public carrier's permit. Sections 55 and 56 dealt with regulations thereof. Section 57 dealt with procedure for grant of permits for the purpose of stage carriage permit. Section 57(2) provided that an application shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the RTA appoints dates for the receipt of such applications, or such dates. Sub-section (3) further provided that on receipt of an application for stage carriage permits.....the RTA shall make the application available for inspection at the office of Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered. Sub-section (5) provided for manner to dealt with such representation filed under sub-section (3) and the RTA to dispose of the same at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative. As such, (i) detailed procedure was prescribed a (sic:as) regards the period and the cut off date for the purpose of filing an application for grant of permit; (ii) publication of such application as stipulated inviting objections; (iii) period of filing the objections and (iv) date fixed for consideration of objections and disposal thereof; a quasi-judicial procedure.

12. Under the Act of 1988, the aforesaid provisions are done away with. There are no such similar provisions under the new Act. The Statement of

Objects and Reasons of the Act of 1988 shows that purpose of bringing the new Act was to liberalize the grant of permits with the objective of simplification for procedure and policy liberalizations for private sector operations in the road transport filed. In the aforesaid background for bringing into the new Act of 1988, the provisions contained in section 80(1) & 80(2) of the Act of 1988 assumes importance in the context of period/time for filing the applications for grant of permit and consideration of such applications. Section 80(1) provides for procedure to make an application for a permit of ***any kind at any time***. Sub-section (2) thereof provides for **consideration** of applications for permit of ***any kind*** made ***at any time*** under the Act. In the opinion of this Court, a conjoint reading of section 80(1) and 80(2) of the Act of 1988 unambiguously provides for consideration of application filed ***at any time or at the time*** of consideration of the application. There is no provision prescribing cut off date for submission of applications, publication of applications inviting objections, consideration of such objections on a fixed date, at a particular place and time and thereafter grant the permit in a manner of quasi-judicial enquiry as contemplated under section 57 of the old Act. Prescription of cut off date for filing of the applications and documents in the pending applications, in the opinion of this Court is not in accordance with the mandate contained in section 80(1) & 80(2) of the Act of 1988 and is in excess of the authority of law. Likewise, for want of the specific provision in the Act of 1988 for publication of the application on a notice board, inviting objections and decide the same in a quasi-judicial manner, the provision for publication of the application and inviting objections in the impugned agenda No.6632/Reader/STA/14 dated 30/12/2014, Annexure R/3 also suffers from the *vice* of being excess of authority. Both the impugned acts; i.e., fixing cut off date for submission of documents and applications as well as inviting objections are *ultra vires* not only of the provisions of section 80(1) & 80(2) of the Act of 1988 but also the Act of 1988 itself.

13. The Hon'ble Apex Court while dealing with the constitutional validity of sections 80 and 88 of the Act of 1988 had undertaken critical analysis of the provisions of the old Act, 1939 and the new Act of 1988 and by detailed study of Statements of Objects and Reasons of the Act has held that the provisions as contained in section 80(1) and 80(2) of the Act are constitutionally valid provisions in paragraphs 5 and 6 of the judgments. Besides, a Division Bench of this Court in *Padam Chand Gupta and another* (supra) relying on the judgment of the Apex Court in the case of *Esskey Roadways (Firm)*

(supra) and various other judgments has ruled in paragraph 19 of the order that the relevant date for consideration of qualitative assessment of the claims of the applicants shall be the time as regards fulfilment of qualifications required in the rules and in regard to availability of the vehicle at the time of passing of the order by the Authority. Therefore, as on the date of consideration of and passing of the order by the Authority, the new application so submitted and documents so filed in the pending application are required to be considered by the Authority.

14. Admittedly, there is no provision either in the Act of 1988 or Rules framed thereunder prescribing the procedure to be followed for grant of any kind of permit. The respondent/State as submitted as far as back in the year 1997 vide resolution No.114/97 dated 221/03/1997 (sic:21/03/1997) (Annexure R/2) has formulated the procedure as regards submission of applications including the details of the applications and the cut off date and the same is claimed to have been followed in the instant case, i.e., in the ensuing meeting scheduled for consideration of applications for grant of permit. The petitioner in the rejoinder-affidavit has specifically stated that the aforesaid hand-made procedure has never been acted upon earlier during the meetings scheduled from the years 1997 upto 15/10/2014 as applications submitted on the date of consideration have been duly considered during the course of such meetings for grant of permits. That apart, the STA while granting permits vide its orders dated 24/11/2014 for the routes from Sidhi to Banaras, dated 15/12/2014 from Shahdol to Allahabad and dated 15/12/2014 from Bhind to Agra, the cut off date for submission of documents and applications was not at all fixed. The aforesaid submission made in the rejoinder-affidavit has not been controverted by the respondents/State. Respondents have not been able to refer to any provisions of Act of 1988 or the Rules framed thereunder contrary to that. Hence, the aforesaid procedure adopted by the respondent/ State in the meeting scheduled for consideration of the application for grant of permit is contrary to the provisions of section 80 of the Act, judgments of the Hon'ble Apex Court and this Court referred to hereinabove. That apart, respondents cannot be permitted to play fast and loose with the authority for selective application of aforesaid procedure as per their choice which otherwise lacks legal sanction, as brought on record in the rejoinder-affidavit. This Court finds substantial force in the submission advanced by the petitioner as regards right for consideration of applications and documents in the pending application at the time of scheduled meeting for grant of permit shall certainly be in

consonance with the simplification of procedure and policy liberalizations for private sector operations in the road transport field and the same shall lead to competitive evaluation of the *inter-se* merits of claim of applicants to provide qualitative, superior and efficient transport service to the public at large; one of the objects for which the Act of 1988 was enacted.

15. In the light of the foregoing discussion and facts and law, the impugned notice Annexure P/1 dated 15/12/2014 fixing the cut off date for submission of applications and filing of the documents in support of the pending applications before the schedule date of meeting and also inviting objections vide agenda No.6632/Reader/SAT (sic:STA)/14 dated 30/12/2014 (Annexure R/3) are hereby quashed. It is directed that the concerned Authority shall consider the new applications filed or documents filed in support of the pending applications submitted on the date of consideration of the application for grant of permit for the purpose of grant of stage carriage permit, in accordance with law.

16. Accordingly, the questions formulated are answered affirmative and in favour of petitioners.

17. With the aforesaid directions, all the writ petitions stand allowed and disposed of.

18. A copy of the order be placed in the connected writ petitions.

Petition allowed.

I.L.R. [2016] M.P., 2682
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 7646/2014 (Gwalior) decided on 28 April, 2015

GHANSHYAM CHANDIL ...Petitioner
Vs.
SMT. RAMKATORI AGRAWAL ...Respondent

Civil Procedure Code (5 of 1908), Section 151 - Suit for eviction and recovery of rent **- Respondent/Plaintiff gave power of attorney to her son - He filed affidavit under Order 18 Rule 4 of C.P.C. - Objection was raised to the effect that whether the rent was properly paid or not must be in the personal knowledge of Respondent/Plaintiff, and her son can not be permitted to depose as Plaintiff - Held - It can not be**

held as a strait jacket formula that in no case power of attorney holder can depose about non-payment of rent - No interference under Article 227 of the Constitution, even if the order so passed is erroneous - Petition is dismissed. (Paras 9, 10 & 11)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 – किराये की वसूली एवं बेदखली हेतु वाद – प्रत्यर्थी/वादिनी ने अपने पुत्र के हित में मुख्तारनामा किया – उसने सि.प्र.सं. के आदेश 18 नियम 4 के अंतर्गत शपथ पत्र प्रस्तुत किया – इस आशय का आक्षेप लिया गया कि प्रत्यर्थी/वादिनी के पुत्र को वादी के तौर पर साक्ष्य देने की अनुमति नहीं दी जा सकती, क्योंकि किराये के उचित रूप से भुगतान होने अथवा न होने का तथ्य प्रत्यर्थी/वादिनी की जानकारी में होना चाहिए – अभिनिर्धारित – इसे एक निश्चित सूत्र के तौर पर अभिनिर्धारित नहीं किया जा सकता कि मुख्तारनामा धारक किसी भी प्रकार से किराये के अभुगतान के संबंध में साक्ष्य नहीं दे सकता – यदि आदेश त्रुटिपूर्ण हो तब भी संविधान के अनुच्छेद 227 के अंतर्गत उसमें हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज।

Cases referred:

(2005) 2 SCC 217, (2010) 10 SCC 512, AIR 2014 SC 630, 2003 (4) MPLJ 138, 2005 (2) MPLJ 230, 2009 (2) MPLJ 156, AIR 1999 SC 3089, (2010) 8 SCC 329.

D.D. Bansal, for the petitioner.
Yogesh Singhal, for the respondent.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 227 of the Constitution challenges the order of the court below dated 18.11.2014 passed in Civil Suit No. 30-A/2014, whereby the application of the petitioner/ defendant preferred under Section 151 of the Code of Civil Procedure (Annexure P/6) is rejected by the court below.

2. Petitioner is tenant of respondent/plaintiff. The tenant (sic:plaintiff) filed a suit for eviction and recovery of rent. The respondent gave a power of attorney (POA) to her son on 25.2.2010 (Annexure P/5). On the strength of this POA, the POA holder/Dinesh Chand Agarwal submitted his affidavit under Order 18 Rule 4 CPC before the court below. The petitioner/ defendant raised an objection against this affidavit. It is contended that the POA holder cannot be permitted to enter the witness box as a plaintiff. In other words, the said person cannot depose his

statement by entering the shoes of the plaintiff. It is contended by Shri D.D.Bansal that whether or not rent is properly paid is a matter of fact which must be in the personal knowledge of the plaintiff. Her son cannot depose for the same. Similarly, the son/POA holder cannot state about bonafide requirement. It is further contended that impugned order of court below shows that the reason given is in favour of the petitioner but conclusion is against him. To elaborate, it is contended that in the operative portion of impugned order, the court below opined that POA holder in his personal capacity filed an affidavit and can be cross-examined but the court below has failed to see that in the present case the statement of POA holder is beyond the capacity of POA holder. Reliance is placed on (2005) 2 SCC 217 *(Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others)*;(2010) 10 SCC 512 *(Man Kaur (Dead) by Lrs. vs. Hartar Singh Sangha)*; AIR 2014 SC 630 *(A.C.Narayanan v. State of Maharashtra and another).*

3. *Per Contra,* Shri Yogesh Singhal, learned counsel for the respondent, opposed the same. He supported the impugned order and contended that the court below has not committed any legal error in the light of following judgments:-

2003 (4) MPLJ 138 *(Shanti Devi Agarwal vs. V.H.Lulla).*

2005 (2) MPLJ 230 *(Bashir vs. Smt. Hussain Bano).*

2009 (2) MPLJ 156 *(Sujata Sarkar vs. Anil Kumar Duttani).*

AIR 1999 SC 3089 *(Smt. Ramkubai since deceased by L.Rs. and others vs. Hajarimal Dhokalchand Chandak and others).*

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

5. In *Smt. Ramkubai* (supra), the Apex Court opined as under :-

"10. We have already noted above that the ground of bona fide requirement of the landlady was accepted by the trial Court but it was negatived by the Appellate Court and the same was confirmed by the High Court. The Appellate Court was swayed away by the fact that the landlady herself did not come into the witness-box

to support her claim. What is not appreciated by the Appellate Court is that her son Bhikchand who was also her G.P.A. holder and for whose benefit the business is to be set up, did come into the witness-box to support the case of personal requirement. The Appellate Court was of the view that the bonafide requirement is in the first place a state of mind and might be something more and that could be established only by the landlady. In all fairness to Mr. Mohta, we must note, that he conceded that that reasoning of the Appellate Court could not be supported."

A plain reading of this para shows that the Supreme Court made it clear that appellate Court has failed to appreciate that the son of plaintiff, who was also POA holder, entered the witness-box to support the case of personal requirement. The Apex Court set aside the judgment of appellate Court, which was affirmed by the High Court.

6. The bone of contention of Shri D.D.Bansal is based on *Janki Vashdeo Bhojwani* (supra). In the said case, the Apex Court opined as under :-

"18. The aforesaid judgment was quoted with the approval in the case of Ram Prasad vs. Hari Narain and others., AIR 1998 Raj. 185. It was held that the word "acts" used in Rule 2 of Order III of the Civil Procedure Code does not include the act of power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the Court, a commission for recording his evidence may be issued under the relevant provisions of the Civil Procedure Code."

This judgment was again considered by Supreme Court in *Man Kaur* (supra). After marshalling all the judgments on the said point, the Apex Court summarised the legal position in para 18. Para 18(c) reads as under:-

"18(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal

or transactions or dealings of the principal, of which principal alone has personal knowledge."

7. The judgment of *Janki Vashdeo Bhojwani* (supra) was considered by this Court in *Bashir* (supra). This Court opined that when POA holder is a member of family, he can depose on her behalf regarding the bona fide need. In my view also, the aspect of bona fide need is a thing which is known to most of the family members. Therefore, it cannot be said that deposition of POA holder on the point of bona fide need is beyond his personal knowledge. In other words, the son, who is POA holder in the present case, knows about the factual aspect of bona fide need. It is well within his personal knowledge and, hence, he can depose with regard to bona fide requirement.

8. The second question is whether the question of non-payment of rent can be said to be a question of personal knowledge of plaintiff only.

9. In my view, it depends on the facts and circumstances of the case. In a given case, it may happen that this factual aspect is also known to the POA holder being the son. For example, if mother is very old, illiterate or not very well educated or for other social reason not able to take care of everything, she can very well entrust the work of keeping the record of rent to her son. Putting it differently, there may be cases where the mother/ father may entrust the work of maintaining the account of rent to their son. Therefore, as a thumb rule, it cannot be said that it can be the only plaintiff who may have personal knowledge about the question of non-payment of rent. Thus, as per principle 18(c) laid down in *Man Kaur* (supra), I am unable to hold that principal alone may have personal knowledge in cases of non-payment of rent in eviction suit. This depends on the facts and circumstances of each case. If POA holder enters the witness- box, it is open to the defendant to ask relevant questions on the aspect of non-payment of rent, personal knowledge about non-payment of rent etc. POA holder's statement can very well be demolished during cross-examination.

10. As analyzed above, it cannot be held as a straitjacket formula that in no case POA holder can depose about non-payment of rent. Thus, in my view, the court below has taken a plausible view, which does not require any interference under supervisory jurisdiction of this Court under Article 227 of the Constitution.

11. Interference under Article 227 of the Constitution can be made if order is shown to be passed by a Court having no jurisdiction, it suffers from manifest procedural impropriety or perversity. Even an erroneous order is not required to be corrected in these proceedings under Article 227 of the Constitution. The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority. This view is taken in *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329.

No such ingredient is available in the present case, on which interference can be made. Petition sans substance and is hereby dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 2687

WRIT PETITION

Before Mr. Justice Rohit Arya

W.P. No. 6550/2011(S) (Gwalior) decided on 14 July, 2015

VIRENDRA SINGH ...Petitioner

Vs.

M.P. LAGHU UDHYOG NIGAM LTD. BHOPAL & ors. ...Respondents

Service Law - Regularisation **- Petition for regularization on the post of diploma holder Sub-Engineer as per recommendation of screening committee with consequential benefits - Petitioner initially appointed on 27.05.1985 on the post of Sub-Engineer - Petitioner's employment terminated twice on 1.4.1986 and 22.1.2008 - Both times petitioner reinstated in service with 50% back wages with continuity of service - Defence by Respondents - Petitioner's initial appointment was not made by the Managing Director therefore not entitled for regularization - Held - As the petitioner has worked for 27 years, so at this stage denial of claim of regularization on the ground that his initial appointment was not by the Managing Director is wholly unjustified, irrational and perverse - Respondents directed to regularize the service of the petitioner and to extend the service benefit accruing therefrom - Petition allowed. (Paras 7 to 9)**

सेवा विधि – नियमितीकरण – छानबीन समिति की अनुशंसाओं के अनुसार डिप्लोमा धारक उप अभियंता के पद पर सभी परिणामिक लाभों के साथ नियमितीकरण हेतु याचिका – याची आरंभ में उप अभियंता के पद पर दिनांक 27.05.1985 को नियुक्त किया गया – याची का नियोजन दो बार 01.04.1986 एवं 22.01.2008 को

समाप्त किया गया – सेवा निरंतर रखते हुए दोनों बार याची को, 50% पिछले वेतन के साथ सेवा में बहाल किया गया – प्रत्यर्थीगण का बचाव – याची की प्रारंभिक नियुक्ति प्रबंध निदेशक द्वारा नहीं की गई थी अतः नियमितीकरण हेतु हकदार नहीं – अभिनिर्धारित – चूंकि याची ने 27 वर्षों तक कार्य किया, अतः इस प्रक्रम पर नियमितीकरण का दावा अस्वीकार किये जाने का आधार कि उसकी आरंभिक नियुक्ति, प्रबंध निदेशक द्वारा नहीं की गई थी, पूर्णतः अनुचित, तर्कहीन एवं विकृत है – प्रत्यर्थीगण को याची की सेवा नियमित करने के लिए और उस पर प्रोद्भूत सेवा लाभ प्रदान करने के लिए निदेशित किया गया – याचिका मंजूर।

Case referred:

(1999) 4 SCC 727.

D.K. Katare, for the petitioner.
Brajesh Sharma, for the respondents No. 1 & 2.

ORDER

Rohit Arya, J. :- By this writ petition under Article 226 of the Constitution of India petitioner has approached this Court for the relief of the nature of direction to respondents to regularize the petitioner on the post of diploma holder Sub Engineer as per the recommendations of the screening committee dated 30/10/2009, Annexure P/1, with all consequential benefits.

2. Facts necessary for disposal of this writ petition are to the effect that petitioner; a diploma holder, was appointed as Sub Engineer on 27/5/1985. On 1/4/1986 his services were terminated. Petitioner raised an industrial dispute before the Labour Court No.1, Gwalior. The disputed (sic:dispute) was decided against the petitioner by the Labour Court. Being aggrieved thereby petitioner preferred writ petition No.2013/1998 in this Court. The same was allowed. The award of the Labour Court was quashed as bad in law. Termination of the petitioner was held to be void ab initio. Petitioner was held entitled for reinstatement alongwith back-wages. It appears that respondents preferred LPA No.108/2002. The same was dismissed on 4/10/2002. Further, respondents filed SLP which converted into civil appeal No.1899/2003 before the Hon'ble Supreme Court. The Hon'ble Supreme Court maintained the order passed by the learned Single Judge and Hon'ble Division Bench with the modification awarding 50% in place of 100% back-wages. Consequent upon the order passed by the Hon'ble Supreme Court, the petitioner was taken back in service and also paid 50% back-wages. It

appears that respondents were not happy with the mandate issued against them by the superior Courts. Petitioner was again retrenched from service on 22/1/2008. Under such circumstances, petitioner again approached this Court by filing writ petition No.1142/2008, which was finally heard and decided vide order dated 20/8/2009, Annexure P/5. The operative part of the order reads as under:-

> *"Looking to the aforesaid facts of the case, the petition of the petitioner is allowed. The impugned order Annexure-P/1 is hereby quashed. The respondents are directed to take the petitioner immediately in service. Looking to the facts of the case, the petitioner be entitled continuity of service. The respondents shall hold an inquiry that, who was responsible for non-compliance of the order passed by this Court on 12.3.2008 and thereafter decide the question of salary of the petitioner.*
>
> *With the aforesaid direction, this petition stands disposed of. No order as to cost."*

Petitioner filed writ petition No.2047/2005 for his regularization. This Court vide order dated 12/5/2006 disposed of the writ petition with direction to consider the representation of the petitioner for regularization. This order was not complied with. That led to filing of contempt petition No.493/2010. Respondents filed reply and stated before the Court that representation has been considered and rejected. This Court under such circumstances though refrained from commenting upon the merits of the order passed, however, gave liberty to the petitioner to agitate the matter before the appropriate forum for redressal of his grievance while disposing of contempt petition vide order dated 26/8/2011.

In the aforesaid factual background the instant writ petition has been filed for the relief of regularization in accordance with the recommendations made by the screening committee vide Annexure P/1.

3. Petitioner belongs to OBC category. Undisputedly the post of Sub Engineer is lying vacant in the category of OBC. The screening committee constituted by the respondents in purported compliance of the order passed by the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and others v. Umadevi and others,* appeal (civil) No.3595-3612/1999 while

scrutinizing the individual cases of employees working for last more than 10 years have made independent recommendations in respect of each employee. In the case of petitioner committee has considered the fact that since 1985 petitioner has been serving as diploma holder Sub Engineer. Termination of employment in 1986, was set aside and petitioner continued to be in service and also paid the back-wages as per the orders of the Hon'ble Supreme Court. That apart, the High Court while deciding the writ petition No. 1142/2008 has also held petitioner entitled for continuity in service. The Court has also taken serious exception to the conduct of the officer responsible for non-compliance of the order passed by the Writ Court on 12/3/2008 and directed respondents to hold an eqnuiry against such erring officer and thereafter decide the issue as regards salary of the petitioner. Petitioner as such has been held entitled for the post of diploma holder Sub Engineer alongwith continuity of service by force of judicial orders. Accordingly, the committee has recommended for regularization of services of the petitioner against the post lying vacant reserved for OBC. Petitioner further submitted that he is in service for last more than 27 years. His juniors have been regularized viz. Ravindra Kumar Verma, who is at serial No.2 and came in service as late as on 1/12/1992, as is evident from the information supplied to the petitioner under the Right to Information Acct (sic:Act) and filed with this petition as Annexure P/6. Other Sub Engineer junior to the petitioner, namely, Harish Vishwakarma appointed on 1/11/1990 by the same process of appointment as adopted in the case of petitioner has also been regularized vide order dated 12/11/2010, Annexure P/7. By way of additional document petitioner has brought on record an additional fact that one S.R. Dhakad appointed in the department in 1996 though overage at the time of initial appointment and junior to the petitioner, but has been regularized vide order dated 18/4/2013, Annexure P/13.

With the aforesaid submissions, petitioner contends that respondents have acted with typical hostility and depravity. Petitioner's fundamental rights enshrined under Article 14 and 16 of the Constitution of India have been violated. Learned counsel submits that there was no reason or justification not to implement the recommendations of the screening committee, which recommended petitioner's candidature for regularization in the backdrop of the fact of orders of this Court and Hon'ble Supreme Court by which petitioner's services have all along been held to be continuous in nature and as petitioner have rendered more than 27 years of service since 1985. The persons appointed

subsequent to petitioner have been extended the benefit of regularization. Further non-regularization of the service of petitioner is patently illegal and in fact tantamounts to defiance of the orders passed by this Court and Hon'ble Supreme Court (supra).

4. Learned counsel for the respondents submits that the State Government has issued a circular on 16/5/2007, Annexure P/1, in compliance of the judgment of Hon'ble Supreme Court in the case of *Umadevi* (supra) for the purpose of regularization of services of daily-wager employees and temporary employees and pursuant to the aforesaid directives of the State Government the screening committee has been constituted. True that the committee had recommended for regularization of the petitioner, however, as petitioner's initial appointment was not by the Managing Director; the competent authority, therefore, even if contention of the petitioner is accepted that he is working since 1985 and more than 27 years service he has rendered, his appointment cannot be regularized in terms of the State Government's directives, however, he was offered contract employment, but the same was declined by him.

With the aforesaid submissions, it is submitted that the writ petition be dismissed.

5. Petitioner has filed rejoinder, besides controverting stands taken by the respondents have also been brought on record that the petitioner has been subjected to selective discrimination in the matter of regularization of service, as though on the one hand petitioner, who served the respondents for 27 years, is declined regularization, but on the other hand persons, namely, Ravindra Kumar Verma and Harish Vishwakarma appointed later than the petitioner in the year 1991/1992 Assistant Engineer, though not by the Managing Director, have been regularized under OBC category. The petitioner also filed an application for production of record to substantiate the aforesaid submissions. No record was produced. Further, it is submitted that even respondents have been playing hide and seek in the matter of furnishing information as regards actual date of appointment of respondents no.3 and 4, as at different point of time different dates of appointment were mentioned, as well detailed in para 2 of the rejoinder.

6. There is no additional counter affidavit filed by respondents.

7. Heard.

Facts as on record and adumbrated in pleadings, it is evident that petitioner's

initial appointment was on 27/5/1985. Though respondents sought to terminate employment of the petitioner by taking resort to the method of retrenchment twice on 1/4/1986 and on 22/1/2008, retrenchment on 1/4/1986 could not withstand judicial scrutiny of the Labour Court, High Court and the Hon'ble Supreme Court. Resultantly, petitioner was taken back in service with 50% back-wages. Respondents appear to be not happy, therefore, again resorted to retrench the petitioner on 22/1/2008. The same was set at knought by this Court in its writ jurisdiction and while allowing the writ petition quashing the retrenchment order, ordered for reinstatement of petitioner with continuity of service. Besides, also directed an enquiry against the erring officials for non-compliance of the interim order passed by the Court on 12/3/2008 in the matter of salary payable to the petitioner. As such, petitioner has continued in employment since 1985; almost 30 years' period has passed by as on date, for the first time in reply to the instant writ petition while denying the relief of regularization the respondents have taken a stale plea that petitioner's initial appointment was not by the Managing Director, therefore, he is not entitled for regularization. It is in fact a camouflage to deny the legitimate claim of the petitioner for regularization. Facts and circumstances of the case in hand do suggest that petitioner definitely has a legitimate expectation for claiming the right of regularization and denial by the respondents in fact and in effect is in conflict with the Wednesbury principles of reasonableness in administrative action.

Fairness both procedural and substantive are two well accepted dimensions of principles of legitimate expectations, which is at the root of rule of law. It requires regulatory, predictability and certainty in the Government's dealing with the public. The Hon'ble Supreme Court while laying down the law in the context of aforesaid principles of administrative law in the case of *Punjab Communications Ltd. vs. Union of India and others*, (1999) 4 SCC 727 has ruled that the doctrine of legitimate expectation in the substantive sense as accepted in our legal systems- "to compel the decision maker to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way".

8. Factual matrix of the case in hand, in the opinion of this Court, if tested on the aforesaid principle of law, petitioner unequivocally can be said to have valid legitimate expectation to claim regularization. After having worked for 27 years petitioner has dedicated prime period of his life in the service of respondents and at this stage denial of claim of regularization on the ground

that his initial appointment was not by the Managing Director is wholly unjustified, irrational and perverse. It is in gross violation of substantive legitimate expectation of the petitioner. Further, such camouflage plea for denial of regularization not supported by any documentary evidence and denial by the petitioner in rejoinder, even otherwise is in conflict with the Wednesbury principles of reasonableness in administrative action. The said action is unsustainable in law. Respondents are estopped to take such a plea after 27 years of service of the petitioner.

Besides, petitioner's plea of selective discrimination against persons named in the rejoinder, namely, Ravindra Kumar Verma and Harish Vishwakarma in the matter of regularization in absence of any material contrary thereto on record by way of additional counter affidavit, deserves cognizance by this Court. Therefore, this Court holds that petitioner has also been subjected to typical hostility and depravity violating his right enshrined under Article 14 and 16 of the Constitution of India.

9. That apart, petitioner is in employment with continuity of service as ordered by this Court and Hon'ble Supreme Court by judicial pronouncements, therefore, by no stretch of imagination, the petitioner can, at this stage, be said to be in service by virtue of an illegal appointment to deny petitioner's claim for regularization.

Accordingly, the writ petition is allowed. Respondents are directed to regularize the services of the petitioner and extend him the service benefits accruing therefrom by virtue of his length of service.

Petition allowed.

I.L.R. [2016] M.P., 2693
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 257/2015 (Jabalpur) decided on 21 July, 2015

VIDYA BAI PATEL (SMT.) ...Petitioner
Vs.
STATE OF M.P. ...Respondent

***Constitution - Article 226 - Service Law - Compassionate Appointment* - Petitioner's claim for compassionate appointment has been turned down by D.E.O. on the ground that she has not completed**

Higher Secondary Examination - After obtaining requisite qualification she again applied which was also turned down in view of circular dt. 13.01.2011 holding the same to be made after expiry of 7 years and barred by 2 months - Held - Though the appointment on compassionate ground being not a right but a privilege to help the family of the deceased government servant to meet financial crises - Non-consideration of appointment on the ground of not having requisite educational qualification and on the ground of delay - State functionaries are not justified in their action - Secretary is directed to take a decision in the matter within 3 months. (Para 89)

संविधान – अनुच्छेद 226 – सेवा विधि – अनुकंपा नियुक्ति – अनुकम्पा नियुक्ति हेतु याची के दावे को जिला शिक्षा अधिकारी द्वारा इस आधार पर अस्वीकार किया गया कि उसने उच्चतर माध्यमिक परीक्षा पूर्ण नहीं की है – अपेक्षित अर्हता प्राप्त करने के पश्चात् उसने पुनः आवेदन किया, उसे भी, परिपत्र दिनांक 13.01.2011 को दृष्टिगत रखते हुए, आवेदन को 7 वर्ष की समाप्ति के पश्चात् किये जाने की धारणा करते हुए और 2 माह द्वारा वर्जित मानते हुए अस्वीकार किया गया – अभिनिर्धारित – यद्यपि अनुकम्पा आधार पर नियुक्ति अधिकार नहीं बल्कि मृतक शासकीय सेवक के परिवार को वित्तीय संकट का सामना करने के लिए सहायता प्रदान करने हेतु एक विशेषाधिकार है – अपेक्षित शैक्षणिक अर्हता नहीं होने एवं विलंब का आधार लेकर नियुक्ति पर विचार नहीं किया जाना – राज्य के पदाधिकारियों द्वारा की गई कार्यवाही न्यायोचित नहीं – सचिव को 3 माह के भीतर मामले में निर्णय लेने के लिए निदेशित किया गया।

Manhar Dixit, for the petitioner.
Deepak Awasthy, G.A. for the State and its functionaries.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Arguments heard.

1. Being aggrieved of her non-appointment on compassionate ground, petitioner has filed this petition under Article 226 of the Constitution of India.

2. Petitioner's husband employed as Shiksha Karmi Grade III in School Education Department died in harness on 13.10.2005. Petitioner sought appointment on compassionate ground in lieu thereof.

3. Vide order-dated 18.1.2007, District Education Officer, Katni turned

down the application on the ground of ineligibility while referring Circular No.F-2-11/2005/P-2 dated 28.12.2005 stipulating that in lieu of death of Shiksha Karmi, there is provision for appointment of one member of his family on the post of Samvida Shala Shikshak Grade III provided he/she has completed Higher Secondary Examination.

4. After obtaining requisite qualifications, petitioner on 7.12.2012 again applied for appointment on compassionate ground. However, by order-dated 24.1.2013, her claim has been negatived. The said order further states that in view of Circular No.C-3/17/1/3/2010 dated 13.1.2011, cases for appointment on compassionate ground after expiry of seven years of Government Servant cannot be considered.

5. Being dissatisfied, petitioner approached the Collector who after appreciating the documents and contentions, wrote a letter-dated 4.6.2013 addressed to Secretary, General Administration Department requesting him to consider the petitioner's application for appointment on compassionate ground sympathetically as the same is barred by two months.

6. Though learned Government Advocate supports the orders-dated 18.1.2007 and 24.1.2013 stating that appointment on compassionate ground being not a right but a privilege to help the family of deceased government servant to meet financial crises in the event of sudden death, the petitioner cannot as a matter of right claim for appointment on compassionate ground on the choice post. However, there is no reply to the communication entered into with Secretary, General Administration Department on 4.6.2013.

7. Since appointment on compassionate ground was declined as the petitioner was not qualified, it was with the hope that the petitioner will get employment, she had undertaken the studies and acquired minimum eligibility qualification required for appointment on compassionate ground. Having acquired the qualification, petitioner approached the respondent-Authority and it was incumbent upon the Authority concerned to consider the case of the petitioner in right perspective, which is reflected from the communication dated 4.6.2013. However, the Authorities, as is apparent from the respective pleadings, did not pay heed to the said communication, which has forced the petitioner to approach this Court.

8. Though not oblivious of the fact that appointment on compassionate ground is not a right but a privilege and a mode to salvage the family of an

employee who die in harness from instant financial penury but, in given facts of the present case, non-consideration of appointment on the ground of petitioner not having requisite educational qualification and thereafter, acquired the same, denial thereof on the ground of delay, the State functionaries are not justified in their action.

9. Be that as it may. Since the matter is pending consideration before the Secretary, General Administration Department vide communication dated 4.6.2013, petition is disposed of with a direction to the Secretary to take decision on the said communication in the light of observations hereinabove. Let a decision be taken within a period of three months from the date of communication of this order.

10. Petition stands disposed of finally in above terms. No costs.

Petition disposed of.

I.L.R. [2016] M.P., 2696
WRIT PETITION
Before Mr. Justice J.K. Maheshwari
W.P. No. 5022/2015 (Jabalpur) decided on 28 October, 2015

PARASRAM PAL & anr. ...Petitioners
Vs.
UNION OF INDIA & ors. ...Respondents

*A. **Land Acquisition Act (1 of 1894), Section 11 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2015*** - **Second proviso to Section 24(2) added - Award passed on 30.11.2004 - Till date neither actual physical possession of the land taken by the State nor compensation amount has been paid to the land owner nor deposited in the Court - Held - As the award has been passed more than five years prior to the date of commencement of the Act of 2013 (i.e. on 1.1.2014), and both the contingencies specified under Section 24(2) of the Act of 2013, have not been satisfied, namely (1) The actual physical possession of the land has not been taken or (2) the compensation amount has not been paid, so the acquisition proceedings are lapsed so far as it relates to the petitioners -**

Writ Petition allowed - Liberty granted to State to initiate fresh acquisition proceedings under the Act of 2013. (Paras 33 to 39)

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 11 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – भूमि अर्जन, पुनर्वासन एवं पुनर्व्यवस्थापन में उचित प्रतिकर एवं पारदर्शिता का अधिकार (संशोधन) अध्यादेश, 2015 – धारा 24(2) का द्वितीय परन्तुक जोड़ा गया – अवार्ड दिनांक 30.11.2004 को पारित – आज दिनांक तक न तो शासन द्वारा भूमि का वास्तविक भौतिक कब्जा प्राप्त किया गया एवं न ही भूमिस्वामी को प्रतिकर की राशि का भुगतान किया गया तथा न ही कोई राशि न्यायालय में जमा की गई – अभिनिर्धारित – चूंकि अधिनियम 2013 के प्रारंभ होने की दिनांक (अर्थात् 1.1.2014) के पांच वर्ष से भी पहले अवार्ड पारित किया गया था, तथा उक्त अधिनियम 2013 की धारा 24(2) में विनिर्दिष्ट दोनों ही आकस्मिकताओं की पूर्ति नहीं की गई अर्थात् (1) भूमि का वास्तविक भौतिक कब्जा नहीं लिया गया एवं (2) प्रतिकर राशि का भुगतान नहीं किया गया, अतः याचीगण की भूमि से संबंधित अर्जन कार्यवाहियाँ व्यपगत हो जातीं हैं – रिट याचिका मंजूर – शासन को अधिनियम 2013 के अंतर्गत नवीन अर्जन कार्यवाहियाँ प्रारंभ करने की स्वतंत्रता दी गई।

***B. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) and Land Acquisition Act (1 of 1894), Sections 31, 32, 33 & 34 - Paid - Meaning* - Held - For the purpose of Section 24(2) of the Act of 2013, the word 'Paid' occurring therein would mean that the compensation amount has been paid to the Land owners or deposited in the Court. (Paras 16 & 17)**

ख. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) एवं भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 31, 32, 33 व 34 – संदत्त – अर्थ – अभिनिर्धारित – अधिनियम 2013 की धारा 24(2) के प्रयोजन हेतु उसमें उल्लिखित शब्द 'संदत्त' का आशय उस प्रतिकर की राशि से होगा जो भूमिस्वामी को अदा की गई है अथवा न्यायालय में जमा की गई है।

***C. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24 (2) - Possession - Meaning* - Held - For the purport of Section 24(2) of the Act of 2013, the word 'Possession' would mean the Actual Physical Possession. (Paras 31 to 35)**

ग. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – कब्जा – अर्थ – अभिनिर्धारित – अधिनियम 2013 की धारा 24(2) के तात्पर्य हेतु शब्द कब्जा का अर्थ वास्तविक भौतिक कब्जा होगा।

D. Interpretation of Statutes - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) **- In the context of the provisions of Section 24(2) of the Act of 2013, the word 'Paid' and 'deposited' cannot be synonym to "offered" or "tendered".(Para 21)**

घ. कानूनों का निर्वचन – भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – अधिनियम 2013 की धारा 24(2) में वर्णित उपबंधों के परिप्रेक्ष्य में 'संदत्त' एवं 'जमा' शब्द "प्रस्थापित" अथवा "निविदत्त" शब्दों के समानार्थी नहीं हो सकते।

Cases referred:

(2014) 3 SCC 183, 53 ITR 83, AIR 1964 SC 1866, AIR 1970 SC 281, AIR 1956 Mad 283 AT 284 (FB), (2014) 6 SCC 586, 2015(1) MPHT 288, (2014) 6 SCC 564, (2015) 3 SCC 353, (2015) 4 SCC 347, (2015) 4 SCC 325, (2009) 10 SCC 501, (2015) 3 SCC 206, 2015(1) Scale 590, 2015 (3) Scale 200, 2015 8 SCC 544, 2015 (9) Scale 1, 2015 MPLJ 523 (SC), (2012) 1 SCC 792.

Rajendra Mishra, for the petitioners.

K.N. Pethia, for the respondent No. 1/Union of India through Archaeological Survey of India.

Sanjay Dwivedi, Deputy A.G. for the respondent Nos. 2 & 3/State.

ORDER

J.K. MAHESHWARI, J. :- Invoking the jurisdiction under Article 226 of the Constitution of India and seeking the following reliefs, the petitioners have filed this petition:-

> "1.Call for the record relating to the subject matter of the petition.
>
> 2.This Hon'ble Court may further be pleased to quash the impugned acquisition proceedings as they stand lapsed.

3.Any other writ, direction, order which this Hon'ble Court may deem fit and proper may also be granted with cost of the petition.

2. The facts leading to file the present petition are that the petitioners are citizen of India and joint owners of the agricultural land pertaining to Khasra No.497/1 area ad-measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur. The said land was being used for the agricultural purpose as well as for their dwelling use having their residence thereon. The land surrounding to the temple situated in Khajuraho was required to be acquisitioned to which a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter be called as old Land Acquisition Act) was issued as per Annexure P/2. Thereafter, the final notification under Section 6 of the Act was issued in the Gazette Published on 26.9.2003 wherein the land belonging to the petitioners pertaining to Khasra No.497/1 ad-measuring area 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur has been acquisitioned alongwith the land of other holders. A notice under Section 9 of the old Land Acquisition Act was issued for ascertainment of the boundaries, and thereafter the compensation was determined by the Land Acquisition Officer (in short "LAO") vide award Annexure P/6 passed on 30.11.2004. The amount of the said award was not paid yet to the petitioners, however, as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter shall be referred to as 'the Act of 2013'). The proceedings shall be deemed to have lapsed. It is also the contention of the counsel that the possession on the land in question has not been taken by following the procedure established by law and the petitioners are in Actual Physical Possession, therefore also, under the said provisions, the proceedings shall be deemed to have lapsed.

3. It is stated in the petition that the petitioners filed the Writ Petition No. 6909/2008 claiming the writ in the nature of certiorari, mandamus, prohibitory to quash whole of the proceedings of the acquisition of the land of the petitioners pertaining to Khasra No.497/1 ad-measuring area 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur and in alternative also prayed that the Hon'ble Court may please to direct the respondent Nos.3 and 4 to refer the matter to the District

Magistrate for determination of compensation. On filing the said writ petition vide order dated 17.2.2009, this Court without commenting on the merits of the case directed to Collector that the application submitted by the petitioners has not been adverted to, however, let it be decided in accordance with law within the time frame. Thereafter, the order was passed by the Collector on 19.6.2009 Annexure P/14 dealing the issue of refusing to make reference to the Court. Assailing the said order, Writ Petition No.2721/2014 was filed, however, during course of argument, it was submitted that now the Act of 2013 has come into force, and the compensation has not yet paid to the petitioners and the actual physical possession has also not taken by the authorities, however, the said writ petition may be disposed of with liberty to take such plea by filing fresh petition. On 5.2.2015, this Court without commenting on merit disposed of the petition and directed to take recourse afresh , on taking plea under the Act of 2013 as permissible in law. Thereafter, the present petition has been filed asking the benefit of statutory provisions contemplated under Section 24(2) of the Act of 2013 and to seek relief as specified hereinabove.

4. The respondent No.1/Archaeological Survey of India has filed their return interalia contending that after issuance of the final notification under Section 6 of old Land Acquisition Act, the LAO determined the compensation of all the private lands and passed the award as per Annexure R/1/3 on 30.11.2004. In pursuance to the award, the answering respondents have deposited the amount with LAO. The LAO vide letter dated 4.10.2005 sent information to the petitioners and other family members in whose name the acquired land was recorded, for receiving the compensation from the office of Sub Divisional Officer. It is said, the petitioners with the help of the local political persons made a futile attempt to take the land back by using the political pressure on the revenue authorities and in this regard various letters were written. It is further said that the petitioners slept in a deep slumber for a long time and thereafter filed a writ petition making the false averments stating that the application filed under Section 18 of the old Land Acquisition Act seeking reference has not been decided. However, this Court had passed an order in Writ Petition No.6909/2008 as per Annexure R/1/7 to take appropriate steps. As per the directions issued by this Court, the Collector by passing an order on 19.6.2009 rejected the claim of the petitioners. Thereafter, the petitioners have filed a second Writ Petition No.2721/2014, which was also dismissed by this Court granting liberty to file a fresh writ petition in the

light of provisions as contained under the Act of 2013. Challenging the order of Single Bench, he has also filed a Writ Appeal No.111/2015, which was also dismissed, however, the plea as taken and the relief sought cannot be granted in this petition. It is further said that after acquisition possession had taken and answering respondents started the work for conservation, preservation and excavation of monument. But the petitioners forcibly entered in the land acquired, to which a complaint was made to the Tahsildar. The Tahsildar preparing a Panchnama, again delivered the possession vide Annexures R/1/9 and R/1/10. As the petitioners have encroached the land, however, request was made vide Annexure P/12 to remove their re-encroachment. It is contended that the land was required for the purpose of conservation, preservation and excavation of the monument situated in Khajuraho, therefore, the said acquisition proceedings cannot be ordered to be lapsed. In nutshell, it is urged that the compensation has been deposited by the Archaeological Survey of India with the LAO and the possession has also been taken from the petitioners, therefore, the provision as contained in Section 24 (2) of the Act of 2013 is having no application.

5. The respondent Nos.2 and 3 by filing their reply have interalia contended that the notice was sent to the petitioners under Section 12(2) of the old Land Acquisition Act as per Annexure R/1 and the possession had taken on 7.10.2005 from the petitioners. It is further stated that the petitioners were intimated to collect the compensation from the office of Sub Divisional Officer Rajnagar, District Chhatarpur by issuing a notice Annexure R/1/5 dated 4.10.2005 keeping the treasury cheque ready. But they have not appeared before S.D.O. to receive the compensation, though other land owners, whose lands were acquired, have received the compensation, as determined by LAO. As the vacant possession of the land is with the Archaeological Survey of India and despite the intimation, petitioners have not received the compensation, therefore, the provisions of Section 24(2) of the Act of 2013 shall not attract in the facts referred above, however, this petition may be dismissed.

6. By filling (sic:filing) the application (I.A.No.7308/2015) for taking additional facts and the documents on record, the electricity bills of the petitioners' dwelling houses and the agricultural land have been brought on record, however, specifically contended by petitioners that they are in possession of the land, and residing in their dwelling houses. The respondent No.1 has filed their synopsis/written arguments by I.A.No.11734/2015, as

well as the additional arguments reiterating the plea taken in their return. However, in view of the aforesaid, looking to the fact that the possession has already taken from the petitioners by the respondent Nos.1 to 3, therefore, the relief as prayed in this writ petition cannot be directed.

7. After having heard learned counsel for the parties upto a length, it is seen that the Act of 2013 is made applicable with effect from 1.1.2014. However, looking to the facts of this case and also the provisions of the Act, the question cropped up for determination is as to (1) whether in the facts of the present case by following due process of law actual physical possession of the land in question has been taken by the respondent Nos.1 to 3 or the compensation has been paid in view of the provisions as contained in Section 24(2) of the Act of 2013? and (2) whether in the facts of the present case and by virtue of the provisions of Section 24 (2) of the Act of 2013, the land acquisition proceedings would be deemed to be lapsed?

8. In view of the arguments as advanced by learned counsel for the parties and to advert the same, first of all the language of Section 24 of the Act of 2013 is relevant, however, reproduced 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 (1 of 1894)
>
> (a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provision of this Act relating to the determination of compensation shall apply; or
>
> (b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
>
> (2) Notwithstanding anything contained in sub-section (1) in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1of 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 provision 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.

9. His Excellency the President of India in Sixty-sixth Year of the Republic introduced the Ordinance No.4 of 2015 "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE 2015" which is published in the gazette extraordinary Part-II Section dated 3.4.2015, whereby the second proviso to Section 24(2) of the Act of 2013 has been aided, which is reproduced as under:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded."

10. It is relevant to note that the said ordinance was passed by the Lok Sabha on 10.3.2015 and thereafter it was published in the gazette subject to approval by the Rajya Sabha and as per the official website of the Parliament, the pre-legislative research indicates that the Joint Parliamentary Committee granted time upto the last day of first week of winter session of 2015 for approval by the Rajya Sabha. It is not in dispute that the winter session is expected from 20th November 2016. In reference to Article 123(2)(a) and (3), it is argued that the said ordinance has cease to operate because it has not been approved by both the Houses within a period of six weeks from

reassembly of the Parliament met first time in Monsoon Session from July 21st to August 13th 2015. As the promulgation of second proviso to sub-section (2) of Section 24 of the Act of 2013 has not been approved by both the Houses within the time so specified, therefore, it ceases its effect and become void. In this context, from the Court's point of view, the competence and the power of the Joint Parliamentary Committee to grant time upto the last day of first week of winter session of 2015 has not been brought to the notice, and the winter session has to commence from 20th November 2015, therefore, presuming that the said ordinance has now converted into the Bill, came into force, however, proceeded to see the effect of the second proviso and how far it effects the basic provisions of the Act.

11. Bare reading of Section 24 of the Act of 2013, it is clear either sub-section (1) or (2), it starts with *non obstante* clause. As per sub-section (1)(a), it is clear that if no award under Section 11 of the old Land Acquisition Act has been made then all the provisions of this Act relating to the determination of compensation would apply. As per clause (1) (b), it is clear that in case the award has been made then such proceedings shall continue under the provisions of the old Land Acquisition Act as if the said Act has not been repealed. Sub-section (2) of Section 24 applies in a case where the land acquisition proceedings were initiated under the old Land Acquisition Act, and the award was made five year prior or more to the date of commencement of the Act of 2013, and in case (i) the physical possession of the land has not been taken or (ii) the compensation has not been paid then the proceedings taken under the old Land Acquisition Act shall be deemed to have lapsed and the appropriate Government may be at liberty to take proceedings of land acquisition afresh in accordance with the provisions of the Act of 2013. Meaning thereby if the award is passed prior to five years or more to the date of commencement of this Act i.e. 1.1.2014 and either the physical possession has not been taken or the compensation has not been paid then the proceedings under the old Act would lapse, and the Government would be at liberty to take action afresh in accordance with the provisions of the new Act.

12. The first proviso of the said sub-section (2) makes it clear that after passing the award if compensation in respect of the majority land holders has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the notification in the old Land Acquisition Act shall be entitled to compensation in accordance with the provisions of this Act. The second proviso as promulgated by the ordinance clarifies regarding computation of the period

of five years and in what manner the effect of non-implementation of the award be recognized. However, as per the language engrafted therein, it appears that the period referred in sub-section (2) of Section 24 of the Act of 2013 means any period or periods during which the persons for acquisition of the land were held up on account of any stay or injunction issued by any Court or the period specified in the award of a Tribunal for taking possession or such period where the possession has taken but the compensation lying deposited in a Court or in a designated account maintained for this purpose shall be excluded. However, the said proviso clarifies three situations and excludes the period during stay or injunction of the Court, or any period specified in the award for taking possession, or where possession taken and compensation lying deposited in the Court or in any designated account for calculating the period of five years. In the said eventualities, the provisions of sub-section (2) of Section 24 of the Act of 2013 would not apply. As observed above, this Court has decided to deal the second proviso on merit, accepting as Section 24(2) is having two proviso, however, presuming it is in existence, its effect has been dealt with in the facts of this case.

13. It is further observed that applicability of the provisions of the old Land Acquisition Act for the purpose of Section 24 of the Act of 2013 has not been disputed looking to the language as specified under Sections 24(1)(a)(b) and 24(2) of the Act of 2013. More so it cannot be objected looking to language of Section 114 repeal and saving by which the old Land Acquisition Act has repealed but by saving clause in sub-clause (2) it is clarified that the said repeal shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the Act and Repeals. Clause 6(b) of the General Clauses Act makes it clear that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or settled thereunder. However, in the context of the contingencies specified under Section 24 of the Act of 2013 for the purpose of the procedure to take possession, for deposit of compensation, the old Land Acquisition Act would apply.

14. In the context of the basic provisions of law as discussed, the interpretation made in this regard by the various pronouncements of the Hon'ble Apex Court or by this Court are required to be referred. In the above context, the basic judgment of the Supreme Court is in the case of *Pune Municipal Corporation and another Versus Harakchand Mishrimal Solanki and others* reported in (2014) 3 SCC 183. In the said case as per

Paragraph 6, it was argued on behalf of the land owners that by virtue of Section 24(2) of the Act of 2013, the subject "acquisition" shall be deemed to have lapsed because the award under Section 11 of the old Land Acquisition Act, 1894 is made more than five years prior to the commencement of the Act of 2013 and no compensation has been paid to the land owners, and the amount has not been deposited in the Court by Sub Divisional Officer. In the said context, the Apex Court has referred the provisions of the old Act as well as the new Act, and also interpreted the provisions of Section 24 of the Act of 2013. The relevant paragraphs of the said judgment are reproduced as thus:-

> "10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24 (1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.
>
> 11.Section 24(2) also beings with *non obstante* clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and

compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section notification become entitled to compensation under the 2013 Act.

12. To find out the meaning of the expression, compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads as follows:

> "31.***Payment of compensation or deposit of same in court.***-(1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.
>
> (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under section 18 would be submitted."

13. There is amendment in Maharashtra Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation" the words "and costs if any" have been inserted.

14. Section 31 (1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31 (2) are: *(i)* the persons interested entitled to compensation do not consent to

receive it, *(ii)* there is no person competent to alienate the land, and *(iii)* there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the Court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court which reference can be made under section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Section 32,33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to offered" or "tendered". But at the same time, we do not think that by use of the word paid, Parliament intended receipt of compensation by the landowners/persons interested. In our

view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section [sub-section (2) of Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of nay of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner os provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs 27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is

equivalent to the amount of compensation paid to the landowners/persons interested We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, relying upon the earlier decision in *Prem Nath Kapur,* has held that the deposit of the amount of the compensation in the sates revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act, It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the Subject land acquisition proceedings shall be deemed to have lapsed under section 24(2) of the 2013 Act. (Emphasis Supplied)

15. In the judgment of *Pune Municipal Corporation* (supra), the Apex Court has clearly held that the word "paid" cannot be equated with the word "offered' or "tendered". It is also held that for the purpose of Section 24(2) of the Act of 2013, its literal meaning cannot be accepted. In the context of the provisions of Sections 31,32,33 of the old Land Acquisition Act, in any case it would not be out of context, to understand the literal meaning of the words, "Paid" "Deposit" "Offer" "Tender" and the said meaning can be made applicable for the purpose of Section 31 of the old Act.

16. The word "Paid" As per Corpus Juris Secundum Volume LXVII, "paid" defined is to liquidate a liability in cash, given or handed over to discharge an obligation; satisfied by payment, redemption, or sale' settled; discharged; applied given, loaned, or advanced. Prima facie the word "paid" indicates that the obligation has been satisfied, and the demand extinguished. The word "paid" is also defined as meaning receiving pay; compensated;hired. "Paid" has been held to be synonymous with, or equivalent to, "applied". It has been said that there is no substantial difference in meaning of the words "paid" and

"satisfied".

As per Law Lexicon Second Edition, 2006 of P.Ramanatha Aiyar's, the word "paid" has been specified. If debt is "paid" when the contract is performed pursuant to the stipulation made; but if on an agreement something collateral is received in satisfaction although demand is extinguished, the debt, technical speaking is not "paid".

As per Judicial Dictionary Second Edition by Orient Publishing Company, the Supreme Court observed in *J.Dalmia v Commissioner of Income Tax, Delhi* 53 ITR 83 AIR 1964 SC 1866; that the expression "paid" in Section 16(2) of Income Tax Act, 1922 does not contemplate actual receipt of the dividend by the members in general,dividend may be said to be paid within the meaning of Section 16(2) when the Company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. *[Benaras State Bank Ltd v Commissioner of Income Tax UP,* AIR 1970 SC 281]. Meaning thereby in discharge of an obligation, the payment is to be made if it is satisfied or settled then the meaning and purpose of the word "paid" would complete. However, for the purpose of Section 24(2) of the Act of 2013, if the amount of compensation is deposited in the Court,it would be treated as paid.

17. As per the first proviso to sub-section (2) of Section 24 of the Act of 2013, any payment of compensation explaining the majority of land holders has been clarified, however, in the first proviso, it was made clear that the compensation ought to be deposited in the account of beneficiaries or in Court. However, the action towards "paid" would be complete when the compensation awarded has been deposited in the account of beneficiaries or in the Court. Now in the said context, the meaning of the word "deposit" is to be seen.

18. The word "Deposit" As per Corpus Juris Secundum Volume Twenty-Six A, a deposit has been described as a mere incident of custody, and, in its ordinary signification, implies something more than mere possession. In a particular connection and context, it has been said that the word means more than a delivery for mere inspection; it means the delivery of a book or paper to one entitled to have the official custody thereof, either to be kept or to be redelivered, after it has served its purpose, to one having a right to receive it.

As per the Major Law Lexicon 4th Edition 2010 of P.Ramanatha

Aiyar's, the word "DEPOSIT" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form.

As per Judicial Dictionary Second Edition of Orient Publishing Company, the word "deposit" means the money belonging to one can be said to be in "deposit" only with another person or authority. It can never be a "deposit" in the hands of the very person to whom the money belongs. *[Joseph v. Official Assignee*, AIR 1956 Mad 283 at 284 (FB)]. Meaning whereby the amount of compensation if deposited in the hands of the person to whom it belongs. It would not come within the purview of deposit in the account of beneficiary.

However, in sub-section (2) of Section 24 of the Act of 2013 for the purpose of payment of compensation, its meaning has rightly understood "depositing" in the account of "beneficiaries".

19. The word "Offer" Corpus Juris Secundum whereby it is defined as to attempt; to attempt to do; to bring to or before; to exhibit; to hold out; to make a proposal to.

As per the Major Lax Lexicon 4th Edition 2010 of P.Ramanatha Aiyar's, the word "offer" means an offer or, as it is sometimes called, a proposal means the signification by one person to another of his willingness to enter into a contract with him on certain terms. It may be express or may be impied (sic:implied) from the conduct of the party. A mere statement of a person's intention or declaration of his willingness to enter into negotiation is not an offer, and cannot be accepted so as to form a binding contract. HALSBURY, 3rd Edn, Vol.8 P.69. "An offer is, in effect, a promise by the offeror to do or abstain from doing something, provided that the offeree will accept the offer (and pay or promise to pay the 'price' of the offer. The price, of course, need not be a monetary one. In fact, in bilateral contracts, the mere promise of payment of the price suffices to conclude the contract, while in a unilateral contract, it is the actual payment of the price which is required." P.S.Atyah, An Introduction to the Law of Contract 44 (3d ed.1981).

20. The word "Tender" As per the Major Law Lexicon 4 th Edition 2010 of P.Ramanatha Aiyar's, the word "tender" is defined to be the offer of money in satisfaction of a debt, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it. Offer; proposal for acceptance; offer to pay a specified sum or do certain acts; the offering of

money or any other thing in satisfaction; or circumspectly to endeavour the performance of a thing as a tender of rent is to offer it at the time and place when and where it ought to be paid. (Termes de la Ley; Tomlin).

As per Black's Law Dictionary Sixth Edition of Henry Campbell Black, the word "tender" means an offer of money. The act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition. As used in determining whether one party may place the other in breach of contract for failure to perform, means a readiness and willingness to perform in case of concurrent performance by other party, with present ability to do so, and notice to other party of such readiness.

21. In view of the aforesaid, in the context of the provisions of Section 24(2) of the Act of 2013, the word "paid" and "deposited" cannot be synonym to "offered" or "tendered" the amount of compensation to the beneficiaries. Thus, it is clear that in case the award was passed under Section 11 of the old Land Acquisition Act prior to five years or more from the date of commencement of the new Act and if compensation is not paid "depositing" it in the account of the beneficiaries, or in Court, it would not come within the purview of the compensation paid, to follow the procedure under Sections 31,32,33,34 of the old Land Acquisition Act.

22. In the case of *Bharat Kumar Versus State of Haryana and another* reported in (2014) 6 SCC 586, the Apex Court has reiterated the same principle holding that if physical possession of the land had not been taken though award was passed or if the compensation had not been paid, the proceeding initiated under the old Land Acquisition Act would be deemed to have been lapsed. However, such case would fall within the purview of Section 24(2) of the Act of 2013, and with the said observation, the order passed by the High Court refusing to grant the relief was set aside.

23. In the case of *Bimla Devi Versus State of Haryana* reported in 2015 (1) MPHT 288, the Apex Court has relied upon the judgment of *Pune Municipal Corporation* (supra) and explaining the meaning of the word "paid", the Apex Court in Paragraph 17 has observed as under:-

> "17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is

clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the land owners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this Sub-section (Sub-section (2) of Section 24). If a literal construction was to be given, then it would amount to ignoring procedure mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view therefore, that for the purposes of Section 24(2) the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33."

24. Thereafter, the Apex Court in a batch of Civil Appeals *Union of India and others Versus Shiv Raj and others* reported in (2014) 6 SCC 564 considering the provisions of Section 24(2) of the Act of 2013, and looking to the proceedings initiated under the old Land Acquisition Act, referring the circular of the Government of India, Ministry of Urban Development, Delhi Division dated 14.3.2014, interpreted that how the period of five year limitation may be made applicable in taking possession and in payment of compensation. However, the Court decided the applicability of the said circular in terms of the judgment of *Pune Municipal Corporation* (supra), and restated the same principles.

25. In the case of *Sree Balaji Nagar Residential Association Versus State of Tamil Nadu and others* reported in (2015) 3 SCC 353, the Apex

Court dealing with the object and intent of legislature while enacting a particular provision held that the words used in that provision should be applied as assigned from the plain and clear wording used in the provision concerned. It has further been held that if the possession has not been taken over or the compensation has not been paid though award was passed prior to five years or more to the commencement of the Act, the proceedings be deemed to be lapsed. In the said case, the Apex Court again reiterating the principle enumerated in the cases of *Pune Municipal Corporation, Bimla Devi, Shiv Raj* (supra) set aside the judgment of Panjab and Haryana High Court, and held that the acquisition proceedings are deemed to have been lapsed by not taking the physical possession following the mandatory procedure as required under the old Land Acquisition Act.

26. In the case of *Ram Kishan and others Versus State of Haryana and others* reported in (2015) 4 SCC 347, the Apex Court has reiterated the same principle holding that the proceedings in violation of the provision contemplated under Section 24(2) of the Act of 2013 shall be deemed to be lapsed. In the case of *Velaxan Kumar Versus Union of India and others* reported in (2015) 4 SCC 325, the Apex Court has observed that what would be the manner to take over the possession of the land acquired. After analyzing the facts, the Apex Court observed that if the contention of taking over of the possession raised by the respondents is accepted even then the procedure enshrined to take over the possession has not been followed by the Acquisition Authority by way of preparing a proper Panchnama in presence of the independent witnesses and the land holders, however, the said procedure is contrary to the principle of law laid down in the case of *Sita Ram Bhandar Society Versus Govt (NCT of Delhi)* reported in (2009) 10 SCC 501. In the said situation, the Apex Court held that the land acquisition proceedings shall be deemed to have lapsed.

27. In the case of *Karnail Kaur and others Versus State of Punjab and others* reported in (2015) 3 SCC 206, the Apex Court has dealt with the second proviso inserted vide amended Ordinance of 2014 and held that it is prospective in operation and the benefit provided under the proviso can not be availed to the Government in the facts of the said case. In the case of *R.Radhakrishnan and others Versus Secretary to Government of Tamil Nadu and others* reported in 2015 (1) Scale 590, the Apex Court has reiterated the same principle considering the effect of the amendment in the Act of 2013.

28. In the case of *Arvind Bansal and others Versus State of Haryana and others* reported in 2015 (3) Scale 200, the Apex Court has narrow down the effect of the second proviso brought by way of the Bill passed by the Parliament waiting assent from Rajya Sabha in the context, considering the various judgments of the Apex Court looking to the provisions of Section 24(2) of the Act of 2013.

29. The Apex Court in the case of *Radiance Fincap Private Limited and others Versus Union of India and others* reported in (2015) 8 SCC 544 has considered the effect and applicability of Section 24(2) of the Act of 2013. The Court has also dealt with the issue of stay granted regarding possession in a judicial proceedings, and emphasized that it may be excluded looking to the second proviso of amended ordinance, but its operation is prospective. In the case of *Soorajmull Nagarmull Versus State of Bihar and others* reported in 2015 (9) Scale 1 the Court has reiterated the same principle considering the effect of the second proviso to Section 24 of the Act of 2013 and directed to give it effect for the benefit of land owners. In the recent judgment delivered on 12.10.2015 in the case of *Working Friends Cooperative House Building Society Limited Versus State of Punjab and others,* the Apex Court relied upon the judgment of *Pune Municipal Corporation* (supra) and the principle enumerated therein has been considered in the context of the other subsequent judgment and laid down the same principle as specified in the said case.

30. The Division Bench of this Court is having an occasion to consider the said issue in the case of *Purushottam Lal and others Versus State of M.P and others* (Writ Appeal No.305/2007) decided on 15.10.2015 whereby this Court relying upon the judgments in the cases of *Pune Municipal Corporation, Bimla Devi, Shiv Raj ,Sita Ram Bhandar Society* (supra) and in the case of *Sharma Agro Industries Versus State of Haryana* reported in 2015 MPLJ 523 (SC) has held that out of two contingencies i.e. of taking over of the possession or the payment of compensation, if anyone of them is not complied, the provision of Section 24(2) of the Act of 2013 would be applicable and the proceedings would be deemed to be lapse.

31. In addition to the aforesaid, the Apex Court in the case of *Raghbir Singh Sehrawat Versus State of Haryana and others* reported in (2012) 1 SCC 792 interpreted the word vesting of the land into the Government on taking of the possession. However, while dealing the issue, it is held that taking

of possession means to take the actual physical possession and not symbolic or possession on paper.

32. In view of the aforesaid, since the date of commencement of the Act of 2013 till recent pronouncements of the Apex Court on the issues, and also of this Court indicating the manner and purpose of Section 24(2) of the Act of 2013 to which it was brought, it is consistent approach that if the award is passed prior to five years or more from the date of commencement of the Act of 2013, or the possession has not been taken over by following the procedure established by law or the compensation is not paid or deposited in the account of the beneficiaries, or in Court mere "tendering" and "offering" of such compensation or to keep "deposit" in the account of the State Government would not fall within the purview of the compensation "paid" to the beneficiaries even without applying the literal construction of the said word used in the enactment considering the legislative intent to bring such provision.

33. In view of the legal position discussed above, considering either the basic provisions or by various pronouncements, the facts of this case are required to be analyzed. In the present case, it is not in dispute that final notification under Section 6 for acquisition of the land of the petitioners bearing Survey No.497/1 Khasra No.497/1 area ad-measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur was issued on 26.9.2003. It is also not in dispute that the award was passed under Section 11 on 30.11.2004. The said land was acquisitioned by respondent Nos.2 and 3 for the use of respondent No.1 indicating the public purpose. After passing the award, it is also not in dispute that the compensation was tendered by respondent No.1 to respondent Nos.2 and 3, but it has not been paid to the petitioners or deposited in their account or in Court as defined under Section 18 of the old Act. It is said by respondent No.1 that he had tendered the amount of compensation to respondent Nos.2 and 3, however, it is their duty to pay the said amount to beneficiaries, therefore, sub-section (2) of Section 24 of the Act of 2013 would not attract; while the respondent Nos.2 and 3 have contended that they have offered the amount for payment issuing a notice to the land owners which was not accepted by them, however, the provisions of Section 24(2) of the Act of 2013 would not attract in this case. Looking to the said undisputed facts, it is clear that on the date of commencement of the Act of 2013 i.e.1.1.2014 from the date of passing of the award, the period of more than five years was elapsed. Sub-section (2) of Section 24 of the Act of 2013 contemplates two contingencies,

indicating (1) the physical possession of the land has not been taken over or (2) the compensation has not been paid then such acquisition proceedings shall be deemed to have lapsed. Looking to the document available on record, after passing the award on 30.11.2004, the notice was sent to the petitioners offering the said amount to receive the same but the amount so determined insofar as it relates to the petitioners are concerned has not been deposited either in their account, or in the Court to follow the procedure prescribed under Sections 31,32,33 of the old Land Acquisition Act. It has also not been brought to the notice of this Court that after acquisition of the proceedings, any designated account to pay the compensation to the beneficiaries has been opened and the amount has been deposited therein to attract the second proviso brought by ordinance. In that view of the matter, it is concluded that the award was passed more than five years prior to the date of commencement of the Act of 2013 and the said amount has not been paid or deposited by the Land Acquisition Officer to the beneficiaries, to observe the requirement of Section 24(2) of the Act of 2013 and the amended ordinance. Thus, the proceedings of the land acquisition would lapse so far as it relates to the petitioners are concerned.

34. Now reverting to the issue of delivery of possession of the petitioners, the documents produced are relevant to be noticed, to qualify the requirement for delivery of possession after issuing the final notification and passing the award satisfying the compliance of Section 16 of the old Land Acquisition Act. As per the return filed by the respondent Nos.1 to 3, the only document Annexure R/1 has been filed by the respondent Nos.2 and 3, acknowledged by the respondent No.1 which is being reproduced as under:-

कार्यालय राजस्व निरीक्षक मंडल राजनगर, तहसील राजनगर

दिनांक 31.07.14

प्रति,
तहसीलदार महोदय,
तहसील राजनगर

विषय :– खजुराहो स्थित विस्व धरोहर स्मारकों के आसपास की अर्जित भूमि को खाली कराये जाने बावत।

संदर्भ :– अनु. अधि. महो. राजनगर का पत्र कमांक 628/अ.वि दिनांक 22.06.12 एवं आदेश दिनांक 30.07.14.

संदर्भित पत्र में विस्व धरोहर स्मारकों के आस पास निम्नलिखित योजना हेतु अर्जित की गई भूमि को खाली कराने हेतु खसरा नं. 497/1 रकवा 5.696 हेक्टर स्थित ग्राम ललूगवां जो कि पूर्व में भू–अर्जन की जा चुकी है। स्थल पर घनश्याम, मलखान, बाबूलाल, परसराम, परमलाल तनय देवीदीन पाल निवासी खजुराहो द्वारा पुरातत्व की भूमि पर कब्जा किया हुआ है स्थल पर तहसीलदार महो. राजनगर नायब तहसीलदार महो. राजनगर पटवारी मौजा राजनगर एवं खजुराहो व पुरातत्व के अधिकारी कर्मचारियों द्वारा संयुक्त रूप से उनको समझाइस दी गई पश्चात् पुरातत्व विभाग द्वारा तभी से गढ्ढा किये जाकर सीमेन्ट के पिलर खड़े कर लिये है। अनावेदको द्वारा रहायसी मकान अधिग्रहण से पूर्व मे गिरे होने से एवं वर्षा का मौसम होने से 0.350 हेक्टर रकवा मकानो का (आबादी) खाली नहीं कराया जा सका। भूमि ख.नं. 484/2 485 रकवा क्रमशः 0.526, 0.340 हेक्टर पर किशोरी S/o दल्लू कुशवाहा द्वारा कच्चा मकान बनाकर एवं बगीचा गनाकर पुरातत्व विभाग की भूमि पर कब्जा किया गया है। जिसमें पटवारी द्वारा अतिक्रमण प्रकरण दर्ज किया जाकर भूमि खाली कराने की न्यायालयीन प्रकिया जारी है।

प्रतिवेदन प्रस्तुत है।
संलग्न –1 स्थल पंचनामा।

35. Bare reading of the aforesaid, it merely refers, that on 7.10.2005 the possession of the land in question in the present petition has been delivered to the respondent No.1. No document has been brought on record indicating the fact that after acquisition and passing of the award, any notice was issued and served on the land owners. Nothing has been brought on record indicating the fact that in presence of the land owners and before the independent witnesses, possession has been taken from them, and thereafter, possession was delivered to the Archaeological Survey of India. In absence of the document of taking over of the possession from the land holders plea of following the procedure is of no consequence and by the said document, it cannot be presumed that the actual physical possession had been taken over from the land owners following the procedure prescribed, and then delivered to the respondent No.1. By filing the various other documents by respondents, it is said that initially the possession was taken by the respondent No.1 but later petitioners have encroached upon the said land, therefore, again the proceedings were initiated to take possession. On perusal of the documents, as referred in the return, those are after the date 1.1.2014, i.e. commencement of the Act of 2013 in any case if possession has not been taken as per procedure in first time, taking plea of encroachment is of no help to them. Thus, looking

to the documents brought by the respondents, which is discussed hereinabove, it is apparent that actual physical possession of the land following the procedure has not been taken over by the respondents. However, as per the judgment of *Velaxan Kumar* (supra), the plea of taking over of the possession is of no help to the respondents.

36. It is also relevant to observe that, when first Writ Petition No.6909/2008 was filed on 16.6.2008 challenging the acquisition proceedings and in alternative making request to refer it to the Court, it is to be noted here that stay was not granted in the said case by this Court. After decision of the Collector, refusing to make reference, without deciding the issue of validity of acquisition, subsequent Writ Petition No.2721/2014 was filed on 12.2.2014 wherein also at admission stage stay was not granted, and it was decided vide order dated 5.2.2015 directing the petitioners to take recourse of law in the context of the Act of 2013. But while passing the final order on 5.2.2015, this Court directed to maintain status-quo as it exists today. Thereafter, the present writ petition has been filed wherein the stay is in operation. In view of the aforesaid, it is clear that after acquisition of the proceedings and filing the said two writ petitions, there was no stay. The stay was only granted on 5.2.2015 after commencement of the Act of 2013. However, the order of stay of possession as directed by this Court would not have any relevance even for the purpose of second proviso of Section 24(2), brought by amendment.

37. In view of the foregoing discussion, in my considered opinion, both the contingencies specified under Section 24(2) of the Act of 2013 either of delivery of possession excluding the period of stay or the compensation paid by depositing it in the account of the beneficiaries or in Court has not been satisfied, bringing any material. In absence thereto, in view of the legal position discussed by various pronouncements, in my considered opinion, it is to be held that the contingencies specified under Section 24(2) of the Act of 2013 have not been satisfied by the respondents. Therefore, the land acquisition proceedings insofar as it relates to the agricultural land pertaining to Khasra No.497/1 area ad-measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur would be deemed to be lapsed. Thus, both the questions are answered in favour of petitioners. Consequently, all the interlocutory applications filed by the parties shall be treated to be disposed of.

38. Accordingly, the writ petition is hereby allowed and the land acquisition

proceedings so far as it relates to the land in question shall stand lapsed. In the facts and circumstances of the case, the parties shall bear their own costs.

39. At this stage, Shri K.N.Pethia, learned counsel for respondent No.1/ Archeological Survey of India has made a reasonable request that in the context of the letter and spirit as per the provisions of Section 24(2) of the Act of 2013, the State Government may be granted liberty to initiate the fresh acquisition proceedings. However, as prayed they are at liberty to take recourse of law as specified under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Petition allowed.

I.L.R. [2016] M.P., 2721
WRIT PETITION
Before Mr. Justice P.K. Jaiswal & Mr. Justice Jarat Kumar Jain
W.P. No. 8780/2015 (Indore) decided on 9 February, 2016

AJAY ...Petitioner
Vs.
KULADHIPATI, DEVI AHILYA VISHWAVIDYALAYA, INDORE & ors. ...Respondents

A. ***Administrative Law - Test for likelihood of bias*** **- Bias depends on not what actually done, but depends upon what might appear to be done - In administrative law rules of natural justice are foundational and fundamental concepts - Principles of natural justice are part of legal and judicial procedures and also applicable to administrative bodies in its decision making having civil consequences - Decisions of committee whether administrative or quasi judicial function - Held - Quasi judicial function. (Paras 14, 15 & 16)**

क. प्रशासनिक विधि – पक्षपात की संभावना का परीक्षण – पक्षपात इस बात पर निर्भर नहीं कि वास्तविक रूप से क्या किया गया बल्कि उस पर निर्भर होता है जो किया जाना प्रतीत होता हो– प्रशासनिक विधि में नैसर्गिक न्याय के नियम, आधारभूत एवं मूलभूत संकल्पनाएँ हैं – नैसर्गिक न्याय के सिद्धांत, विधिक एवं न्यायिक प्रक्रियाओं के भाग हैं और प्रशासनिक निकायों की सिविल परिणामों वाली निर्णय प्रक्रिया में भी लागू होते हैं – समिति के निर्णय क्या प्रशासनिक है अथवा अर्द्ध न्यायिक कार्य है – अभिनिर्धारित – अर्द्ध न्यायिक कार्य हैं।

B. ***Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Sections***

***13(2) & 13(4) - Committee for appointment of Kulpati* - Petition for quashment of notification dated 04.12.2015 by which committee constituted for recommending panel of 3 persons for appointment of Kulpati - Touchstone of principle of Natural Justice & bias - Respondents No. 3 & 4, who were aspirants for the post of Kulpati, participated and expressed their views through vote in the meeting held for election of one of the Members of Committee, who in turn has to select the candidate for the post of Kulpati - Active participation of respondents in the meeting contaminated whole process - Presence of personal bias vitiates entire proceedings renders it null and void - Actual proof of bias not possible but reasons to believe that respondent Nos. 3 & 4 were in position to influence the result of Committee - Election of member cancelled, executive committee directed to start fresh election process - Petition allowed. (Paras 17, 18 & 19)**

ख. विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धाराएँ 13(2) व 13(4) – कुलपति की नियुक्ति हेतु समिति – अधिसूचना दिनांक 4.12.2015, जिसके द्वारा कुलपति की नियुक्ति हेतु 3 व्यक्तियों के पैनल की अनुशंसा करने के लिए समिति गठित की गई थी, को अभिखण्डित किये जाने हेतु याचिका – नैसर्गिक न्याय के सिद्धांत की कसौटी एवं पक्षपात – प्रत्यर्थीगण क्र. 3 एवं 4, जो कुलपति के पद हेतु अभिलाषी थे, ने समिति के सदस्यों में से एक सदस्य के चुनाव हेतु आयोजित बैठक में भाग लिया एवं मत द्वारा अपना दृष्टिकोण व्यक्त किया, जिसे कुलपति के पद हेतु अभ्यर्थी का चयन करना है – मीटिंग में प्रत्यर्थीगण के सक्रिय सहभाग से संपूर्ण प्रक्रिया दूषित – व्यक्तिगत पक्षपात की उपस्थिति संपूर्ण कार्यवाहियों को दूषित करती है और उसे शून्य एवं अकृत बनाती है – पक्षपात का वास्तविक सबूत संभव नहीं परंतु यह मानने के लिए कारण है कि प्रत्यर्थी क्र. 3 व 4, समिति के परिणाम को प्रभावित करने की स्थिति में थे – सदस्य का चुनाव निरस्त किया गया, कार्यपालिक समिति को नये सिरे से चुनाव प्रक्रिया आरंभ करने के लिए निदेशित किया गया – याचिका मंजूर।

Cases referred:

(1969) 2 SCC 262, AIR 1993 SC 2155, (1998) 5 SCC 513, (2001) 1 SCC 182.

Manohar Dalal (Dr.), for the petitioner.
S.C. Bagadiya with *Lokesh Mehta,* for the respondent Nos. 1 & 2.
Akash Sharma, for the respondent No. 3.
Anil Ojha, for the respondent No. 5.
None for the respondent No.4.

ORDER

The Order of the Court was delivered by : **J.K. JAIN, J. :-** This writ petition under Article 226 of the Constitution of India has been filed for quashment of the Notification dated 04.12.2015 by which a Committee for appointment of Kulpati of Devi Ahilya Vishwavidyalaya, Indore has been constituted, by the Kuladhipati while exercising the powers under Section 13 (2) of the Madhya Pradesh Vishwavidayalaya (sic:Vishwavidyalaya) Adhiniyam , 1973 [for short "the Adhiniyam"].

2. Brief facts of this case are that on 10.08.2015, a vacany (sic:vacancy) for the post of Kulpati arose due resignation of Professor Dr. D.P. Singh Kulpati of Devi Ahilya Vishwavidyalaya, Indore [for short "DAVV, Indore"]. Thereafter, the procedure for the appointment for post of Kulpati started. In the meanwhile, the Kuladhipati appointed Dr. Ashutosh Mishra as acting Kulpati until the appointment of Kulpati. That on 27.08.2015 an advertisement inviting the applications for the post of Kulpati was published in the news papers. In response to the advertisement, Dr. P.K. Gupta, Professor Institute of Management Studies, DAVV, Indore (Respondent No.3) and Dr. Ganesh Kavdiya, Professor and Head of School of Economics, DAVV, Indore submitted their applications on 07.09.2015 and 30.09.2015 respectively. As per the Provisions of Section 13(2) of the Adhiniyam, for the appointment of Kulpati, the Kuladhipati has to constitute a Committee consisting of 3 persons, namely, (i) one person elected by the Executive Council; (ii) one person nominated by Chairman of University Grants Commission; and (iii) one person nominated by the Kuladhipati. That on 26.11.2015 a meeting was convened for electing a Member by Executive Council. Twelve Members including respondent No.3 & 4 participated in the meeting, which was presided by acting Kulpati Dr. Ashutosh Mishra. In the meeting names of 4 persons, namely, Shri Ajay Chordiya (petitioner) Ex Member Executive Council of Rajiv Gandhi Praudyogiki Vishwavidyalaya, Bhopal and Awadhesh Pratap Vishwavidyala (sic:Vishwavidyalaya), Rewa; Professor R.P.Tiwari, Kulpati, Dr. Hari Singh Gaur Kendriya Vishwavidyalaya; Shri Gulab Sharma (Respondent No.5) retired District Judge, and Professor Rajpal Singh were considered. That in the meeting unanimous decision could not be taken. Looking to the circumstances Dr.K.K.Tiwari withdrew the name of Professor Rajpal Singh. Thereafter, a secret voting was adopted but Acting Kulpati did not participated

in the voting. Out of 10 votes, Shri Gulab Sharma got 6 votes; Professor R.P.Tiwari got 2 votes and Shri Ajay Chordiya also got 2 votes. Thus, on the basis of the voting, Shri Gulab Sharma was elected by the Executive Council. Thereafter, the Kuladhipati constituted a committee consisting of 3 persons including Shri Gulab Sharma. In this regard a notification was issued on 04.12.2015. The said Committee was directed to recommend a Panel of not less than 3 persons for appointment of Kulpati of DAVV, Indore. The petitioner being aggrieved with election of Shri Gulab Sharma has filed this petition on the ground that the Election process is biased and against the principal (sic:principle) of natural justice and fair play as Respondent No.3 & 4, who were the aspirants for the post of Kulpati participated in the said meeting held on 26.11.2015 being interested persons. Raising all such objections, the petitioner made a representation on 02.12.2015 to Kuladhipati. However, without considering the petitioner's representation, Kuladhipati issued impugned notification dated 04.12.2015. Therefore, quashment of notification dated 04.12.2015 is prayed in this Petition.

3. The stand of Respondent Nos.1 and 2 is that Respondent Nos.3 and 4 being member of Executive Council, have participated in the election process as there is no provision in the Adhiniyam and Rules which prohibits the aspirants for the post of Kulpati, from participating in the election process. It was further pleaded that Respondent No.5 is not connected with the university or any college, therefore, he is competent to be a Member of Committee for appointment of Kulpati. Hence, he is elected in consonance with the provisions as contemplated in Section 13 (2) of the Adhiniyam. Respondent No.5 was elected with majority of votes as he secured 6 votes out of 10 votes and the victory margin of votes in favour of respondent No.5 was more than 2, hence, the question of participation of Respondent Nos.3 and 4 does not, in any way affects the result. It is also stated that the petitioner's name was proposed by one of the member of the Executive Council and during the election process that member has not raised any objection in regard to participation of Respondent No.3 & 4. Therefore, now the petitioner cannot raise such an objection regarding eligibility of casting of votes by Respondent Nos.3 and 4. Hence, there is no merit in the petition.

4. The Respondent Nos.3 and 4 have not filed any reply to this petition; whereas Respondent No.5 in his reply pleaded that as per the provisions of the Adhiniyam, Respondent No.5 is competent and has been duly elected by

Executive Council by majority of votes. The Adhiniyam does not provide any specific qualification of the Member of the Committee. The only rider under Section 13 (4) of the Adhiniyam is that such a person should not be connected with the University or any College. Hence, the election of Respondent No.5 is as per the law and there is no violation of any of the provisions of the Adhiniyam and principles of natural justice. Hence, he pleaded for dismissal of the petition.

5. Learned counsel for the petitioner submits that Respondent Nos.3 and 4 are aspirants for the post of Kulpati as they have submitted their applications on 07.09.2015 and 30.09.2015 respectively. Therefore, they are interested persons, hence, they should have not participated in the meeting which was held on 26.11.2015 for electing a member of the Committee constituted for selection of Kulpati. Though, there is no such provision in the Adhiniyam and Regulations but as per the principles of natural justice and fair play it was expected from aspirants for the post of Kulpati not to participate in a meeting. The Respondent Nos.3, 4 & 5 all are the residents of Indore, then it is possible that respondent No.3 and 4 may have influenced the result and that is why more competent person like Professor R.P. Tiwari, Kulpati and Educationist could not be elected. It is also possible that Respondent No.5 may be biased as he has elected by the aspirants i.e. Respondent No.3 and 4. In such a situation the whole process is unfair, biased and against the natural justice and fair play, therefore, the impugned notification dated 04.12.2015 be quashed.

6. On the other hand, learned Senior Counsel Shri S.C.Bagadiya for the Respondent Nos.1 and 2 submits that learned counsel for the petitioner was unable to point out that in the election process, there is any violation of the provisions of the Adhiniyam or Rules. The Respondent No.5 is an eligible person to be appointed as a Member of the Committee as he is not connected with the University or any of the college. Admittedly the Respondent No.5 has been elected by the Executive Council and he got 6 votes. There is no bar that the persons who are aspirants for the post of Kulpati and also Member of the Executive Council cannot participate in the meeting of election of representative of Executive Council. Even for the sake of arguments, if it assumed that the Respondent Nos.3 and 4 casted their votes in favour of Respondent No.5, and if we deduct such votes, then also it would not affect the result. The decision taken by the Executive Council is an administrative

decision which is not open for judicial review. It is pertinent to note that none of the members who participated in the meeting have raised the objection in regard to participation of respondent no. 3 & 4 in the election process. It is also submitted that even in the general election a candidate who is also a voter, can cast the vote. Therefore, there is no violation of any of the principle of natural justice. It is further contended that principle of natural justice that no one should be condemned unheard is not applicable in this case. Learned Senior Counsel further submits that there is no material on record to infer that the decision of Executive Council is biased or unfair. Thus, there is no merit in this petition.

7. Learned counsel for the Respondent No.5 while adopting the arguments of learned Senior Counsel Shri S. C. Bagadiya submits that in election of Respondent No.5, Executive Council has not violated any of the provisions of the Adhiniyam and the principles of natural justice. It is also submitted that if petitioner has any grievance in regard to such election, as per the provisions of Adhiniyam he should have submitted the representation to the Kuladhipati who is the authority to decide such objections and without availing such remedy the petitioner has filed this petition. Therefore, the petition is not maintainable. The petition has no merit. Therefore, it be dismissed with costs.

8. In reply, learned counsel for the petitioner submits that no sooner he received the information that the Executive Council has elected the Respondent No.5 as the Member of the Committee, he immediately sent a representation to the Kuladhipati by Speed Post and also sent a copy of the same to the Kulpati, but without considering his representation, impugned notification has been issued. In such a situation the petitioner has no remedy available except to file this petition. Hence, the objection taken by learned counsel for the Respondent No.5 has no merit. Copy of representation is Annexure P/2.

9. During the course of arguments we directed the Respondent No.1 & 2 to produce the original note sheets and minutes in regard to the process of appointment of Kulpati.

10. After hearing learned counsel for the parties, we have carefully examined the note-sheets and other relevant documents.

11. Admittedly due to resignation of Kulpati – Professor Dr. D. P. Singh on 10.08.2015 the vacancy occurred, therefore, the procedure for appointment

of Kulpati was started and in continuation an advertisement inviting applications for the post has been published in news papers on 27.08.2015. In response to the advertisement, Dr. P. K. Gupta (Respondent No.3) and Dr. Ganesh Kavdiya (Respondent No.4) submitted their application for the post of Kulpati on 07.09.2015 and 30.09.2015 respectively. As per the Provision of Section 13(2) of the Adhiniyam, for the appointment of Kulpati, the Kuladhipati has to constitute 3 Members Committee which would consist of, one person elected by the Executive Council; one person nominated by the Chairman of the University Grants Commission; and one person nominated by the Kuladhipati. And hence for electing a Member of Executive Council of the University, a meeting was held on 26.11.2015. The meeting was presided by Acting Kulpati Dr. Ashutosh Mishra, total 11 members and Secretary were present in the meeting. In the meeting name of four persons, viz. Shri Ajay Chordiya; Dr. R. P. Tiwari; Shri Gulab Sharma and Professor Rajpal Singh were considered, but there was no unanimous decision and the name of Professor Rajpal Singh was withdrawn. Therefore, only for remaining three persons, voting was held. In the said election Shri Gulab Sharma got 6 votes; whereas Professor R. P. Tiwari and Ajay Chordiya got 2 – 2 votes respectively.

12. It is to be seen that there is no provision in the Adhiniyam or in the Regulation that aspirants for the post of Kulpati cannot participate in the process of election of Member of the Committee. Hence we are convinced with the arguments of learned counsel for the Respondents that in electing a Member of Executive Council of University, the Council has not violated any of the provisions of the Adhiniyam or regulations made there under. Now we have to consider whether they have violated any of the principles of natural justice. A post of the Kulpati is a very prestigious and high dignitary post, therefore, it is necessary that for the appointment of such post, there should be a fair play of action and transparency.

13. Before we proceed further we would like to refer the various judgments on the principles of natural justice and bais (sic:bias). In this regard it is useful to refer the landmark judgment of the Hon'ble apex Court in the case of *A.K.Kraipak v/s Union of India* [(1969) 2 SCC 262] wherein it has held that:-

> "15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be

considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others,

more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund."

14. The Hon'ble Apex Court in the case of *Ratanlal Sharma v /s Managing Committee* reported in [AIR 1993 SC 2155] has held that deciding authority must be impartial and without bias. The test is whether there was a real likelihood of bias. Answer to the question whether there was a real likelihood of bias depends upon not what actually was done but upon what might appear to be done. In administrative law, rules of natural justice are foundational and fundamental concepts and law is now well settled that principles of natural justice are part of the legal and judicial procedures and are also applicable to administrative bodies in its decision making process having civil consequences.

15. The Hon'ble Apex Court in the case of *State of West Bengal Vs. Shivananda Pathak* reported in [(1998) 5 SCC 513] held as under :-

"31. This Court has already, innumerable times, beginning with its classic decision in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150] laid down the need of "fair play" or "fair hearing" in quasi-judicial and administrative matters. The hearing has to be by a person sitting with an unbiased mind. To the same effect is the decision in

S.P. Kapoor (Dr) v. State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] In an earlier decision in *Mineral Development Ltd. v. State of Bihar* [AIR 1960 SC 468 : (1960) 2 MLJ (SC) 16] it was held that the Revenue Minister, who had cancelled the petitioner's licence or the lease of certain land, could not have taken part in the proceedings for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In *Financial Commr. (Taxation), Punjab v. Harbhajan Singh* [(1996) 9 SCC 281] the Settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The maxim *nemo debet esse judex in propria sua causa* was invoked in *Gurdip Singh v. State of Punjab* [(1997) 10 SCC 641 : 1997 SCC (L&S) 1742] .

32:The above maxim as also the other principle based on the most frequently quoted dictum of Lord Hewart C.J. In R.v. Suxxes JJ., ex.p. Mc Carthy (1924) 1 KB 256, 159, that :

> "It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."

Constitute the well-recognised Rule Against Bias.

33.Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". De Smith in Judicial Review of Administrative Action, 1980 Edn., 262, 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's

own evaluation of the probabilities."

16. In so far as the question whether the decision of the Committee is administrative or quasi-judicial function, we would again like to refer the observation of the Hon'ble Apex Court in *A.K.Kraipak's* judgment (Supra) wherein it has been held that :-

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a *quasi-judicial* power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power....."

17. Now we proceed to test the facts of this case on the touchstone of one of the principles of natural justice and bias. It is to be noted that where a complaint is made before a court that some principle of natural justice had been contravened the court has to decide that whether the observance of such rule was necessary for a just decision on the facts of that case. Admittedly in the present case the Respondent Nos.3 and 4 have personal interest as

they were the aspirants of the post of Kulpati and they were aware of this fact that on 26.11.2015 the meeting was held for election of one of the Member of the Committee, who has to inturn select the candidate for the post of Kulpati. Therefore, in all fairness respondent no. 3 & 4 should not have participated in such a meeting. They have consciously participated in the deliberation and express their views. They have exercised their right of vote. They were not silent spectators in the meeting and as per rules they were not prevented from voting, but their active participation in the meeting itself contaminated the whole process. Hence, the presence of the element of personal bias vitiates the entire proceedings and renders it null and void.

18. It is not possible to furnish actual proof of bias but there are reasons to believe that the Respondent no.3 & 4 were in a position to influence the result of the Committee. Kindly refer to para 16 of *A.K.Kraipak's* judgement (supra).

19. It is also to be seen that the meeting was held on 26.11.2015. On 02.12.2015 petitioner has submitted his representation to the Kuladhipati with the request that the election of Respondent No.5 is in violation of the principle of natural justice, therefore, such election be cancelled and the Executive Council be directed to again start fresh selection process. In the reply of the Petition, the Respondent Nos.1 and 2 pleaded that the representation dated 02.12.2015 submitted by the petitioner has been duly considered by the Respondent No.1 i.e. Kuladhipati and the same has been found sans merit, therefore, it has been filed. We have gone through the note-sheets but from the note-sheets it is not reflected that such representation has been considered.

20. It is to be seen that if the decision of the Executive Council is vitiated then the final recommendation of the Committee must also be vitiated, for they cannot be disassociated from the selections made by the Executive Council which is the foundation for the recommendations made by the Committee for the selection of Kulpati. Also the Hon'ble Apex Court in case of *Kumaon Mandal Vikas Nigam Ltd. V/s. Girja Shankar Pant* reported in (2001) 1 SCC 182 at page 201 held that:-

> "The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom — in the

event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained....."

21. Moreover, it is to be seen that if the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable on administrative actions. Thus, we are of the considered view that the election of Respondent No.5 as Member to the Committee for appointment of Kulpati is in violation of the principle of natural justice and fair play. Therefore, we have no option but to quash the notification issued by the Respondent No.1 dated 04.12.2015.

Thus, the petition is allowed. No order as to costs.

Petition allowed.

I.L.R. [2016] M.P., 2733
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 20003/2015 (Jabalpur) decided on 24 February, 2016

DINESH KUMAR JAAT ...Petitioner
Vs.
MUNICIPAL CORPORATION ...Respondent

(Alongwith W.P.No. 20110/2015, W.P.No. 20111/2015, W.P.No. 20117/2015, W.P.No. 20192/2015, W.P.No. 20196/2015, W.P.No. 20204/2015, W.P.No. 20609/2015, W.P.No. 20611/2015, W.P.No. 20612/2015, W.P.No. 20614/2015, W.P.No. 20655/2015, W.P.No. 20726/2015, W.P.No. 21014/2015, W.P.No. 21015/2015, W.P.No. 61/2016, W.P.No. 1495/2016, W.P.No. 1737/2016, W.P.No. 1813/2016 & W.P.No. 1936/2016)

Service Law - De-regularisation of Service **- Orders de-regularising the services of the petitioners have been passed after putting 12 years of regular service without holding enquiry in violation of principles of natural justice - Held - As the consolidated seniority list has not been prepared in compliance of order passed in W.P. No. 8359/2005, impugned order has not been passed on the grounds mentioned in the show cause notice, petitioners were never asked to submit documents, their defence has not been considered and they were given only three days time to submit reply - Thus**

principles of natural justice have been violated - Impugned order is not sustainable. (Paras 33 & 34)

सेवा विधि – सेवा का अनियमितिकरण – 12 वर्षों की नियमित सेवा देने के पश्चात्, याचीगण की सेवाओं के अनियमितिकरण के आदेश को बिना जांच कराये, नैसर्गिक न्याय के सिद्धांतों के उल्लंघन में पारित किया गया – अभिनिर्धारित – चूंकि रिट पिटीशन नं. 8359/2005 में पारित आदेश के अनुपालन में समेकित वरिष्ठता सूची तैयार नहीं की गई, आक्षेपित आदेश को कारण बताओ नोटिस में उल्लिखित आधारों पर पारित नहीं किया गया, याचीगण को दस्तावेज प्रस्तुत करने के लिए कमी नहीं कहा गया, उनके बचाव को विचार में नहीं लिया गया और जवाब प्रस्तुत करने हेतु उन्हें केवल तीन दिन का समय दिया गया था – अतः नैसर्गिक न्याय के सिद्धांतों का उल्लंघन हुआ है – आक्षेपित आदेश पोषणीय नहीं।

Cases referred:

(2006) 4 SCC 1, (1990) 1 SCC 361, (2014) 9 SCC 105, (2001) 3 SCC 328, AIR 2008 SCW 2877, (2004) 2 MPHT 49, (1993) 4 SCC 727, (2015) 8 SCC 519, (2006) 8 SCC 776, (2004) 8 SCC 200, AIR 1981 SC 818, AIR 1978 SC 597, AIR 1962 SC 1893, (2008) 12 SCC 73, (2003) 4 SCC 557, (2005) 6 SCC 321, AIR 1991 SC 271, AIR 1980 SC 1157, (2008) 13 SCC 689, (2001) 6 SCC 261, (2011) 1 SCC 109.

Shobha Menon, D.K. Dixit, Manoj Sharma, Shashank Shekhar, Vipin Yadav, N.P. Dwivedi, Bhoopesh Tiwari, Ashish Agrawal, Deepak Singh, Rajeshwar Rao & Rahul Choubey, for the petitioners.

Anshuman Singh, for the respondent.

ORDER

ALOK ARADHE, J. :- In this bunch of writ petitions, the petitioners have assailed the validity of the orders dated 19.11.2015, by which, the orders of regularization of services of the petitioners who are employees of Municipal Corporation, Jabalpur, have been cancelled. Though common questions of law arise for consideration in this bunch of petitions, yet in different factual scenario, therefore, it is necessary to refer to the facts of each of the writ petitions, which are stated infra.

2. The petitioner in **Writ Petition No.20003/2015** had passed Higher Secondary Examination and had obtained Diploma in Domestic Electrical Installation. Sometime in the year 1983 the petitioner was appointed as Daily Wage employee on the post of Wireman. The petitioner filed Writ Petition No.1265/

2003 seeking regularization of his services, which was disposed of by the High Court vide order dated 03.9.2003 with a direction to respondent to consider the case of the petitioner for regularization of his services. The petitioner by order dated 12.1.2004 was regularized on the post of Vaccinator in the pay scale of Rs.3050-3200/-. Thereafter, by order dated 10.8.2005 the order of regularization of services of 74 employees including the petitioner was cancelled, which was the subject matter of challenge in a bunch of writ petition, which was disposed of by a Bench of this Court vide order dated 1.9.2005, by which, the order dated 10.8.2005 directing cancellation of order of regularization was quashed and the respondent was granted liberty to prepare seniority list and to hear the petitioners and thereafter to pass an order of de-regularisation, if warranted. In compliance of order passed by the High Court, the order dated 10.8.2005 was cancelled vide order dated 19.9.2005. Thereafter, a show-cause notice dated 27.8.2011 was issued which was challenged in a bunch of writ petitions before this Court which was disposed of on 06.10.2015 with directions to the Commissioner to decide the matters after considering the response given by the petitioner expeditiously and giving due opportunity of hearing to the petitioners within a period of four months and to communicate the decision thereof to the petitioners within same time. The petitioners in the Bunch were also granted liberty to challenge the decision if the same is adverse to their interest, by way of appropriate proceeding, which will be decided on its own merits. In pursuance of aforesaid order, impugned orders of de-regularisation of services of the petitioners have been passed.

3. The petitioner in **Writ Petition No.20110/2015** was appointed as daily wage employee on the post of Peon in the year 1981. He filed Writ Petition No.1266/2003, in which, he sought the relief of regularization of his services. The said writ petition was disposed of with a direction to consider the case of the petitioner for regularization of his services. Thereafter, by order dated 12.1.2004 the services of petitioner were regularized on the post of Peon. On 28.10.2015 an information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, impugned order was passed by which the services of the petitioner from the post of Peon was de-regularised.

4. The petitioner in **Writ Petition No.20111/2015** was appointed on the post of Helper (Assistant Wireman) on 13.3.1985. He filed

W.P.No.1266/2003 seeking regularization which was disposed of on 03.9.2003. Thereafter, by order dated 12.1.2004 the services of the petitioner were regularized. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon was cancelled.

5. In **Writ Petition No.20117/2015** the petitioner was appointed as daily wage employee on the post of Gas Welder on 01.6.1981. He filed Writ Petition No.5153/1998 seeking regularization of his services. The said writ petition was disposed of by order dated 08.2.2001 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of Gas Welder vide order dated 28.5.2003. Thereafter, the aforesaid order was amended on 30.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Gas Welder was cancelled.

6. The petitioner in **Writ Petition No.20192/2015** was appointed as daily wage employee on 01.8.1984 on the post of Peon. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of Peon vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon of OBC category was cancelled.

7. The petitioner in **Writ Petition No.20614/2015** was appointed as Daily Wage employee on 01.1.1989 on Class IV post. The petitioner filed Writ Petition No.3460/1994 seeking regularization of his services. During pendency of aforesaid petition the respondents took policy decision of framing a scheme to regularize incumbents who are working prior to 31.12.1988.

However, no decision was taken with regard to employees working after 01.1.1989. The Writ Petition No.3460/1994 was disposed of on 27.02.2003. Pursuant to decision of High Court the respondent regularized the services of petitioner on the post of Lineman (Water Department) on 28.1.2004. A show-cause notice dated 28.10.2015 was issued to petitioner. However, impugned order has been passed by which the order of regularization of services of the petitioner has been cancelled.

8. The petitioner in **Writ Petition No.20196/2015** was appointed as daily wage employee on the post of Bullock Shed Chowkidar on 01.3.1995. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of 'Kulgade' Chowkidar vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

9. The petitioner in **Writ Petition No.20204/2015** was appointed as daily wage employee on the post of Helper (Assistant Wireman) on 01.6.1982. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of 'Gadivaan' vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

10. The petitioner in **Writ Petition No.21015/2015** was appointed as daily wage employee on the post of Helper (Assistant Wireman) on 21.11.1982. He filed Writ Petition No.1266/2003, in which, he sought the relief of regularization of his services. The said writ petition was disposed of with a direction to consider the case of the petitioner for regularization of his services. Thereafter, by order dated 12.1.2004 the services of petitioner were regularized on the post of Bin Card Attendant. On 28.10.2015 information

was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon was cancelled.

11. The petitioners in **Writ Petition No.20609/2015** were appointed as Sub Engineers (Technical) on daily wage basis prior to 31.12.1988. During the pendency of Writ Petition No.3460/1994, the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rated employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court vide orders dated 23.4.2003, 22.5.2003 and 28.5.2003 the services of the petitioners were regularized on the post of Sub Engineers. While passing the order of regularization in the note-sheet, it was, inter alia, held that petitioners were working as Sub Engineers (Technical) prior to 31.12.1988. The petitioners fulfilled the requisite qualification of holding three years Diploma in Engineering and the case of petitioners for regularization can be considered against three vacant posts. Thereafter, by order dated 10.8.2005 the order of regularization of services of 74 employees including petitioner was cancelled, which was the subject matter of challenge in Writ Petition No.8359/2005, which was disposed of by order dated 01.9.2005, by which, the order dated 10.8.2005 directing cancellation of order of regularization was quashed and the respondent was granted liberty to prepare seniority list and to hear the petitioners and thereafter to pass an order of de-regularization, if warranted. In compliance of order passed by High Court, the order dated 10.8.2005 was cancelled by order dated 19.9.2005. Thereafter, a show-cause notice dated 27.8.2011 was issued which was the subject matter of challenge in Writ Petition No.10260/2012 before this Court which was disposed of on 06.10.2015 with a direction to the Commissioner to decide the matters after considering the response given by the petitioner expeditiously and giving due opportunity of hearing to the petitioners within a period of four years and to communicate the decision thereof to petitioner within same time. The petitioners in the Bunch were also granted liberty to challenge the decision if the same is

adverse to their interest, by way of appropriate proceeding, which will be decided on its own merits. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner were cancelled.

12. The petitioners in **Writ Petition No.20611/2015** were appointed on daily wage basis on Class IV post prior to 31.12.1988. During the pendency of Writ Petition No.3460/1994, in which the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rated employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court, the services of the petitioner No.1 were regularized on the post of Notice Writer, whereas that of respondent No.2 on the post of Pump Attendant vide order dated 25.12.2003. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

13. The petitioners in **Writ Petition No.20612/2015** were appointed as Lower Division Clerk on daily wage basis on 01.1.1989. During the pendency of Writ Petition No.3460/1994, in which the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rate employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court, the services of the petitioner No.1 were regularized on the post of Lower Division Clerks vide order dated 12.2.2004. On 28.10.2015, information was sought from the petitioners with regard to regularization of

their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

14. In **Writ Petition No.21014/2015** the petitioners no.1 & 2 were appointed on daily wage basis on consolidated pay in the year 1988. In pursuance of the resolution, the services of **petitioners No.1 & 2** were regularized on the post of Lower Division Clerk vide order dated 10.10.2003. Whereas the services of **petitioners no.3, 4 & 5** were regularized on the post of Pump Attendant vide order dated 12.1.2004. The services of **petitioner No.6** was regularized vide order dated 12.1.2004. The services of **petitioners No.7 & 8** were regularized by order dated 12.1.2004 on the post of Vaccinators. The services of **petitioner No.9** were regularized on the post of Ward Supervisor, whereas the **petitioner no.10** was regularized on the post of Ward Clerk and **petitioner No.11** was regularized on the post of Peon vide order dated 25.12.2003. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

15. In **Writ Petition No.20655/2015** had passed Higher Secondary School examination in the year 1983 and was appointed on daily wage basis on 19.6.1986 on the post of peon. Thereafter, he was appointed on fixed pay of Class IV in year 1996. The services of the petitioner were regularized by order dated 25.12.2003 on the post of Peon. Thereafter, the petitioner was served with notice dated 28.10.2015 and information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

16. The petitioners in **Writ Petition No.20726/2015** the **petitioner No.1** was appointed as daily wage employee in the year 1988 and thereafter vide order dated 28.1.2004 his services were regularized on the post of Moharrir. The **petitioner No.2** was appointed on daily wage basis in the year 1992 and his services were regularized on 31.1.2004 on the post of Notice Server in

the Revenue Department of the Corporation. The **petitioner no.3** was appointed on daily wage basis in the year 1992 and his services were regularized on the post of Notice Server vide order dated 31.1.2004. The **petitioner No.4** was appointed as daily wage employee in the year 1990 and his services were regularized on the post of Ward Clerk vide order dated 25.12.2003. The **petitioner No.5** was appointed on daily wage basis in 1988 and was regularized on the post of Ward Clerk vide order dated 10.10.2003. The **petitioner No.6** was appointed on daily wage basis in 1991 and vide order dated 25.12.2003 he was regularized in Haka Gang. On 28.10.2015, information was sought from the petitioner with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

17. The petitioner in **Writ Petition No.61/2016** was appointed as daily wage employee in 1987. Thereafter, he was appointed in fixed pay on the post of Time Keeper vide order dated 07.12.1995. The petitioner filed W.P.no.4520/1997 claiming regularization on the post. The said writ petition was disposed of by order dated 17.2.2003 with a direction to consider the case of petitioner for regularization. Thereafter, vide order dated 25.12.2003 the services of petitioner were regularized on the post of Time Keeper. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioners was cancelled.

18. In **Writ Petition No.1495/2016** was appointed in 1988 on daily wage basis. Thereafter, his services were regularized on 17.9.2003 as he had passing Typing Test. Thereafter, on 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days' time to submit explanation. The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

19. In **Writ Petition No.1737/2016** were appointed on daily wage basis on the post of Driver prior to 1988. The services of the **petitioners No.1 to 9** were regularized on the post of Driver vide order dated 16.12.2003. The

services of **petitioners No.10 & 11** were regularized on the post of Driver vide order dated 19.1.2004. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

20. The petitioners in **Writ Petition No.1813/2016** the petitioners were appointed on daily wage basis in the year 1983. Thereafter, there (sic:their) services were regularized vide order dated 12.1.2004 on the post of Pump Operators. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days' time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

21. The petitioner in **Writ Petition No.1936/2016** the petitioner was appointed on daily wage basis on 31.1.1987 in Fire Brigade Department. The services of the petitioner were regularized vidé order dated 28.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of their services and he was given 3 days' time to submit explanation. The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

22. Mrs.Shobha Menon, learned senior counsel for the petitioners submitted that impugned orders directing de-regularisation of services of petitioner have been passed in contravention of the order dated 27.2.2003 passed in Writ Petition No.3460/1994 as well as order dated 01.9.2005 passed in Writ Petition No. 8359/2005. It is further submitted that seniority list was required to be prepared after inviting objections, which has not been done. It has also been submitted that cyclostyled orders have been passed which reflect non-application of mind. It is further submitted that while passing impugned orders the material on the basis of which original orders of regularization were passed, has not been taken into account. It is also contended that services of the petitioners, who are regular employees of the respondent-Corporation, cannot be de-regularized without holding an enquiry.It is urged that petitioners, have put in more than 12 years of service as regular employees and, therefore, the Corporation committed manifest error in un-settling the settled things. It is

further submitted that reasons spelt out in the show-cause notice do not find place in the impugned orders, therefore, the same have been passed in violation of principles of natural justice. While inviting the attention of this Court to order dated 25.7.2012 passed in W.P.no.10263/2012 it is submitted that, in fact, no seniority list was prepared till 2012 and the action of respondents in de-regularising the services of the petitioners is contemptuous. It is also submitted that respondents ought to have taken into account the principle of fair play while considering the qualification/eligibility while deciding the question of regularization of services of the petitioners. In support of her submissions, learned senior counsel has placed reliance on order dated 30.8.1997 passed in Writ Petition No.2040/1997 *[Prabhudayal Pandey vs. M.P. State Agricultural Marketing Board and another].*

23. Mr.D.K.Dixit, learned counsel for the petitioner submitted that impugned order of de-regualrisation of services of petitioner is arbitrary as the Supreme Court in the case of *State of Karnataka Vs. Uma Devi,* (2006) 4 SCC 1 has held that the services of persons who have been regularized, cannot be de-regularized. It is further submitted that in the case of *U.P. State Electricity Board vs. Pooran Chandra Pandey and others* [Civil Appeal No.3765/2001 decided on 09.10.2007] it has been held that even if *Uma Devi's* case is to be applied, the protection contained in Article 14 of the Constitution of India cannot be overlooked and all the petitioners who have rendered their services for past about 10 years are entitled to the benefit of regularization.

24. Mr.Manoj Sharma, learned counsel for the petitioner submitted that petitioner No.6 in W.P.No.20726/2015 was never served with the show-cause notice, but straight away the impugned order dated 19.11.2015 has been passed. Thus, the petitioner No.6, in the aforesaid writ petition has been condemned unheard. It is also submitted that show-cause notice does not fulfil the requirement of show-cause and no effective opportunity of hearing was afforded to petitioner as only 3 days' time is given by respondent to the petitioner to show cause. It is further submitted that action of de-regularisation of services of the petitioners is vitiated on account of non-preparation of seniority list. It is also urged that it is nobody's case that petitioners are not entitled for regularization. The only issue which requires to be adjudicated is, whether they have been regularized in the order of seniority against the posts which befit their qualification. It is also submitted that issue with regard to

non-availability of posts, especially that of not following the reservation and roster, cannot be made a ground after a decade, as long experience has been acquired by the petitioners on the post on which they are regularized and the same takes care of qualification. In this connection reference has been made to the decision in the case of *Bhagwati Prasad vs. Delhi Mineral Development Corporation,* (1990) 1 SCC 361. Lastly, it is urged that the impugned orders have the effect of unsettling the settled things after a decade by taking recourse to casual process.

25. Mr.Shashank Shekhar, learned counsel for the petitioner has submitted that action of respondent demonstrates pre-determination and prejudice inasmuch as impugned orders have been passed in utter contravention of the settled proposition of service jurisprudence. It is further submitted that administrative decisions are expected to be taken reasonably and within reasonable time. In the instant case, the impugned decision has been taken after a period of 12 years.

25. Mr.Vipin Yadav, learned counsel for the petitioners submitted that letter dated 28.10.2015 purported to be show- cause notice cannot be termed as "show-cause notice" as it requires the grounds to be stated, according to which the action is necessitated, particularly the penalty/action which is proposed to be taken. In support of aforesaid submission he has placed reliance on the decision in the case of *Gorkha Security Services vs. Government (NCT of Delhi) and others,* (2014) 9 SCC 105. While referring to paragraph 44 of the decision in the case of *Uma Devi* (supra) it is contended that if regularization is already made and is not subjudice, the same need not be re-opened. Therefore, the impugned orders of de-regularisation are contrary to the decision in the case of *Uma Devi's case*. It is further submitted that since the order of regularization has been cancelled after 11 years, therefore, the same is bad in law. In support of aforesaid submission reliance has been placed on the decision in the cases of *Buddhi Nath Chaudhary and others vs. Abahi Kumar and others*, (2001) 3 SCC 328, *Rajendra v. State of Maharashtra,* AIR 2008 SCW 2877 and *Radha Mohan Goswami vs. State of M.P.*, (2004) 2 MPHT 49.

26. Mr.Ashish Agrawal, learned counsel for the petitioner in Writ Petition No.1936/2016 and Mr.Deepak Singh, learned counsel for petitioner in Writ Petition No.61/2016 have adopted the submissions made by learned counsel for the petitioners in other writ petitions.

27. On the other hand, Mr.Anshuman Singh, learned counsel while opposing the submissions made on behalf of learned counsel for the petitioners, has submitted that impugned orders have been passed in compliance with principles of natural justice. It is further submitted that it is well settled in law that principles of natural justice cannot be put in straight jacket formula and non-observance does not automatically result in setting aside any administrative action. It is also submitted that party alleging violation of principles of natural justice has to show prejudice and has to demonstrate how the action could have been different if opportunity would have been granted. In support of aforesaid submission reference has been made to decision of Supreme Court in the cases of *Managing Director, ECIL v. B. Karunakar,* (1993) 4 SCC 727 and *Dharampal Satya pal Ltd. vs. Deputy Commissioner of Central Excise,* (2015) 8 SCC 519. It is contended that none of the petitioners have been able to demonstrate as to whether the post were, in fact, vacant or juniors to them have been regularized or they fulfil the qualification or that reservation roster was followed. It is urged that none of the petitioners have been able to demonstrate prejudice, therefore, the submission with regard to non-compliance of principles of natural justice deserves to be rejected. It is argued by him that contention of petitioners that since seniority lists have not been prepared, therefore, the orders with regard to de-regularisation cannot be passed, also does not deserve acceptance as the respondents have prepared separate gradation lists for four categories, namely, daily wagers of technical post engaged prior to 31.12.1988; daily wagers of technical post engaged subsequent to 01.1.1989; daily wager of non-technical post engaged prior to 31.12.1988 and daily wager of non-technical post engaged subsequent to 01.1.1989. It is also argued that aforesaid gradation lists were prepared as on 01.1.2009. It is submitted that since petitioners were continuing in regular establishment, therefore, their names were not mentioned in the aforesaid gradation lists and they only contain the names of daily wage employees. It is also urged that contention raised on behalf of petitioners that even till 2012 the gradation list was not prepared deserves to be rejected as gradation list was prepared in the year 2009 itself. It was further argued that respondent-Corporation was not represented at the time when the order dated 25.7.2012 was passed, as the said fact could not brought to the notice of the High Court. It is also submitted that even non-existence of names of petitioners in the gradation list is inconsequential as petitioners have failed to demonstrate any prejudice to them.

It is urged that doctrine of severability applies in respect of administrative orders as well and in case an order which contains many reasons,

and some reasons are severable from another, the order can be justified on the basis of sustainable reasons, notwithstanding that Court may not agree with the unsustainable reasons. In this connection, reference is made to the decision of Supreme Court in the cases of *P.D. Agrawal vs. State Bank of India*, (2006) 8 SCC 776 and *Krishnakali Tea Estate vs. Akhil Bharatiya Chah Majdoor Sangh*, (2004) 8 SCC 200. It is also contended that impugned order of de-regularisation has been passed on the basis of non- fulfilment of educational qualification, non-availability of vacant post and non following of reservation roster and not following the principle of seniority. The aforesaid grounds are sufficient to justice the orders of de-regularisation. It is further submitted that regularization of services of the petitioners falls in the category of illegal appointment as per law laid down in the case of *Uma Devi* (supra) and, therefore, the respondent is fully justified in de-regularising the services of the petitioners. It is also urged that submission of petitioners that long existing position cannot be unsettled runs contrary to recent decision of Division Bench in the case of *Manukhlal Saraf vs. Arun Kumar Tiwari and others* [W.P.No.198/1999]. It is also argued that petitioner No.6 in W.P.No.20726/2015 has been transferred to Municipal Corporation, Satna, therefore, he has not received any notice or order. However, aforesaid fact has not been mentioned in the writ petition. Lastly, it is urged that impugned orders have been passed on the basis of grounds which are mentioned in the show-cause notice and in every case there are justifiable reasons which makes the appointment illegal and which has its foundation in the show-cause notice. Therefore, the impugned orders of deregularisation of services of the petitioners are justified and do not call for any interference of this Court.

28. I have considered the respective submissions on both sides. The Supreme Court in the case of *Swadeshi Cotton Mills vs. Union of India,* AIR 1981 SC 818, while recognizing the rule of fair play as a necessary concomitant of principle of natural justice, has held that this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. In *Maneka Gandhi v. Union of India,* AIR 1978 SC 597 it was held that natural justice is a great humanizing principle and the soul of natural justice is fair play in action. It is further held that it is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and background of statutory provisions, nature of right, which may be affected, and the consequences which may entail. Its

application depends upon the facts and circumstances of each case. The necessary facet of principles of natural justice before the process of adjudication starts, is that the authority concerned give to the affected a notice of the case against him and action proposed to be taken against him, so that he may adequately defend himself. A notice is regarded as the minimum obligatory condition. It is the *sine qua non* of fair hearing. [See: *East India Commercial co. Vs. Collector of Customs,* AIR 1962 SC 1893 and *Raymond Woollen Mills Ltd. vs. D.G.(Investigation and Registration)*, (2008) 12 SCC 73]. It is equally well settled principle that notice must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet and should give adequate time. In the absence of notice of any kind and reasonable opportunity, the order passed becomes wholly vitiated. [See: *Canara Bank vs. Debasis Das,* (2003) 4 SCC 557 and *Canara Bank vs. V.K.Awasthy,* (2005) 6 SCC 321]. The notice must be effective and must be adequate as regards the details of the case, so that the noticee gets an adequate opportunity to represent against the impugned action. A notice in order to be valid has to fulfil following two attributes viz. (i) it must be adequate and (ii) it should fully mention all the grounds, on which, the action is proposed to be taken against the noticee. The grounds given in the notice, on which the action is proposed to be taken, should be couched in clear, specific and unambiguous terms and not in vague or general terms. [See: *Board of Technical Education, U.P. Vs. Dhanwantare Kumar*, AIR 1991 SC 271]. It is equally well settled legal proposition that if notice mentions one ground and the action is taken on some other ground or action is taken on some additional ground, which is not mentioned in notice, such notice suffers from vagueness and would amount to violation of principles of natural justice. [See: *J.Vilanagandan v. Executive Engineer,* AIR 1978 SC and *Nasir Ahmed v. Assistant Custodian-General, Evacuee Property,* AIR 1980 SC 1157]. A hearing to be fair must fulfil several conditions: (i) The adjudicating authority should receive all the relevant material which the individual wishes to produce. (ii) It should disclose all information, evidence or material which the authority wishes to use against the individual concerned in arriving at its decision. (iii) It should give to the individual concerned an opportunity to rebut such information or material. Reasonable time should be granted to submit reply to the show-cause notice. [See:(2008) 13 SCC 689]. It is equally well settled legal proposition that grounds in the show-cause notice must be ones which are relied on in the impugned order. Otherwise, the action would be held to be in violation of principles of natural justice. [See: *Tarlochan Dev Sharma vs. State of Punjab and others*, (2001) 6 SCC 261 and *CCE Vs.*

Sheetal International, (2011) 1 SCC 109]. The principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate and appropriate outcomes. [See: *Dharampal Satyapal Ltd.* (supra)]

29. In the backdrop of aforesaid well settled legal position, the facts of the cases may be taken note of. Admittedly, the petitioners had filed writ petitions seeking their regularization which were disposed of by order dated 27.2.2002 passed in Writ Petition No.1464/2001 *[Ramadhar Kushwaha vs. State of M.P. and others]*. The relevant extract of the said order reads as under:-

> *"4. As the Corporation itself has decided to regularize the services of employees who are working prior to 31st December, 1988, by which every employee will get his right according to his seniority on availability of post and on fulfilling the eligibility. In the circumstances, contention of the learned counsel appearing for the Corporation, that the Corporation is regularizing the services of employees as per policy decision which is in the uniform policy, is accepted and in respect of those employees who are working prior to 31st December, 1988, following directions are issued:-*
>
> *(a) Respondent Corporation who has already prepared the seniority list of daily rated employees who are working prior to 31st December, 1988 will regularize the services of daily rate employees strictly as per their seniority and eligibility subject to availability of post.*
>
> *(b) The respondent-Corporation has prepared aforesaid seniority list in two heads, technical and non-technical, will be at liberty to fill up the technical post on availability of technical post from daily rated worker who possesses requisite qualification. If the technical post is not available and the employee comes in the seniority criteria then respondent Corporation will be at liberty to regularize that person even on non-technical post, if such employee so chooses or opts such regularization.*

(c) So far as non-technical persons are concerned, all the daily rated workmen will get their regularization as soon as the posts become available as per his seniority and eligibility.

(d) This order will not affect those employees who have already been regularized because of the order passed by the High court or by Labour Court and the aforesaid order has reached its finality. But so far as the other employees are concerned, their services will be regularized as per the direction issued today including those whose regularization are under challenge before this Court.

(e) As the employees are to be regularized or classified on particular post on the availability of vacant post, as has been held in Full Bench decision by this Court in Superintending Engineer Vs. State of M.P. and others, [1999 (1) MPJR 1], in the circumstances, if any litigation in respect of employee who is working prior to 31-12-1988 or after 1-1-1989 respondent- Corporation will place this order before the Labour Court in that case and labour courts will strictly follow the decision of Full Bench Judgment and directions issued today in this case.

(f) In respect of those cases in which any junior person has been regularized ignoring seniority of other daily rate employees and if presently the order is under challenge before this Court, the aforesaid order of regularization by the labour court stand modified, as per this order.

(g) Those employees who are not satisfied with their seniority in the seniority list will file fresh representation before respondent Municipal Corporation within a period of sixty days from today and Municipal Corporation will decide the seniority of those unsatisfied employees within a period of ninety days thereafter.

(h) So far as the regularization of the employees working prior to 31-12-1988 are concerned, the respondent will consider the cases for regularization as

and when the posts are available strictly according to their seniority.

5. In respect of employees who are engaged after 1-1-1989 is concerned, following directions are issued:

(a) Respondent will prepare a fresh seniority list of all those employees who are continuously working in the Corporation and have achieved the status of permanent workman. This shall be done within 90 days from today.

(b) The aforesaid list will be duly published by the Corporation and after considering objections of the employees, the aforesaid seniority list will be finalized.

(c) The respondent Corporation on availability of post, after exhausting the list of employees working prior to 31-12-88 will regularize the services of all those employees strictly in accordance with their seniority and as per policy Annexure-R-4.

(d) The policy Annexure R-4 will also be applicable in respect of employees who are working after 1.1.89 and have achieved a permanent status as per provisions of standing order.

(e) For regularizing the services of workmen working after 1-1-1989, respondent-Corporation will also observe the reservation as has been mentioned in the Policy Annexure R-4 and in case daily rated employees are available of reserved quota then respondent will fill up the aforesaid quota by regularizing the services of those employees who belongs to reserved category on priority basis and if any such post remains vacant then they will follow the provisions of reservation by the State of M.P.

With the aforesaid directions, the petitions are finally disposed of."

30. Thereafter, the services of the petitioners were de-regularised by order dated 10.8.2005, which was assailed in a bunch of writ petition, which was disposed of by order dated 01.9.2005. The relevant extract of the order reads as under:-

"In these writ petitions an order dated 10.8.2005 has been assailed, by which regularization of the petitioners has been cancelled without giving them an opportunity of hearing. The services of the petitioners were regularized after they have rendered the service for consideration period. Order of regularization was passed after petitioners have rendered the services for long period, is not in dispute. Opportunity of hearing has not been afforded, is also not in dispute. The ground on which the order of regularization has been cancelled behind the back of the petitioners is that correct gradation list was not prepared, as such some of the incumbents may have been illegally regularized by the Municipal Corporation,Jabalpur.

After hearing learned counsel for the parties at length, in my opinion, the Corporation is not sure at this stage which of the incumbents have been wrongly regularized. As the Corporation is still preparing the gradation list, on the basis of which it has to be determined by the Corporation that which of the incumbents were not entitled for regularization. May be that seniority list which was earlier prepared was incorrect, once regularization was made the petitioners were required to be heard by the Municipal Corporation before passing order of deregularisation and in case their case was not in the seniority of the employees which is the correct seniority as per the Municipal Corporation, only in that case the order of regularization should have been cancelled only in consonance of principle of natural justice after hearing the petitioners. Thus, the order dt. 10.8.2005 which has been passed without hearing the petitioners, without apprising them of the cause of de-regularisation cannot be allowed to sustain, once the order of regularization has been passed after serving for considerable period, order derogatory to the interest of civil rights of the employees could not have been passed without hearing them as per law laid down by the Apex Corut in Ku.Neelima Mishra v. Harinder Kaur Paintal and others, AIR 1990 SC 1402.

Thus, the order dt. 10.8.2005 is hereby set aside with liberty to the Municipal Corporation to prepare the seniority list, to hear the petitioners and thereafter pass order of de-regularisation if warranted. There were Contempt Petition No.70/04 filed, in which, in accordance with the direction given in the contempt petition, seniority list has to be prepared afresh. However, that does not absolve the Corporation from hearing the petitioners and passing appropriate order in accordance with law. Let the seniority list be prepared as directed in the Contempt Petition.

Writ petitions are allowed to the extent indicated above. Parties to bear their own costs."

(Emphasis supplied)

31. Thereafter, in a bunch of writ petitions, in which challenge was made to the validity of the show-cause notice dated 27.8.2011, was disposed of with the following directions:-

"As a result, without expressing any opinion on the merits of the controversy, we dispose of these petitions with direction to the Commissioner to decide the matter after considering the response given by the petitioners expeditiously by giving due opportunity to the writ petitioners, in any case, not later than four weeks from today and communicate the decision so taken to the petitioners within the same time. If the decision is adverse, the petitioners will be free to challenge the same by say of appropriate proceedings. That will be decided on its own merits.

32. It is pertinent to note that Corporation itself had framed a scheme for regularisation of services of the daily wage employees and the orders of the regularisation of services of the petitioners have been passed in the year 2003 i.e. prior to decision in *Umadevi'v (sic:Umadevi's) case* (supra). A comparative chart to indicate the grounds mentioned in the show-cause notices and in the impugned orders in order to ascertain whether there is compliance with the principles of natural justice, is reproduced below:-

W.P.No.	Petitioner	Show-cause notice	Impugned order	Remark
20003 of 2015	Dinesh Kumar Jaat	a) Did not have requisite qualification as he has not passed Vaccination exam b) In seniority list of 9.12.03 name of petitioner is at Sr.No.32	a) Not possessing requisite qualification as Exam of vaccination not passed b) Seniority principle not followed	a) The defence of the petitioner that services were regularized in clerical cadre and he is performing duties of clerk, and further that services were regularized against the vacant post of Vaccinator to facilitate withdrawal of salary, has not been considered b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
20110 of 2015	Ashok Kumar Dubey	Since name of petitioner in seniority list of 09.12.03 at Sr.No.11, therefore, principle of seniority not followed	a) Regularised on post of peon on 12.1.04 on the said date no post of driver in general category was vacant b) No document for qualification filed c) Seniority principle was not followed	a) The fact that on 12.1.2004 no post of Driver was vacant in general category not mentioned in the show-cause notice. b) In the show-cause notice it is stated that petitioner had requisite qualification whereas in the impugned order it is stated that petitioner had not filed any document to show-cause that he had the requisite qualification. However, the requisite qualification has neither been prescribed in the show-cause notice nor in the impugned order. c) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
20111 of 2015	Sushil Shukla	a) Regularised on 12.1.04 against post of peon b) Name in seniority list of 09.12.03 at Sr.no.49, therefore, seniority principle not followed	a) Post of peon in general category was not vacant b) No document for educational qualification was filed c) Seniority principle was not followed	a) The fact that no post of peon was vacant in general category was not mentioned in the show-cause notice. However, the same finds in the impugned order. b) In the show-cause notice it is stated that the petitioner has the requisite qualification, whereas in the impugned order it is stated that no document with regard to educational qualification filed by the petitioner. c) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
20117 of 2015	Rustam Khan	a) Regularised on 28.5.03 b) Regularised as Gas Welder on which date there were vacant posts (1-ST, 1- OBC, 2-UR) c) Since passed 7th did not have requisite qualification of ITI Diploma	a) Post of Gas Welder was not vacant b) Educational qualification document not filed in respect post of Gas Welder c) Principle of seniority not followed as his name appears at Sr.no.09 of seniority list dt.09.12.03	a) The fact that post of Gas Welder was not vacant, not mentioned in the show-cause notice. b) The defence of the petitioner that in case the order of de-regularisation is passed the same would tantamount to violation of order dated 27.02.2002 passed in Writ Petition No.1464/2001, has not been considered. c) The petitioner was not required by show-cause notice to file any document with regard to his educational qualification. d) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

20192 of 2015	Hasan Mehndi	a) Regularised on 12.1.04 as peon b) Principle of seniority was not followed while regularizing the petitioner since his name was at sr.no.38 of seniority list dt.09.12.03	a) Relevant time post of OBC peon was not vacant b) No document for qualification filed alongwith reply c) Seniority principle was not followed as his name was at sr.no.11 of seniority list dt.09.12.03	a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) The fact that no post of peon belonging to OBC category was vacant was not mentioned in the show-cause notice. c) The fact that petitioner did not have the requisite qualification was not mentioned in the show-cause notice, whereas the same was made the ground for passing the impugned order of de-regularisation.
20614 of 2015	Lakhan Prasad Sen	a) Regularised on 28.1.04 against post of Lineman b) His name does not find place in seniority list dt. 09.12.03. c) He is higher secondary whereas requisite qualification is 8th pass and experience d) He is not found appointed as daily wage employee	a) He was not entitled for being regularisation on the date of regularisation on the post of Lineman (OBC) b) Since name does not find place in seniority list dt. 09.12.03, therefore, seniority list not followed c) He has not filed document to show that he possessed requisite qualification and experience for Lineman	a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) In the show-cause notice it is stated that educational qualification for the post in question was 8th pass, whereas the petitioner has passed Higher Secondary Examination, therefore, the conclusion in the impugned order that petitioner did not have the requisite qualification is perverse and further the same suffers from vice of non-application of mind. c) In the absence of any seniority list prepared in pursuance of direction of this Court in Writ Petition No.8565/2005 it cannot be said that petitioner was not entitled for regularization on the post of Lineman.
20196 of 2015	Dheeraj Prasad Tripathi	a) Regularised on 12.1.04 on post of Bullock Shed Chowkidar on which 2 posts were vacant (1-ST, 1-UR) b) His name was at sr.no.169 in seniority list dt.09.12.03 c) Requisite qualification of 8th pass did not possess as petitioner has passed Class 7th	a) He has not filed any document indicating that he was entitled to be regularized on the date of regularisation on the post of Bullock shed chowkidar b) His name was at Sr.No.169 of seniority list dt. 09.12.03 c) He did not file any document in respect of possessing requisite qualification for post of Bullockshed chowkidar	a) From the order of regularization of the petitioner it is evident that petitioner was regularized as 'Kulgade Chowkidar', whereas the conclusion with regard to non-availability of post has been arrived on record with reference to the post of Bullock Shed Watchman, which is unsustainable. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The defence of the petitioner with regard to educational qualification that at the relevant time the candidate should have passed Class Vth examination for appointment on the post against Class IV was not considered in the impugned order. d) The petitioner was not asked to furnish any document with regard to his educational qualification by the show-cause notice, whereas in the impugned order an inference has been drawn against the petitioner that he does not possess the requisite qualification merely on the ground that petitioner failed to annex any document with regard to his educational qualification.
20204 of	Rajulal Patel	a) Petitioner (OBC) regularized	a) Petitioner not found to be appointed	a) The defence of the petitioner was not considered.

2015		on 12.1.04 as Gadivaan on which date 1 post of ST category was vacant b) Since petitioner is 4th pass, therefore, did not possess requisite qualification of Class 8th	on daily wage basis b) He has not filed document indicating that he was entitled to be regularized on the date of regularisation on the post of Gadivaan c) He did not file any document showing possession of requisite qualification for the post of Gadivaan	b) The show-cause notice does not mention that petitioner was never regularized and not asked to produce document of educational qualification. c) In the show-cause notice it is not required to show that petitioner was not entitled to be regularized on the post of 'Gaadivan' on the date of regularization.
21015 of 2015	Sanat Kumar Shukla	a) Regularised on 12.1.04 on post of Vin Card Attendant, on which date, 1 post under ST category was vacant b) His educational qualification is 8th whereas requisite qualification was Higher Secondary	a) No post in unreserved category of Vin Card Attendant was vacant b) Name of petitioner finds place at sr.no.15, therefore, principle of seniority list was followed c) He did not file any document to show that on date of regularisation he possess requisite qualification for Vin Cart Attendant	a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) The fact that principle of seniority was not followed, was not mentioned in the show-cause notice. c) The defence with regard to educational qualification has not been considered.
20609 of 2015	Madan Singh Thakur (Petitioner No.1)	a) On 28.5.03 i.e. date of regularisation as Sub-Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant	a) No post of general category of Sub engineer was vacant on date of regularisation b) Principles of seniority not followed	a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed, was not considered while concluding that no post of Sub Engineer belonging to general category was vacant. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order
	Vijay Kumar Dubey (Petitioner No.2)	On 1.10.03 i.e. date of regularisation as Sub-Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant	a) No post of general category of Sub engineer was vacant on date of regularisation b) Principles of seniority not followed	a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed, was not considered while concluding that no post of Sub Engineer belonging to general category was vacant. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order
	Anurag Pathak	a) On 15.11.03 i.e. date of	a) No post of general category of Sub	a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed,

	(Petitioner No.3)	regularisation as Sub-Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant b) No reservation roster was followed while regularizing c) On date of appointment as daily wage employee he was 17 years of age	engineer was vacant on date of regularisation b) Principles of seniority not followed	was not considered while concluding that no post of Sub Engineer belonging to general category was vacant. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order
20611 of 2015	Ramraj Kushwaha (Petitioner No.1)	On date of regularisation on the post of Notice Writer i.e. on 25.12.03 only 1 post in ST category was vacant	a) He did not filed document in his reply to indicate that on date of regularisation the post of Notice Writer, such post under OBC category was vacant b) His name was at sr.no.28 of seniority list 09.12.03, therefore, seniority principle not followed	a) The petitioner in his reply has made a reference to note-sheet dated 12.1.1996 of Commissioner to point out that 7 posts were vacant. However, the aforesaid fact has not been considered while recording the conclusion that no post of Notice Writer was vacant at the time when the services of the petitioner were regularized. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The show-cause notice does not mention that seniority principle was not followed. Therefore, the order of de-regularisation has been passed on the ground, which was not mentioned in the show-cause notice.
	Kailash Singh Chouhan (Petitioner No.2)	a) Regularised on 25.12.03 as Pump Attendant b) His qualification was indicated as Nil whereas requisite qualification for the post was ITI Diploma c) Roster reservation not followed	a) No post of Pump Attendant (general) was vacant on date of regularisation i.e. 25.12.03 as his name was at Sr.No.45 of seniority list of illiterates b) Since his name was at sr.No.45 of seniority list relating to illiterates and persons below 8th standard, therefore, no seniority principle followed c) No document has been filed to show that he possessed requisite qualifidation (sic:qualification) for pump attendant on date of regularization	a) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order a ground has been taken that at the time of regularization of services of the petitioner the post of Pump Attendant was not vacant. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI Examination shall be relaxed in case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order.
20612 of 2015	Anil Shukla (Petitioner No.1)	a) Regularised as Clerk on 12.2.04 b) 09.12.03 his name was not in seniority list c) He is B.A. pass, whereas requisite	a) No vacant post of Clerk in general category on date of regularisation. b) His name is not in Seniority list dt. 09.12.03. He filed appointment order dt.	a) The fact that no post of L.D.C. was vacant, was not mentioned in the show-cause notice. However, the impugned order of de-regularisation has been passed on the ground that no post was vacant at the time when regularization was made. The order of de-regularisation has been passed on the ground not mentioned in the show-cause notice.

		qualification is Higher Secondary and Typing Exam Pass d) No reservation roster followed e) He is not found appointed on daily wage basis	19.8.99, therefore, his regularisatin (sic:regularisation) is against principle of seniority	b) Reply of petitioner to the show-cause notice was considered. c) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	Manoj Tiwari (Petitioner No.2)	a) Regularised as Clerk on 12.2.04 b) On 09.12.03 his name was not in seniority list c) He has passed Higher Secondary, whereas requisite qualification is Higher Secondary and Typing Exam Pass d) No reservation roster followed e) He is not found appointed on daily wage basis	a) No vacant post of Clerk in general category on date of regularisation. b) His name is not in Seniority list dt. 09.12.03. He filed appointment order dt. 19.8.99, therefore, his regularisatin is against principle of seniority	a) The fact that no post of L.D.C. was vacant, was not mentioned in the show-cause notice. However, the impugned order of de-regularisation has been passed on the ground that no post was vacant at the time when regularization was made. The order of de-regularisation has been passed on the ground not mentioned in the show-cause notice. b) Reply of petitioner to the show-cause notice was considered. c) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
21014 of 2015	Surendra Ingwasia (Petitioner No.1)	a) Regularised on 10.10.03 as Clerk (General). Total 6 posts (3-ST, 2-SC, 1 & A.Ja.Vi.-1) were vacant on date of regularistion (sic:regularisation) but not of general category b) He is B.Com. whereas requisite qualification is Higher Secondary and Typing, therefore, he did not possess requisite qualification	a) No document filed with reply indicating that on the date of regularisation the post of Wark Clerk (General) was vacant. b) His name in seniority list dt.09.12.03, therefore, seniority principle not followed while regularisation c) He has not filed document indicating that he passed B.Com. He had not passed Hindi Typing Test	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) The principles of seniority has been violated, has not been mentioned in the show-cause notice, therefore, the order has been passed on the ground not mentioned in the show-cause notice. c) While recording conclusion in the impugned order, the petitioner had not passed Hindi Typing Test, the defence of the petitioner has not been considered that since he was more than 40 years of age, therefore, under circular of the State Government dated 15.11.1984, he was not required to pass Hindi Typing Test.
	Kapil Anand Dubey (Petitioner No.2)	a) Regularised on 10.10.03 as Clerk (General). Total 6 posts (3-ST, 2-SC, 1 & A.Ja.Vi.-1) were vacant on date of regularistion but not of general category b) He is Higher Secondary, whereas requisite qualification is Higher Secondary and Typing, therefore, he did	a) He has not filed any document indicating that post of Ward Clerk (General) was vacant on 10.10.03. b) His name in seniority list was at sr.no. 284, therefore, seniority was not followed c) Not filed any document indicating that on date of regularisation he possessed	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) The principle of seneority was not followed while regualrisation (sic:regularisation), was not mentioned in the show-cause notice. However, the same was made the ground in the impugned order. c) The petitioner was not asked to submit the document with regard to his educational qualification. However, inference has been

	not possess requisite qualification c) No Reservation roster followed d) Since appointee after 31.12.88, therefore, not entitled for regularisation	qualification of Higher Secondary and Hindi typing pass	drawn that since the petitioner has not produced the document with regard to his educational qualification, therefore, he does not possess the same.
Manoj Kumar Sharma (Petitioner No.3)	a) Regularised as Pump Attendant of general category on which 7 posts of other categories were vacant. b) His name was not in seniority list of 09.12.03 c) He is Class VIII passed, whereas requisite qualification was ITI diploma d) Not found appointed as daily wage employee	a) He was not found appointed on daily wage basis. He did not file document to show that on date of regularisation post of Pump Attendant (General) was vacant. b) Document not filed indicating on date of regularisation he was working as daily wage employee and his name was not in seniority list dt. 09.12.03 c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation	a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant. b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization. c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
Deepak Khatri (Petitioner No.4)	a) Regularised as Pump Attendant of general category on which date 7 posts of other categories were vacant. b) His name was not in seniority list of 09.12.03 c) He is Class VIII passed, whereas requisite qualification was ITI diploma d) Not found appointed as daily wage employee	a) Document not filed showing entitlement for regularisation as Pump Attendant (General). His name was not seniority list. b) Name not found in seniority list dt. 09.12.03. Document not filed showing working as daily wager on date of regularisation c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation	a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant. b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization. c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
Ghanshyam Vishwakarma (Petitioner No.5)	a) He was regularized as Pump Attendant (OBC) on 12.1.04. b) His name was not in seniority list dt. 09.12.2003 c) He is Higher Secondary passed, whereas requisite qualification was ITI diploma	a) No post of Pump Attendant (OBC) vacant on date of regularisation. Document not filed by petitioner in this regard. b) Name not in seniority list dt. 09.12.03 and document not filed showing working as daily wager on date	a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant. b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled

		d) Not found appointed as daily wage employe (sic:employee)	of regularisation c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation	for regularization. c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	(Omkar Prasad Mishra) Petitioner No.6	a) Regularised as peon in general category on 12.1.04. b) His name was not in seniority list dt.09.12.03 c) His is Higher Secondary whereas requisite qualification was 8th pass and as such he did not possess the same. d) Reservation roster not followed. e) Not appointed as daily wage employee	a) Did not file document with reply indicating his entitlement for regularisation on the post of peon in general category. His name was not in seniority list and found not appointed on daily wage basis. b) Name not in seniority list dt. 09.12.03 and document not filed showing working as daily wager on date of regularisation. c) Document not filed showing that he possessed requisite qualification for being regularized as peon (general).	a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant. b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization. c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	Akhilesh Mishra (Petitioner No.7)	a) Regularised as Vaccinator (General). b) His name was not in seniority list. c) He is Higher Secondary, whereas requisite qualification is passing Vaccination Exam, therefore, did not possess requisite qualification d) He is not found appointed on daily wage basis.	a) His regularisation was on post of Vaccinator (General) dated Nil, which indicates that no order was passed. b) No document filed showing that on date of regularisation he was working on daily wage basis. His name was not in seniority list dt. 09.12.03. c) No document filed showing requisite qualification for being regularized as Vaccinator	a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess requisite qualification for the post of Pump Attendant. b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization. c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. d) The petitioner was not asked to produce the document with regard to his educational qualification
	Atul Anand Dubey (Petitioner No.8	a) Regularised as Vaccinator (General) b) His name was not in seniority list dt.09.12.03 c) He is higher secondary, whereas requisite qualification was	a) His regularisation was on post of Vaccinator (General) dated Nil, which indicates that no order was passed. b) No document filed showing that on date of regularisation he was working on daily wage basis. His	a) The conclusion that petitioner's regularization was contrary to the rules, is in contravention of the grounds taken in the show-cause notice. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

		Vaccination Exam Pass d) He was not found appointed on daily wage basis	name was not in seniority list dt. 09.12.03. c) No document filed showing requisite qualification for being regularized as Vaccinator	c) The petitioner was not asked to produce the document with regard to his educational qualification d) No explanation, worth the name, was offered by the Corporation to show if the petitioner was not appointed on daily wage basis, then how his services were regularized.
	Umashankar Tiwari (Petitioner No.9)	a) He was regularized on 25.12.03 on Ward Supervisor (Promotional Post), on which date post was not vacant. b) He was not entitled for regularisation on promotional post c) He was appointed after 31.12.88, therefore, not entitled for regularisation	a) No document filed indicating that on date of regularisation post of Ward Supervisor in general category was vacant. b) His name was at sr.no.175 of seniority list dt.09.12.03, therefore, seniority was not followed. c) No document filed indicating possessing of requisite qualification on the date of regularisation	a) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) The petitioner was not asked to produce the document with regard to his educational qualification.
	Rahul Anand Dubey (Petitioner No.10)	a) Regularised as Ward Clerk (General), whereas on such date 6 posts of other categories were vacant. b) He is Higher Secondary, whereas requisite qualification is Higher Secondary and Typing Pass, therefore, do not possess same c) He was 12 years of age on appointing date as daily wage employee ie. 31.12.88	a) Not filed document in reply showing that on date of regularisation i.e. 25.12.03 post of Ward Clerk (general) was vacant b) His name at sr.no.125 of seniority list dt.09.12.03. His age was 12 years on date of appointment. c) Did not file document in reply showing possessing of requisite qualification on date of regularisation	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The petitioner in the show-cause notice was not asked to produce the document with regard to his educational qualification.
	Zaleel Ahmad (Petitioner No.11)	a) Regularised as Peon (OBC) on 25.12.03. b) In seniority list dt. 09.12.03 his name was at sr.no.369, therefore, seniority principle not followed while regularisation c) Reservation Roster not followed d) Daily wage appointee after 31.12.88, therefore, not	a) Being of OBC his name in sr.no.369 and, therefore, on date of regularisation as peon on 25.12.03, no post of OBC was vacant. b) No document filed with reply showing his regularisation was valid even if seniority was not followed. c) No document filed showing possessing of requisite qualification for post of peon on the date of regularisation	a) The fact that no post of peon was vacant, was not mentioned in the show-cause notice. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The fact that petitioner does not possess educational qualification was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation.

		entitled for regularisation		
20655 of 2015	Vishnu Kant Tripathy	a) Regularised on 25.12.03 as Peon (General). b) His name in seniority list dt. 09.12.03 was at sr.no.241, therefore, while regularisation no seniority principle was followed c) He possess requisite qualification for the post in question	a) On 25.12.03 no post of peon (general) was vacant and no document filed in this regard in reply. b) Since his name at sr.no.241 of seniority list dt. 09.12.03, therefore, seniority was not followed. He did not file document that his regularisation without following seniority was valid. c) No document filed showing that he did not possess requisite qualification on date of regularisation	a) The fact that no post was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The fact that petitioner does not possess educational qualification, was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation.
20726 of 2015	Ashok Pathak (Petitioner No.1)	a) Regularisd (sic:Regularised) on 28.1.04 as Moharrir on which date only 2 posts of ST were vacant. b) His name was at seniority list dt. 09.12.03 at sr.no.147, therefore, principle of seniority was not followed c) No reservation roster was followed d) Since he was Higher secondary, therefore, possessed requisite qualification	a) On date of regularisation no post of Moharrir (General) was vacant and no document filed in reply by petitioner in this regard b) In seniority list of 09.12.03 his name was at sr.no.147, therefore, seniority principle not followed. No document filed with reply showing that his regularistion (sic:regularisation) without following seniority was valid	Ta) The fact that no post of Moharrir belonging to general category was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of services of petitioner. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	Sanjay Mishra (Petitioner No.2)	a) Regularised as Notice Server (General) on 31.1.04. b) His name was at sr.No.226 of seniority list, therefore, seniority was not followed c) Since he passed M.A. therefore, possessed requisite qualification of 8th pass. d) Appointed as daily wager after 31.12.88, therefore, not eligible on the date of regularisation	a) He was regularized on31.1.04 as Notice Server, whereas in note sheet there is mention of regularisation on post of Notice Writer. Thus, no post of notice writer. Thus, regularisation was against the rules. b) In seniority list dt. 09.12.03 his name was at sr.no.226. He not filed document with reply showing his regularisation without following seniority was valid.	a) The fact that no post of Notice Writer, was vacant was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of services of petitioner. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	Ravindranath Singh (Petitio	a) Regularised as peon (general) on 31.1.04	a) Regularised as Notice Server on 31.1.04, whereas note-sheet mentions	a) The fact that no post of Notice Server was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of

	ner No.3)	b) His name at sr.no.263 of seniority list 09.12.03, therefore, seniority was not followed c) Since Higher Secondary, therefore possessed requisite qualification of Class 8th d) Reservation roster not followed while regularisation e) Since appointed as daily wager after 31.12.88, therefore, not eligible on the date of regularisation.	regularisation on post of Notice Writer. Thus, no post of Notice Writer was vacant and regularisation was against rules. b) In seniority list dt. 09.12.03 his name was at sr.no.263, therefore, seniority was not followed. He did not file that without following seniority his regularisation was valid.	services of petitioner. b) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
	Ravishankar/Mohanlal (Petitioner No.4)	a) Regularised as Ward Clerk (General) on 25.12.03 on which date 6 posts (3-ST, 2-SC & 1 OBC) were vacant b) He was higher secondary, therefore, did not possess requisite qualification of Higher Secondary & Typing Pass c) Appointed as daily wager after 31.12.88, therefore, not eligible for regularisation	a) Regularised on 25.12.03 on the post of Ward Clerk (OBC), on which date no post was vacant and no document filed in this regard in reply. b) In seniority list dt. 09.12.03 his name was at sr.no.186. Seniority was not followed. No document filed showing regularisation without following seniority was valid c) He is higher secondary. He did file any document showing that he possessed Hindi Typing pass certificate.	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The fact that post of Ward Clerk of general category was not vacant is not mentioned in the show-cause notice. d) The fact that petitioner did not possess the requisite educational qualification, was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation.
	Chandrashekhar Patel (Petitioner No.5)	a) Regularised as Ward Clerk (OBC) on 10.10.03, on which 6 posts of other category were vacant, therefore, he did not come under vacant posts. b) He was higher secondary, therefore, did not possess requisite qualification of Higher Secondary & Typing Pass c) On 31.12.88 when he was appointed as daily	a) No post of Ward Clerk (OBC) was vacant on the date of regularisation. Not filed any proof with reply showing that post was vacant on the date of regularisation b) In seniority list dt.09.12.03 his name was sr.no.163. No document filed showing that his regularisation without following seniority was valid c) Requisite qualification is	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) No reason has been assigned as to why the petitioner did not possess the requisite educational qualification.

		wager, he was 14 years of age.	Higher Secondary, whereas he filed certificate of Hindi Typing of Maharashtra State of 1994 with reply	
	Rama kant Dwivedi (Petitioner No.6)	a) Regularised as Haka Gang (general) whereas 4 posts of other categories were vacant. b) In seniority list of 09.12.03 his name was at sr.No.202, therefore, principle of seniority not followed c) Requisite qualification for the post was. 8th pass.	a) Since appointed date 1991, no general category post of Hakagang was vacant b) In seniority list dt. 09.12.03, his name was sr.no.202, therefore, no document filed showing that his senior has not been regularized c) No document filed showing on the date of regularisation he possessed requisite qualification of post of Hakagang	a) The fact that post in Hakagang cadre belonging to general category was not vacant, not mentioned in the show-cause notice. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. c) The fact that petitioner did not possess the requisite educational qualification was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation of services of petitioner.
61 of 2016	Rakesh Shukla	a) Regularsed (sic:regularised)as Time Keeper (general) on 25.12.03, on which date, 2 posts (1-ST & 1-SC) were vacant. b) He is B.Com., whereas requisite qualification was Higher Secondary (Mathematics), therefore, did not possess requisite qualification.	a) No document filed with reply showing that on 25.12.03 post of Ward Supervisor (General) was vacant b) In seniority list his name is at sr.no.164, therefore, seniority was not followed. No document filed with reply showing his regularisation without following seniority was valid.	a) The fact that post of Time Keeper of general category was not vacant, not mentioned in the show-cause notice. However, the same was made the ground for passing the order of de-regularisation. b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.
1495 of 2016	Amit Yadav	a) Regularised as Ward Clerk (OBC) on 23.9.03, on which date, OBC category post was not vacant b) His qualification was higher secondary, whereas requisite qualification was Higher Secondary & Typing Test	a) He had not filed document with reply showing that on date of regularisation post of Ward Clerk (OBC) was vacant. b) In seniority list of 09.12.03 his name was at sr.no.154. No document filed with reply that his regularisation without following seniority was valid. c) Requisite qualification is Higher Secondary whereas with reply he filed certificate showing Hindi Typing pass from Maharashtra State on 31.1.04. Thus, not possessing requisite qualification on date of regularisation	a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order. b) No reason has been assigned as to why the petitioner did not possess the requisite educational qualification. c) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
1737 of 2016	Santosh Gautam (Petitioner	a) Regularised on 16.12.03 as Driver (General). On date of regularisation	a) On 16.12.03 8 posts of Driver (General) were vacant and his name	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered

	No.1)	only 8 (general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.13 c) He is Class 10th, whereas requisite qualification was Higher Secondary & Driving Licence	in seniority list was at 13, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant. b) No document filed with reply showing that his regularisation (sic:regularisation) without following seniority was valid c) No document filed with reply indicating that on 16.12.03 he was possessing requisite qualification for the post of Driver.	while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Ganesh Singh (Petitioner No.2)	a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.26 c) He is Class 8th pass whereas requisite qualification was Higher Secondary & Driving Licence d) Reservation roster not followed e) Appointed as daily wager after 31.12.88, therefore, not entitled to be regularised.	a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 26, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver was vacant. b) No document filed with reply showing that his regularisation (sic:regularisation) without following seniority was valid c) His educational qualification is 8th, whereas with reply he filed driving licence of 19.11.1996, from which it is clear that on 16.12.03 he did not possess requisite qualification	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Vijay Kumar (Petitioner No.3)	a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.11 c) He is Class 9th, pass whereas requisite	a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 11, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant. b) No document filed with reply showing that his regularisation (sic:regularisation) without following seniority was valid c) His educational	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.

		qualification was Higher Secondary & Driving Licence	qualification is 9th, whereas with reply he filed HTV driving licence of 13.7.06, from which it is clear that on 16.12.03 he did not possess requisite qualification	
	Shyam Lal Patel (Petitioner No.4)	Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, was not entitled for regularisation & In seniority list dt. 09.12.03 his name was at sr.no.3 & His educational qualification was nil, whereas requisite qualification was Higher Secondary and Driving Licence	a) On 16.12.03 3 posts of Driver (OBC) were vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant. b) No document filed with reply showing that his regulariation (sic:regularisation) without following seniority was valid c) His educational qualification is 3rd, whereas with reply he filed HTV driving licence of 31.7.07, from which it is clear that on 16.12.03 he did not possess requisite qualification	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Ratan Patel (Petitioner No.5)	a) Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.22 c) He is Class 8th, pass whereas requisite qualification was Higher Secondary & Driving Licence	a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 22, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant. b) No document filed with reply showing that his regulariation (sic:regularisation) without following seniority was valid c) His educational qualification is 8th, whereas with reply he filed driving licence of 18.12.03, from which it is clear that on 16.12.03 he did not possess requisite qualification	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.

	Saleem Khan (Petitioner No.6)	a) Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, was not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.20 c) His educational qualification was 7th pass, whereas requisite qualification was Higher Secondary & Driving Licence	a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 20, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant. b) No document filed with reply showing that his regulariation (sic:regularisation) without following seniority was valid c) His educational qualification is 7th, whereas with reply he filed HTV driving licence of 20.2.07, from which it is clear that on 16.12.03 he did not possess requisite qualification	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Rajesh Shukla (Petitioner No.8)	a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.10 c) He is Higher Secondary, pass whereas requisite qualification was Higher Secondary & Driving Licence	a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 10, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant. b) No document filed with reply showing that his regulariation (sic:regularisation) without following seniority was valid	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Shashikant Hazari (Petitioner No.9)	a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.19 c) He is Class 8th pass whereas requisite qualification was Higher Secondary & Driving Licence	a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 19, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant. b) No document filed with reply showing that his regulariation (sic:regularisation) without following seniority was valid c) His educational qualification is 8th, whereas with reply he filed HTV driving	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.

			licence of 27.12.03, from which it is clear that on 16.12.03 he did not possess requisite qualification	
	Ravindra Sharma (Petitioner No.10)	a) Regularised on 19.1.04 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.12 c) He is Higher Secondary, pass whereas requisite qualification was Higher Secondary & Driving Licence	a) On 19.1.04 8 posts of Driver (General) were vacant and his name in seniority list was at 12, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant. b) No document filed with reply showing that his regularisation (sic:regularisation) without following seniority was valid c) His educational qualification is Higher Secondary and HTV driving licence dt. 12.12.2006, from which it is clear that on 19.1.04 he did not possess requisite qualification	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
	Munna Lal Patel (Petitioner No.11)	a) Regularised on 19.1.04 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, not entitled for regularisation b) In seniority list dt. 09.12.03 his name was at sr.no.18 c) He is Class 4th, pass whereas requisite qualification was Higher Secondary & Driving Licence	a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 18, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant. b) No document filed with reply showing that his regularisation (sic:regularisation) without following seniority was valid c) His educational qualification is 4th, whereas with reply he filed driving licence of 07.2.07, from which it is clear that on 19.1.04 he did not possess requisite	a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant. b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition. d) In the show-cause notice it was not mentioned that order of de-regularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of de-regularisation.
1813 of 2016	Rakesh Tiwari (Petitioner No.1)	a) Regularised on 28.1.04 as Pump Operator (General) on which date 8 post of other categories were vacant. b) In seniority list of 09.12.03 his name was at sr.no.18, therefore,	a) Did not file document with reply to show that on date of regualrisation (sic:regularisation) i.e. 28.1.04 post of Pump Operator (General) was vacant. b) In seniority list dt. 09.12.03 his name was at sr.no.18. Did not file any document	a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI

		regularized without following principle of seniority. c) His seniority was nil, whereas requisife qualification was ITI/Diploma	showing that his regularisation without following seniority was valid. c) Did not file document to show that on date of regularisation he possessed requisite qualification of pump operator	Examination will be relaxed in the case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order. c) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order, ground has been taken that at the time of regularization of services of the petitioner, the post of Pump Attendant was not vacant.
	Rajendra Kashyap (Petitioner No.2)	a) Regularised as Pump Operator (OBC) on 28.1.04. On said date 8 posts of other categories were vacant. b) 09.12.03 in seniority list his name was at sr.no.64, therefore, seniority principle was not followed. c) His educational qualification was Higher Secondary, whereas requisite qualification was ITI Diploma	a) Regularised on 28.1.2004 as Pump Operator on vacant post of Pump Operator (OBC). On said date no post under said category was vacant. b) In seniority list dt.09.12.03 his name was at sr.no.64, therefore, seniority was not followed while regularisation. He had not filed any document to indicate that his regularisation without following principle of seniority was valid. c) He has not filed document to show that on the date of regularistion (sic:regularisation) he was possessing requisite qualification	a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated. b) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI Examination will be relaxed in the case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order. c) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order, ground has been taken that at the time of regularization of services of the petitioner, the post of Pump Attendant was not vacant.
1936 of 2016	Bal Krishna Patel	a) Regularised on 28.1.04 as Peon (OBC). b) 09.12.13 his name in seniority list was at sr.no.92 and he was regularized without following principle of seniority. c) His educational qualification was higher secondary and requisite qualification was 8th, therefore, possess requisite qualification.	a) Regularised on 28.1.04 as Peon (OBC). His name in seniority list at sr.no.92. He did not file any document to show that on date of regularisation post of peon (OBC) vacant b) He did not file any document with reply indicating that his regularisation without following principle of seniority was valid.	a) The fact that post of peon at the time of regularization was not vacant, was not mentioned in the show-cause notice, yet the same has been made the ground while passing the order of de-regulariastion. b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

33. From perusal of the above chart, it is evident that action against the petitioners have been taken in violation of principles of natural justice for the following reasons :-

(a) From perusal of order dated 01.9.2005 passed in Writ Petition No.8359/2005 it is axiomatic that respondent-Corporation was granted liberty to prepare the seniority list after affording an opportunity of hearing to the petitioners and thereafter pass an orders of de-regularisation, if warranted.

(b) From perusal of impugned orders it is evident that respondent-Corporation has concluded that principle of seniority has not been violated on the basis of seniority list prepared in the year 2003, whereas in the return as well as in the written synopsis produced before this Court, a stand has been taken that seniority list has been prepared in the year 2009. In the seniority list prepared in the year 2009, the names of petitioners do not find place, as the orders of regularization of services of petitioners were already passed.

(c) Thus, it is evident that a consolidated seniority list including the names of petitioners in compliance of order dated 01.9.2005 passed by this Court has not been prepared. Therefore, in the absence of the same it is not possible for the Corporation to conclude that the principle of seniority has not been followed.

(d) The grounds mentioned in the show cause notices in most of the cases are different than the ones, on which, the impugned orders have been passed, which is evident from the chart reproduced above..

(e) In the impugned orders it has been recorded that petitioners have failed to produce any document to show their educational qualification, whereas by way of show-cause notices the petitioners were never asked to submit document with regard to their educational qualifications alongwith the reply.

(f) The defence set up by the petitioners in their replies has not been considered while passing the impugned orders;

(g) Since the case of the petitioners were considered with reference to the gradation list prepared on 09.12.2003 and not with reference to the gradation list prepared in the year 2009, in which the names of the petitioners do not appear, therefore, it is not possible to infer whether any vacant posts were available in the year 2003.

(h) The petitioners were granted only three days' time to submit their replies, which was inadequate in the fact situation of the case.

Thus, from the facts narrated supra, it is evident that orders of de-

regularisation have been passed in violation of principles of natural justice, which cannot be sustained in the eye of law.

34. The contention raised by learned counsel for respondent-Corporation that impugned orders have been passed in compliance of principles of natural justice, therefore, cannot be accepted in the fact situation of the case. Similarly, the contention that petitioners have failed to demonstrate any prejudice also cannot be accepted, as the prejudice is writ large in the fact situation of the case, (as show-cause notices have been issued on one ground and impugned orders have been passed on other grounds. The petitioners have not been given sufficient time to respond to the show-cause notice and the petitioners were not even asked to submit documents alongwith the reply. However, an adverse inference has been drawn on account of non-submission of documents. The defence of the petitioners has also not been considered while passing the impugned orders. The respondent-Corporation was under an obligation to prepare the seniority list containing the names of the petitioners to ascertain whether or not the principle of seniority has been violated. From perusal of chart, it is evident that doctrine of severability does not apply to the fact situation of the case.

36. In view of preceding analysis, the impugned orders of de-regularisation of services of the petitioners dated 19.11.2015 are hereby quashed. The Corporation may take action for de-regularisation of services of the petitioners, if so advised, in the light of law laid down by the Supreme Court in the case of Umadevi's (supra) particularly in the light of observations made in paragraph 53 of the decision. Needless to state, the respondent-Corporation shall first prepare the seniority list containing the names of petitioners as directed vide order dated 01.9.2005 passed by a Bench of this Court in Writ Petition No.8359/2005, after inviting objections, and thereafter may issue show-cause notices to the petitioners containing precise grounds, on which, action of de-regularisation of services of petitioners is sought to be taken. The show-cause notices shall clearly state the documents which the petitioners, in the opinion of respondent, are required to produce in support of their claim. Needless to state, the respondent-Corporation shall pass speaking orders.

37. With the aforesaid directions, the writ petitions stand disposed of.

Petition disposed of.

I.L.R. [2016] M.P., 2771
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 2339/2015 (Indore) decided on 10 March, 2016

GAIL GAS LIMITED & anr. ...Petitioners
Vs.
M.P. AGRO BRK ENERGY FOODS LTD. & anr. ...Respondents

Constitution - Article 227 - Arbitration and Conciliation Act (26 of 1996), Section 8 **- Rejection of application for referring the matter to arbitration - Held - In a suit where very existence and validity of arbitration agreement is under challenge, Section 8 cannot be invoked - Issue declaring the agreement as null and void can be decided by the trial Court and not by arbitrator - No illegality in order - Petition dismissed. (Paras 6 to 10)**

संविधान – अनुच्छेद 227 – माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 8 – मामले को माध्यस्थम् हेतु निर्देशित किये जाने का आवेदन नामंजूर किया जाना – अभिनिर्धारित – किसी वाद में जहाँ माध्यस्थम् करार के अस्तित्व एवं वैधता को ही चुनौती दी गई हो, धारा 8 का अवलंब नहीं लिया जा सकता – करार को अकृत और शून्य घोषित करने वाले विवाद्यक को विचारण न्यायालय द्वारा विनिश्चित किया जा सकता है न कि मध्यस्थ द्वारा – आदेश में कोई अवैधता नहीं – याचिका खारिज।

Cases referred:

2011(3) MPLJ 625, 2013(1) MPLJ 233, AIR 2010 SC 488, 2006(4) MPLJ 566.

N.L. Ganapatti and *G.S. Chouhan*, for the petitioner.
R.S. Laad, for the respondents.

(Supplied: Paragraph numbers)

ORDER

PRAKASH SHRIVASTAVA, J. :- This writ petition under Article 227 of the Constitution of India is at the instance of the defendant in the suit challenging the order of trial court dated 21/1/2015 rejecting the petitioner's application under Section 8 of Arbitration & Conciliation Act, 1996 (for short Act of 1996).

2. In brief in a suit filed by respondent/plaintiff an application under Section 8 of Act 1996 was filed by petitioner for invoking the arbitration clause contained in the agreement with a prayer to refer the dispute to arbitration in terms of Section 8 of Act of 1996. The said prayer was opposed by respondent and the trial court by the impugned order has rejected the application.

3. Learned counsel for petitioner submits that the trial court has committed an error in rejecting the application under Section 8 of Act of 1996 without appreciating that the conditions mentioned therein are satisfied and in terms of the arbitration agreement, the dispute is required to be referred for arbitration.

4. Learned counsel for respondent has opposed the writ petition.

5. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the trial court has rejected the petitioner's application under Section 8 of the Act 1996 on the ground that very arbitration agreement is under challenge in the suit, hence Section 8 cannot be invoked.

6. On perusal of the plaint, it is noticed that respondent/plaintiff has raised the plea in the suit that agreement dated 24/2/11 is one sided proforma which is not binding on the respondent. The main relief claimed in the plaint is to declare that agreement dated 24/2/11 is not binding on the respondent and is void.

7. Under Section 8 of the Act 1996 a matter which is subject matter of arbitration agreement can be referred to arbitration therefore Section 8 presupposes the existence of valid arbitration agreement. In a suit where very existence and validity of arbitration agreement is under challenge, Section 8 of Arbitration Act cannot be invoked.

8. Supreme court in the matter of *Booz Allen And Hamilton INC. Vs. SBI Home Finance Ltd. And others* reported in 2011(3) MPLJ 625 has held that while deciding the application under Section 8 of Act, all aspects of the arbitrability will have to be decided by the court seized of the suit and they cannot be left to the decision of the arbitrator. It has further been held that if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special Court or Tribunal, the court will refuse an application under Section 8 of Act. Same is the view taken by this Court in the matter of *Mukesh Singh Tomar and another Vs. Rakesh*

s/o Amrish Sharma and others reported in 2013(1) MPLJ 233.

9. While granting the prayer under Section 8 of the Act, the court is required to see whether there exists an agreement and such an agreement contains the arbitration clause and the dispute sought to be raised in the suit is covered by the agreement (See: *The Branch Manager Magma Leasing and Finance Ltd. And another Vs. Potluri Madhavilata and another* reported in AIR 2010 SC 488; *Birla Global Finance Ltd. Vs. Gajra Bevel Gears Ltd.* Reported in 2006(4) MPLJ 566.

10. Under the amended Section 8 of the Act 1996 also the court is required to reach to the conclusion about existence of valid arbitration agreement while deciding the application under Section 8 of the Act.

11. Since in the present matter, the suit itself is for declaring the agreement as null and void and such an issue can only be decided by the trial court and not by the arbitrator, hence the trial court has not committed any error in rejecting the petitioner's application under Section 8 of the Act of 1996. The order passed by the trial court does not suffer from any patent illegality.

12. Hence no case for interference in the impugned order of trial court is made out. The writ petition is accordingly dismissed.

C.C. as per rules.

Petition dismissed.

I.L.R. [2016] M.P., 2773
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 3666/2014 (Indore) decided on 31 March, 2016

PRAMOD KUMAR UDAND ...Petitioner
Vs.
STATE BANK OF INDIA & ors. ...Respondents

Service Law - Stay of Departmental Enquiry - **Petitioner seeking stay of departmental enquiry on the ground that criminal case on the same subject is pending - Held - Stay of departmental enquiry, only when case involves complicated question of law and fact, and stay would not suspend the departmental enquiry indefinitely or delay it**

unduly - Charges framed in criminal case & departmental enquiry are not identical - Charges do not involve complicated question of law & facts - Petition dismissed. (Paras 8 & 14)

सेवा विधि – विभागीय जाँच का रोका जाना – याची द्वारा विभागीय जाँच को इस आधार पर रोका जाना चाहा गया कि समान विषय पर दाण्डिक प्रकरण लंबित है – अभिनिर्धारित – विभागीय जाँच को केवल तभी रोका जा सकता है जब मामले में विधि एवं तथ्य का जटिल प्रश्न अंतर्ग्रस्त हो, तथा रोक से विभागीय जाँच अनिश्चित रूप से निलंबित अथवा असम्यक् रूप से विलंबित नहीं होगी – दाण्डिक प्रकरण एवं विभागीय जाँच में विरचित आरोप एक जैसे नहीं हैं – आरोपों में विधि एवं तथ्य का जटिल प्रश्न अंतर्ग्रस्त नहीं – याचिका खारिज।

Cases referred:

(1996) 6 SCC 417, (1997) 2 SCC 699, (1999) 3 SCC 679, (2004) 7 SCC 27, (2004) 7 SCC 442, (2007) 10 SCC 385, (2014) 3 SCC 636.

Piyush Mathur with *Shashank Sharma,* for the petitioner.
A.K. Sethi with *R.C. Sinhal,* for the respondents.

ORDER

PRAKASH SHRIVASTAVA, J. :- By this petition the petitioner is seeking stay of departmental proceeding till completion of the trial in criminal case.

2. Facts in nutshell are that petitioner during the relevant period was working as Branch Manager of respondent Bank at Sarangpur. Three FIRs were registered on 2/10/2012 at Sarangpur Police Station at the instance of respondents against the petitioner for commission of offence under Sections 420, 467, 468 and 120-B of IPC and challan has been filed by the police in the court on 25/12/2012 and criminal cases 30/13, 31/13 & 32/13 are registered against the petitioner. The charges in the criminal case have been framed against the petitioner vide Annexs.P-9 to P-11. A departmental enquiry has also been initiated against the petitioner by serving a charge sheet dated 11th August 2012, Annex.P-12. The petitioner had filed an application dated 10/3/2014 for staying the departmental enquiry pending the criminal trial but the said application has been rejected by order dated 10/3/14.

3. Learned counsel for petitioner submits that departmental enquiry as well as the criminal case are on the same subject matter and the same witnesses are required to be examined in both therefore, the departmental enquiry is

required to be stayed since the petitioner will have to disclose the defence in departmental enquiry which will cause prejudice to him in criminal case.

4. Per contra learned counsel for respondents has submitted that the subject matter as well as the scope of departmental enquiry and criminal case is different and petitioner is not entitled for stay.

5. Having heard the learned counsel for parties and on perusal of the record, it is noticed that in criminal case the charges have been framed against the petitioner for fabricating the documents and by committing fraud and cheating obtaining huge sum dishonestly resulting into commission of offence under Sections 420, 467, 468, 469, 471, 120-B and 409 of IPC.

6. Whereas perusal of the charge sheet in the departmental enquiry reveals that petitioner has been charge sheeted for as many as 10 charges. The first charge is about disbursement of loan against WHRs in the name of various borrowers without their knowledge and mandate and crediting the proceeds of these loans to the accounts of warehouse owners and other individuals and thus passing on undue financial favour under his ID; The second charge is disbursing demand loan against WHR to Shri Bharat Singh Dhul without mandate of the borrower and crediting the same in SB account of Shri Chandra Prakash Paliwal and other accounts; The third charge is about sanctioning 95 demand loans against WHRs of three warehouses without ascertaining whether the goods belong to the borrower and without ascertaining necessary evidence in this regard; The forth (sic:fourth) charge is failure to obtain coliateral security in a matter contrary to the instructions contained in HO Letter; Fifth charge is about failure to obtain KYC documents of persons to whom the loans against WHRs were disbursed; Sixth charge is allowing the loan documents to be executed by persons different from the persons to whom the loan was sanctioned; Seventh charge is failure to verify the signatures of the borrowers on the reverse of the WHRs in token of endorsement in Bank's favour which were found to be different from the signatures obtained in loan documents, whereby not adhering to the instructions of the bank; The eighth charge is not maintaining 'warehouse wise commodities kept by the borrowers and their movement' register and not carrying out periodical inspections and not maintaining the inspection register; Ninth charge is concealing the actual status of the assets by sanctioning new loans and crediting the amount to old non performing accounts; The tenth charge is sanctioning and disbursing demand

loans against WHRs but denial by borrowers of having received the disbursement of the loan.

7. The examination of the charges framed in criminal case as well as charges for which the departmental enquiry is being conducted reveal that the charges in the departmental enquiry are not same as the charges in criminal case.

8. The petitioner is seeking stay of departmental enquiry on the ground that criminal case on the same subject matter is pending. There is no inflexible rule that in every case where criminal case and departmental enquiry is pending on the same subject matter, the departmental enquiry should be stayed. In such matters each case is required to be examined on the basis of its own facts and circumstances. The criminal case and departmental enquiry can proceed simultaneously and this normal rule can be departed in cases where charges leveled against the employee are serious in nature and continuance of disciplinary proceeding is likely to prejudice the defence before the criminal court, but even this is not enough to stay the departmental enquiry unless the case involves complicated question of law and fact and stay would not suspend the departmental enquiry indefinitely or delay it unduly.

9. In the matter of *State of Rajasthan Vs. B.K. Meena and others* reported in (1996) 6 SCC 417 it has been held that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In one conduct of the employee resulting into imposition of punishment is examined and in other the commission of offence and imposition of sentence is examined. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

10. In the matter of *Depot Manager A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others,* reported in (1997) 2 SCC 699 it has been held that the crime is an act of commission in violation of law or of omission of public duty whereas the departmental enquiry is to maintain discipline in service and efficiency of public service, therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible and no inflexible rules can be laid down for staying the departmental proceeding pending the criminal trial and what is required to be seen is whether the departmental enquiry would seriously prejudice the

delinquent in his defence at the trial in a criminal case.

11. In the matter of *M. Paul Anthony Vs. Bharat Gold Mines Ltd. And another* reported in (1999) 3 SCC 679 the Supreme court considering the earlier judgment on the issue has culled out the following principle in this regard:

> 22 The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

12. The same position of law has been reiterated by the Supreme court in the subsequent judgments in the matter of *State Bank of India and others Vs. R.B. Sharma* reported in (2004) 7 SCC 27, in the matter of *Kendriya Vidyalaya Sangathan and others Vs. T. Srinivas* reported in (2004) 7 SCC 442, in the matter of *Noida Entrepreneurs Association Vs. Noida and others* reported in (2007) 10 SCC 385.

13. In the matter of *Stanzen Toyotetsu India Private Limited Vs. Girish V. and others*, reported in (2014) 3 SCC 636 it has been held that:-

> 16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminals trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.

14. In the present case this Court on examination of the charges framed in the criminal case as also in the departmental enquiry, has already found that the charges are not identical in nature. Even otherwise these charges do not involve any complicated questions of law and facts. The departmental enquiry is pending since 2012 and more than three and half years have passed. The stay granted by this court on 12/5/2014 against continuation of the departmental enquiry itself is operating since last more than one and half years.

15. In the matter of *M. Paul Anthony* (supra) it has been clarified that if

the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they are stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date.

16. In the present case trial in the criminal case is not concluded till now. As per the submission of counsel for petitioner prosecution witness in the criminal case are not turning up. Counsel for the petitioner has also failed to point out the prejudice which may be caused on account of simultaneous continuation of both proceedings. Hence staying the departmental enquiry at this point of time is not found just and proper.

17. In the aforesaid circumstances the writ petition is found to be devoid of any merit which is accordingly dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 2779
WRIT PETITION
Before Mr. Justice Vivek Agarwal
W.P. No. 2833/2010 (I) (Gwalior) decided on 14 June, 2016

SHRIJI WARE HOUSE ...Petitioner
Vs.
M.P. STATE CIVIL SUPPLIES CORPORATION LTD. & ors. ...Respondents

A. Civil Procedure Code (5 of 1908), Section 89 Order 7 Rule 10 & 11 **- Dismissal of suit for lack of jurisdiction directing to avail the alternative remedy - Facts - Suit of the plaintiff/petitioner was dismissed with a direction to refer the matter to the arbitrator vide order dated 11.11.2009 - Petitioner filed application before trial court for refund of court fee after dismissal of suit which was rejected - Held - Suit was dismissed accepting application of defendant under Order 7 Rule 11 being not maintainable within the jurisdiction of trial court in view of the stipulations of agreement between the parties and on the ground of availability of alternative remedy - None of the ingredients of Section 89 is available in the present case as it was a contested matter without there being any consent of the petitioner to refer the matter to arbitration. (Paras 4 to 8)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 89 आदेश 7 नियम 10 व 11 – वैकल्पिक उपचार का अवलंब लेने के लिए निदेशित करते हुए अधिकारिता के अभाव में वाद खारिज किया गया – तथ्य – आदेश दिनांक 11.11.2009 द्वारा मामला मध्यस्थ को निर्देशित करने के लिए निदेश के साथ वादी/याची का वाद खारिज किया गया – वाद को खारिज किये जाने के पश्चात् याची ने विचारण न्यायालय के समक्ष न्यायालय फीस लौटाये जाने हेतु आवेदन प्रस्तुत किया जिसे अस्वीकार किया गया – अभिनिर्धारित – पक्षकारों के मध्य किये गये करार की शर्तों को दृष्टिगत रखते हुए और वैकल्पिक उपचार की उपलब्धता के आधार पर विचारण न्यायालय की अधिकारिता के भीतर पोषणीय नहीं होने के नाते आदेश 7 नियम 11 के अंतर्गत प्रतिवादी का आवेदन स्वीकार करते हुए वाद खारिज किया गया – धारा 89 का कोई भी अवयव वर्तमान प्रकरण में उपलब्ध नहीं, क्योंकि यह एक प्रतिवादित मामला था, जिसमें मामले को मध्यस्थ को निर्दिष्ट करने हेतु याची की सहमति नहीं ली गई थी।

***B. Court Fees Act (7 of 1870), Section 16 - Refund of Court Fee* - Held - Section 16 provides for refund of court fee in case dispute is settled in terms of Section 89 C.P.C. and since in the present case suit was not decided in terms of requirements of Section 89, plaintiff not entitled to refund of court fee - Petition dismissed. (Para 9)**

ख. न्यायालय फीस अधिनियम (1870 का 7), धारा 16 – न्यायालय फीस का प्रतिदाय – अभिनिर्धारित – धारा 89 सि.प्र.सं. की शर्तों के अनुसार विवाद के निपटारे की दशा में, धारा 16 न्यायालय फीस के प्रतिदाय हेतु उपबंध करती है, और चूंकि वर्तमान प्रकरण में वाद का विनिश्चय धारा 89 की अपेक्षाओं के अनुसार नहीं किया गया इसलिए, वादी न्यायालय फीस के प्रतिदाय हेतु पात्र नहीं – याचिका खारिज।

Cases referred:

AIR 1959 Punjab 629, AIR 1963 Andhra Pradesh 68, AIR 1969 Delhi 130.

D.D. Bansal, for the petitioner.
Vilas Tikhe, for the respondents No. 1 to 4.
Praveen Newaskar, G.A. for the respondent No. 5/State.

ORDER

VIVEK AGARWAL, J. :- In this writ petition, petitioner has challenged the order dated 01.04.2010 passed by 3rd Additional District Judge, Morena in Civil Suit No. 1B/2009. The petitioner had filed an application for refund of Court fees of Rs. 20,640/- after dismissal of the suit No. 1B/2009 which was

filed on 06.07.2009. In the said suit, respondent No. 4 had filed an application under Order 7 Rule 11 of CPC which was decided vide order dated 11.11.2009 and suit of the plaintiff was dismissed with a direction that matter be referred to an arbitrator.

2. In the present petition, petitioner claimed refund of the Court fees on the ground that when the suit was returned for filing before the Court of competent jurisdiction, in terms of the Provisions contained in Order 7 Rule 10 CPC petitioner is entitled to refund of the Court fees. It is further submitted that the Proceedings of the trial Court will be deemed to be proceedings under Section 89 of CPC and, therefore, order dated 11.11.2009 being an order under Section 89 of CPC, petitioner is entitled for refund of Court fees. He has also referred to Section 16 of the Court Fees Act,1870 in support of the claim that petitioner is entitled to a certificate from the Court authorizing him to receive back the Court fee from the Collector, the full amount of the fee be paid in respect of such plaint. The petitioner has referred to few decisions in support of his claim for refund of the Court fees. The first decision is of Punjab and Haryana High Court in the matter of *Bhura Mal Dan Dayal Vs. Imprial Flour Mills Limited and Ors*. as reported in AIR 1959 Punjab 629 in support of his claim for refund of Court fees. Facts of the present case are totally different from the facts of the case of *Bhura Mal Dan Dayal Vs. Imprial Flour Mills Limited and Ors*. in as much as in the later case Court having no jurisdiction over the subject matter of the suit had returned the plaint for presentation to the appropriate Court of competent jurisdiction. This Court has already observed that Provisions of Order 7 Rule 10 will be applicable only when plaint is returned for being presented to the appropriate Court but in the present case as plaint was not returned, ratio of this decision will not help the petitioner.

3. Petitioner has similarly relied on the decision in the case of *Mamidi Lakshminayana Vs. Akula Satyanarayana and Ors.* as reported in AIR 1963 Andra Pradesh 68. In that case also on the basis of peculiarity jurisdiction, the plaint was returned for presentation before the appropriate Court, therefore, again ratio of the said decision is not in favour of the petitioner and facts are distinguishable. Petitioner has also placed reliance on the decision of the Delhi High Court as reported in AIR 1969 Delhi 130 in case of *Chief Controlling Revenue Authority and another Vs. Fertilizer Corporation of India Ltd. And others.* Facts of that case are also different where the plaint was returned

by Hoshiyarpur Civil Court for being presented to a competent Court at Delhi as the territorial jurisdiction of the subject matter of the suit was not with the Hoshiyarpur Civil Court.

4. The question for adjudication in the present case is whether the order dated 11.11.2009 will fall within the purview of Section 89 of CPC or within the purview of Order 7 Rule 10 of CPC, thus, entitling the petitioner to invoke the Provisions of Section 16 of the Court Fees Act 1870.

5. This Court has perused the record and it is apparent from the order dated 11.11.2009 that defendant No. 4 had moved an application under Order 7 Rule 11 read with Section 151 of CPC. It was submitted by the defendant No. 4 that a lease agreement was executed between the parties on 02.06.2008 and the said lease agreement provides for referring a dispute between the parties to an arbitrator, whose decision shall be binding on both the parties. The plaintiff had filed reply to the said application under Order 7 Rule 11 and had contested that defendant No. 4 has since not paid the rent, therefore, the dispute need not be referred to the arbitrator and the objection raised by the defendant No. 4 is unnecessary. It was also submitted that such application was filed merely to delay the proceedings.

6. After hearing the parties, learned 3rd Additional District Judge, Morena had accepted the application under Order 7 Rule 11 of CPC and had dismissed the suit on the ground of suit being not maintainable within the jurisdiction of learned trial Court in terms of the stipulations of the agreement, it is apparent from the order dated 11.11.2009 that the suit was not returned for filing before the arbitrator.

7. At this stage, it will be profitable to refer to Section 89 of CPC which reads as under:-

> "It is apparent that where it appears to the Court that there exist element of settlement acceptable to the parties, it is the Court may formulate the terms of possible settlement and refer the same for arbitration. Thus the basic requirement of tracing into service, the Provisions of Section 89 of CPC is that the Court should be satisfied of availability elements of a settlement, those elements should be acceptable to the parties and then the Court should formulate the terms of a possible settlement and refer them to either arbitration, conciliation, judicial settlement including

settlement through Lok Adalat or mediation."

8. In the present case none of the ingredients of Section 89 of CPC are available as the Civil suit was a contested matter in which objection of the respondent No. 4 has been sustained and upheld by the learned trial Cout (sic:Court) without there being any consent of the present petitioner to amicably take the matter to arbitration. Therefore, it can not be said that the order dated 11.11.2009 meet the requirements of Section 89 of CPC. Similarly Order 7 Rule 10 of CPC provides that subject to the provisions to the Order 7 Rule 10 A of CPC the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. In the present case it is apparent from the order dated 11.11.2009,annexure P/3 that the plaint was not returned for presenting before the appropriate Court. In the present case objection of the defendant No. 4 was upheld and the suit was dismissed on the ground of lack of jurisdiction due to availability of alternate remedy of arbitration.

9. Section 16 of the Court Fees Act, 1870 provides for refund of fee where a suit/dispute is settled in terms of Section 89 of CPC,1908. As has been observed above the suit in question was not decided in terms of the requirement of Section 89 of CPC, therefore, there is no infirmity in the order dated 01.04.2010 passed by the Court of 3rd Additional District Judge, Morena. Thus, this writ petition under Article 227 of Constitution of India fails and is dismissed.

Parties to bear their own cost.

Petition dismissed.

I.L.R. [2016] M.P., 2783
WRIT PETITION
Before Mr. Justice S.K. Seth & Mr. Justice H.P. Singh
W.P. No. 17859/2015 (Jabalpur) decided on 5 July, 2016

MAHENDRA KUMAR DWIVEDI ...Petitioner
Vs.
SPECIAL POLICE ESTABLISHMENT
(LOKAYUKT ORGANIZATION) BHOPAL ...Respondent

Constitution - Article 226 - Quashing of FIR **- Complainant was told to pay illegal gratification for his posting - FIR reflects that when complaint was made to Lokayukt a digital voice recorder was**

provided to complainant for recording conversation - After obtaining recorded conversation trap was set up - Rs. 10,000/- and the document pertaining to posting of complainant was also seized - Held - Complainant has made clear and specific allegation against the petitioner - Allegations clearly constitute a cognizable offence - No case to exercise extraordinary or inherent powers to quash the FIR - Petition is dismissed. (Paras 7 & 8)

संविधान – अनुच्छेद 226 – प्रथम सूचना प्रतिवेदन का अभिखण्डन – शिकायतकर्ता को उसकी पदस्थापना हेतु अवैध पारितोषण अदा करने के लिए कहा गया था – प्रथम सूचना रिपोर्ट दर्शाती है कि जब लोकायुक्त को शिकायत की गई थी, शिकायतकर्ता को बातचीत रिकार्ड करने हेतु एक डिजिटल व्हाईस रिकार्डर उपलब्ध कराया गया था – रिकार्ड की गई बातचीत प्राप्त करने के पश्चात् जाल बिछाया गया – रूपये 10,000/– एवं शिकायतकर्ता की पदस्थापना से संबंधित दस्तावेज भी जब्त किया गया – अभिनिर्धारित – शिकायतकर्ता ने याची के विरूद्ध स्पष्ट एवं विनिर्दिष्ट अभिकथन किया है – अभिकथन स्पष्ट रूप से, एक संज्ञेय अपराध गठित करते है – प्रथम सूचना रिपोर्ट को अभिखण्डित किये जाने हेतु असाधारण अथवा अंतर्निहित शक्तियों का प्रयोग किये जाने हेतु कोई प्रकरण नहीं बनता – याचिका खारिज।

Case referred:

AIR 1992 SC-629.

Manish Datt with *Yash Soni*, for the petitioner.
Pankaj Dubey, Standing Counsel for Lokayukt.

ORDER

The Order of the Court was delivered by :
H.P. SINGH, J. :- By the present petition under Article 226 of the Constitution of India, petitioner is seeking relief of quashing the FIR bearing Crime No. 5/2015 dated 04.01.2015 under Section 7, 13 (1)(d) and Section 13 (2) of Prevention of Corruption Act, 1988, registered by Special Police (Lokayukt), Bhopal against the petitioner.

2. Facts relevant for disposal of this petition, in nutshell are that during the relevant period the petitioner was posted as District Education Officer (for short the D.E.O.), Panna. Complainant-Ravishankar Danayak was attached to the Office of D.E.O. in capacity of Teacher. He had made application to the petitioner on three occasions for his posting but he was not

posted anywhere. When he met the co-accused Khuman Prajapati, posted in Office of D.E.O., he was told to pay illegal gratification then only he would get the posting order. On this, complainant Ravishankar Danayak made a written complaint to the Superintendent of Police, Special Police Establishment (Lokayukt), Sagar stating these allegations. On basis of complaint, a Digital Voice Recorder was given to the complainant for recording the conversation. After obtaining the recorded conversation a trap was set up and according to prosecution Rs. 10,000/- was recovered from co-accused who had received the illegal gratification on behalf the petitioner.

3. At that time petitioner was also present in his office. The document pertaining to posting of the complainant was also seized. The complainant has made specific allegation against the petitioner. On the basis of written complaint given by complainant and completing the trap proceeding, FIR had been lodged by respondent. The investigation is in process.

4. Learned counsel for petitioner has submitted that it is apparent from the FIR that petitioner had not directly demanded any illegal gratification from the complainant, the FIR against petitioner on the basis of false complaint is not only an abuse of process of law but riddled with malice and no *prima facie* offence under Section 7 of Prevention of Corruption Act is made out.

5. In *State of Haryana Vs. Bhajan Lal* (AIR 1992 SC 629), Hon'ble the Supreme Court has held that in following categories of cases, the High Court may in exercise of powers under Article 226 of Constitution of India or under Section 482 Cr.P.C. may interfere in proceeding relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases. It was held as under:-

> "1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2)

of the Code.

3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence, but constitute only a non-cognizable by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. It is argued on behalf of the petitioner that when petitioner legally refused to do wrong posting of the complainant, later had a grudge against the petitioner and made a false complaint against him. Even assuming that complainant has lodged the complaint only on account of his personal animosity that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected.

7. Perusal of complaints given by complainant and said FIR reflects that a voice recorder was given to complainant and then complainant had a talk with petitioner on 31.12.2014 and during the conversation petitioner assured that he would issue the posting order after payment was received on his behalf by the co-accused Khuman Prajapati a clerk posted in office of D.E.O. Panna.

In this relation relevant portion which has been written in FIR is as follows :-

> "मान्यवर निवेदन है कि मुझे दिनांक 31.12.2014 को आपके कार्यालय से एक वाईस रिकार्डर महेन्द्र दिवेदी जिला शिक्षा अधिकारी पन्ना की रिश्वत मांग वार्ता रिकार्ड करने हेतु दिया गया था जो मैंने उनसे दिनांक 31.12.14 को बातचीत की जो उन्होंने दस हजार रूपये बाबू खुमान प्रजापति को देने के लिये तथा मेरा कांम करने के लिये तैयार हो गये है...""

8. After giving careful consideration to the facts alleged and submissions made by learned counsel for the petitioner it appears that the complainant has made clear and specific allegation against the petitioner. The allegations made in the complaint, in our considered opinion do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under anyone of the categories of the cases formulated in *State of Haryana* (supra) calling for the exercise of extra-ordinary or inherent powers of the High Court to quash the FIR itself.

9. In view of the aforesaid, the petition has no merit and is accordingly dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 2787
WRIT PETITION
Before Mr. Justice S.K. Seth
W.P. No. 6106/2016 (Jabalpur) decided on 4 August, 2016

KUNTI SINGH (SMT.) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Constitution - Article 226 - Writ - Maintainability **- Order passed by Collector/Secretary, District E-Governance Society was called in question whereby, the contract granted to the petitioner was terminated on the ground that despite successfully running Lok Seva Kendra and without giving any notice regarding deficiency of service, contract was not renewed and a fresh RFP (Request for Proposal) was issued - Held - Since it was a pure and simple contract given to the petitioner to run Lok Seva Kendra, no time limit was vested in the petition to claim renewal of the contract - It is the discretion of the employer either to renew the contract or to issue fresh RFP - Same**

can not be questioned unless it is arbitrary or tainted with malafide to achieve some hidden agenda - Controversy is purely in the realm of contract - Writ Petitions in such cases are not maintainable - Petition is dismissed. (Paras 9, 10 & 11)

संविधान – अनुच्छेद 226 – रिट – पोषणीयता – कलेक्टर/सचिव, जिला ई–गवर्नेन्स सोसाईटी द्वारा पारित उस आदेश को चुनौती दी गई जिसके द्वारा याची को प्रदत्त संविदा समाप्त की गई लोक सेवा केन्द्र के सफलतापूर्वक चलने के बावजूद और सेवा में कमी के संबंध में कोई नोटिस दिये बिना संविदा को नवीकृत नहीं किया गया और नये सिरे से प्रस्ताव हेतु अनुरोध जारी किया गया – अभिनिर्धारित – चूंकि लोक सेवा केन्द्र चलाने के लिए याची को दी गई यह एक शुद्ध एवं साधारण संविदा थी, संविदा के नवीकरण का दावा करने के लिए याचिका में कोई समय सीमा निहित नहीं थी – यह नियोक्ता का विवेकाधिकार है कि या तो संविदा नवीकृत करें अथवा नये सिरे से प्रस्ताव हेतु अनुरोध जारी करे – जब तक कि वह मनमाना अथवा किसी छिपे हुए एजेंडे को पूरा करने हेतु दुराशय से ग्रसित न हो, तब तक उस पर प्रश्न नहीं उठाया जा सकता – विवाद विशुद्ध रूप से संविदा की परिधि में है – ऐसे प्रकरणों में रिट याचिकाएं पोषणीय नहीं – याचिका खारिज।

Case referred:

(2014) 3 SCC 760.

D.K. Tripathi, for the petitioner.
D.K. Bohre, G.A. for the respondents No. 1 & 2.
Sanket Shrivastava, for the respondent No. 3.

ORDER

S.K. Seth, J. :- Secretary, District E-Governance Society, Chhatarpur issued Request For Proposal (RFP) on 17.5.2012 for selection of eligible bidder for establishing operating and maintaining Lok Seva Kendra at Rajnagar, District-Chhatarpur. After evaluation of bids, the Secretary had accepted the bid of M/s. Smt. Kunti Singh Gautam and issued Letter of Acceptance on 9.7.2012 (LOA). Pursuant to this, a contract was entered into between the Secretary E-Governance Society on the one part and Smt. Kunti Singh Gautam on the other part. As per the terms and conditions of the agreement, the contract was for a period of 3 years. Copy of the RFP and the agreement is on record as Annexure-P-5 to the writ petition. The LOA is also on record as Annexure-P-4.

2. Grievance of the petitioner is that despite successfully running the Lok Seva Kendra, the petitioner was never given any notice regarding deficiency of service and contract was not renewed and a fresh RFP was issued by the respondents on 5.2.2016. Petitioner is, therefore, challenging the order dated 11.2.2016 passed by Collector/Secretary, District E-Governance Society, District-Chhatarpur. By the said order, earlier contract granted in favour of the petitioner was terminated and the order further says that the petitioner was found ineligible for renewal of the contract.

3. Respondents No.1 and 2 have filed reply and along with the reply they have filed various communication issued to the petitioner to remove various deficiency pointed out there-in during the period of contract. It is specifically denied that no notice was given to the petitioner. It is also submitted that the term of contract for 3 years is over, therefore, the respondents are well within their rights not to renew the contract and issued a fresh RFP.

4. Initially, respondent No.3 Arvind Gupta files an application for intervention pointing out that in pursuance of the fresh RFP, his bid has been accepted for running the Lok Seva Kendra at Rajnagar. He also filed certain more documents along with the application for intervention. However, later on, he has been joined as a respondent in the writ petition and Shri Shrivastava appearing for respondent No.3 submitted that he relying on the documents filed along with the application for intervention as a sufficient and complete answer to the writ petition.

5. Shri Tripathi counsel for the petitioner invited attention to sub clause (d) and sub clause (o) of clause 5.1 of RFP to submit that the Secretary, E-Governance Society did not provide necessary trading to operator and his employees. It was also submitted that the Secretary, E-Governance Society failed to provide SWAN connectivity to the operator at the Lok Seva Kendra and therefore, no blame can be attached to the petitioner and she was fully eligible for renewal of the contract and the order impugned Annexure-P-1 is therefore, unsustainable and liable to be quashed.

6. On the other hand, Smt. Bohre appearing for the respondents No.1 and 2 invited attention to the documents filed along with the application for taking additional documents on record and especially the notice dated 10.7.2015 issued by the Collector/Secretary, E-Governance Society to the petitioner on the subject of deficiency of service and slack operation of the

Lok Seva Kendra. The Lok Seva Kendra, Rajnagar District –Chhatarpur was inspected by the Collector and he noticed as under:-

> निरीक्षण के समय 5000/– आवेदनों का बंडल रखा पाया गया जिसको आप के द्वारा ना ही ऑनलाईन फीडिंग की गई ना ही आपत्ति से संबंधित संस्थाओं को वापिस किये गये जो लापरवाही है जिससे लोक सेवा केन्द्रों में आवेदनों की ऑनलाईन फीडिंग का कार्य प्रभावित रहा। आपके द्वारा अधिकृत संचालक द्वारा बताया कि ऑनलाईन फीडिंग का कार्य दिनांक 09.07.2015 से किया जाना है जिसकी व्यवस्था मेरे द्वारा की जाकर जिला प्रबंधक लोक सेवा को बताये गये कार्य स्थल पर निरीक्षण हेतु भेजा जिसमें पाया गया कि आपके एक कमरे में दस नये कम्प्युटर रखे हुये हैं जो अभी स्टोलेशन नहीं हुये थे और ऑनलाईन फीटिंग का कार्य नहीं हो रहा था। दिनांक 10.07.2015 को भी आपकी ऑनलाईन फीटिंग का निरीक्षण किये गया जिसमें आपके पास प्राप्त आवेदनों में से 19908 ऑनलाईन फीटिंग हेतु लंबित पाये गये। दिनांक 09.07.2015 को आपके लोक सेवा केन्द्र द्वारा मात्र 21 आवेदन ही ऑनलाईन फीड होना पाये गये।

7. Smt. Bohre appearing for the respondents No.1 and 2 submitted that in view of the various communication issued from time to time to the petitioner, it is clear that deficiency of the service and slackness was writ large in providing the Online facilities to the villagers in remote places for small things like obtaining caste certificate, death certificate etc., without going from village to the District Head Quarter or the State Head Quarter. She, therefore, submits that no interference is called for with Annexure-P-1 or Annexure-P-2.

8. Shri Shrivastava, appearing for the respondent No.3 invited attention to clause No.11 of RFP documents/agreement which requires that an application for renewal the operator is required to submit at least 6 months prior to the expiry of agreement an application in writing to show his willingness to continue to operate the Lok Sewa Kendra for a further period of 3 years. His contention is that, no such application for renewal has been filed by the petitioner. In support of this contention, he invited attention to Annexure-8 filed along with his application for intervention. He, therefore, submitted that the petitioner having failed to submit a written application in 6 months prior to the date of expiry, therefore, petitioner is not entitled for renewal. He also invited attention to clause No.15 read with clause 15.2 which provides mechanism for dispute resolution, either by amicable settlement or by arbitration by named arbitrator. He, therefore, submitted that the petitioner had an adequate, efficacious, alternative remedy hence petition is therefore, liable to be dismissed on this ground.

9. After having heard rival submissions at length and having considered material on record, one thing is very clear that it was a pure and simple contract given to the petitioner to run Lok Sewa Kendra at Rajnagar District-Chhattarpur. By the said contract, no time was vested in the petition to claim renewal of the contract. It is within the discretion of the employer to renew the contract or issue fresh RFP and petitioner is nobody to question that decision unless it is arbitrary or tainted with mala fide to achieve some hidden agenda. As it is well settled by the decision of the Supreme Court in the case of *Maa Binda Express Carrier & Another Vs. North-East Frontier Railway & Others* reported in (2014) 3 SCC 760.

10. It is not the case of the petitioner that the RFP has been issued with some ulterior motive or to achieve hidden agenda. There is neither pleadings in this regard nor cogent material has been placed. Only submission of Shri Tripathi is that the issuance of fresh RFP is mala fide because respondents had made up their mind before the contract period was over. Except this bald and sweeping assertion, without any supportive material, this plea cannot be accepted, merely, because respondents had decided to issue fresh RFP though the contract period was not over. It does not mean that they are acting with mala fide.

11. As has been said hereinabove the controversy is purely in the realm of contract, therefore, a writ petition in such cases are not maintainable. Consequently, writ petitions are hereby dismissed. Interim order passed in favour of the petitioner stands vacated.

12. Let a copy of this order be retained in the file of W.P. No.6068/2016.

Petition dismissed.

I.L.R. [2016] M.P., 2791
APPELLATE CIVIL
Before Mr. Justice Alok Aradhe & Mr. Justice Vivek Agarwal
F.A. No. 144/2007 (Gwalior) decided on 21 April, 2016

VIJAY & SONS (M/S), MUNGAVALI ...Appellant
Vs.
SHIVPURI GUNA KSHETRIYA GRAMIN BANK & anr. ...Respondents

(Alongwith F.A. No. 444/2006, F.A. No. 166/2006 & F.A. No. 167/2006)

Contract Act (9 of 1872), Section 176 - **Rights of Pawnee in**

case of default by Pawnor - Held - In case of default by Pawnor, a Pawnee may bring a suit upon the debt and he may retain the pawn as a collateral security, or he may sell it giving the Pawnor reasonable notice of sale - The Pawnee cannot be permitted to recover the debt as well as to retain the pledged goods - The right to sue for debt assumes that he is in a position to redeliver the goods on payment of the debt and therefore, if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree - A pawnee has both collateral and concurrent rights and can institute suit for the purpose of realization of said debt or promise while retaining the goods as collateral security - In the peculiar fact situation of the case as the plaintiff bank failed to sell the food grains which were perishable in nature despite request by the defendant and taking into account the fact that plaintif bank is not in a position to deliver the food grains now, the Court directed that the plaintiff bank shall be entitled to recover the amount of debt along with 20% quarterly interest after adjusting the value of the food grains. (Paras 13, 14, 15, 21 & 23)

संविदा अधिनियम (1872 का 9), धारा 176 – गिरवीकर्ता द्वारा व्यतिक्रम की दशा में गिरवीदार के अधिकार – अभिनिर्धारित – गिरवीकर्ता द्वारा व्यतिक्रम के प्रकरण में, गिरवीदार ऋण पर वाद ला सकता है तथा संपार्श्विक प्रतिभूति के रूप में गिरवी को प्रतिधारित कर सकता है अथवा गिरवीकर्ता को विक्रय का युक्तियुक्त नोटिस देकर वह उसका विक्रय कर सकता है – गिरवीदार को गिरवी माल के प्रतिधारण के साथ ऋण की वसूली हेतु अनुमति नहीं दी जा सकती – ऋण हेतु वाद लाने का अधिकार यह धारणा करता है कि ऋण का संदाय करने पर वह माल को वापस करने की स्थिति में है और इसलिए, यदि उसने स्वयं को ऐसी स्थिति में लाया है जहाँ वह माल वापस करने में समर्थ नहीं तब वह डिक्री अभिप्राप्त नहीं कर सकता – गिरवीदार को संपार्श्विक और समवर्ती दोनों अधिकार प्राप्त हैं और संपार्श्विक प्रतिभूति के रूप में माल को प्रतिधारित करते हुए उक्त ऋण या वचन की वसूली के प्रयोजन हेतु वाद संस्थित कर सकता है – प्रकरण की विशिष्ट तथ्यात्मक स्थिति में, चूंकि वादी बैंक, प्रतिवादी द्वारा निवेदन करने के बावजूद विनश्वर प्रकृति के खाद्यान्न, का विक्रय करने में असफल रहा और इस तथ्य को विचार में लेते हुए कि वादी बैंक अब खाद्यान्न वापस सौंपने की स्थिति में नहीं है, न्यायालय ने निदेशित किया कि वादी बैंक खाद्यान्न के मूल्य को समायोजित करने के पश्चात् 20% त्रैमासिक ब्याज के साथ ऋण की वसूली करने के लिए हकदार होगा।

Cases referred:

AIR 1967 SC 1322, AIR 1981 SC 1711, 1988 JLJ 618, 1995 MPLJ

1004, AIR 1992 MP 45, AIR 2000 BOMBAY 151, AIR 1991 DELHI 278, AIR 1985 SC 520, AIR 2007 SC 2804, (2015) 3 SCC 363.

D.D. Bansal, for the appellant in F.A. No.144/2007 & F.A. No. 444/2006.

D.S. Chauhan, for the respondent No. 1 in F.A. No. 144/2007 & F.A. No. 444/2006 and for the appellant in F.A. No. 166/2006 & F.A. No. 167/2006.

None for the respondent No. 2, though served in F.A. No. 144/2007 & F.A. No. 444/2006.

None for the respondents, though served in F.A. No. 166/2006 & F.A. No. 167/2006.

JUDGMENT

The Judgment of the Court was delivered by : **ALOK ARADHE, J. :-** In this bunch of appeals, since common question of law and facts arise for consideration, they are heard analogously and are being decided by the common judgment and decree. First Appeal No. 144/2007 as well as First Appeal No. 444/2006 have been filed by defendant No.1 being aggrieved by the judgment and decree passed in Civil Suit No. 3B/2002 and judgment and decree passed in Civil Suit No. 4B/2002 respectively, by which the claim of the plaintiff-Bank has been decreed. First Appeal No. 166/2006 and First Appeal No.167/2006 have been filed by the plaintiff-Bank against the judgment and decree passed in the aforesaid Civil Suits, by which the defendant No.2 has been exonerated from 1+1/5 liability. In order to appreciate the challenge of the parties to the impugned judgments and decrees, relevant facts need mention which are stated infra.

2. The respondent No.1, namely Shivpuri Guna Kshetriya Gramin Bank, is a Bank incorporated under the Kshetriya Bank Adhiniyam, 1976 and has its branch at Mungaoli, District Guna. The plaintiff-Bank filed a suit, namely, Civil Suit No.3-B/2002 for recovery of an amount to the tune of Rs. 4,85,159/- against the defendants inter alia on the ground that defendant No. 1(a) and defendant No. 1(b) submitted an application on 26.11.1998 for sanction of the loan to the tune of Rs. 1,07,000/- and pledged the receipt No.42505 in respect of food grains stored in the warehouse of defendant No.2. The defendant No.1 also agreed that in case of non-payment of the loan, the Bank shall have the authority to sell the food grains stored in the warehouse and to

recover the amount of loan. The in-charge of the godown of defendant No.2, namely Mr. Ram Govind Sharma also endorsed the lien notes on the receipt. It was also averred that respondent No.1 again applied for a loan of Rs.99,000/- on 26.11.1998 and executed necessary documents and pledged the receipt bearing No. 43531 in respect of food grains stored in the warehouse of defendant No.2 and empowered the Bank that in case of default by the defendant No.1, in respect of repayment of the amount of loan, the Bank can sell the food grains stored in the warehouse and can recover the same. It was further pleaded that defendant No.1 again on 30.3.1999 applied for a loan of Rs. 1,35,000/- and executed necessary documents and pledged the receipt No.42588 in respect of the food grains which were stored in the warehouse of defendant No.2. The godown in-charge endorsed the lien note on the receipt and the Bank was given the authority to sell the food grains in case of default in repayment of loan by defendant No.1. It is the case of the plaintiff that the aforesaid amounts by way of was extended to defendant No.1 by way of cash credit facility subject to payment of interest at the rate of 20% per annum with quarterly rests.

3. The defendant No.1 did not repay the aforesaid amount within the prescribed time and, therefore, a notice dated 24.2.2000 was sent to the defendant to repay the amount of loan. On receipt of the notice, the defendant No.1 made part payment of the amount of loan but could not repay the entire amount. Accordingly, the civil suit No. 3B/2002 seeking recovery of amount to the tune of Rs.4,85,159/- along with interest was filed. Similarly, the plaintiff-Bank on the same set of averments filed another suit, namely Civil Suit No. 4B/2002 for recovery of the amount of Rs.6,82,668/- along with interest.

4. The defendant No.1 filed written statement in Civil Suit No. 3B/02 in which inter alia it was admitted that the sum of Rs.3,44,383/- was given to him by way of cash credit facility by the Bank. However, it was denied that he had executed any agreement in respect of rate of interest. It was also pleaded that the defendant No.1 had pledged the receipt of food grains stored in the warehouse of defendant No.2. It was also pleaded that the defendant No.1 had informed in writing to the Bank that in case the amount of loan is not repaid, the Bank can sell the food grains stored in the warehouse of defendant No.2. It was further pleaded that since financial condition of defendant No.1 was not good, therefore, he could not repay the amount of loan and despite being aware about the financial condition of defendant No.1, the plaintiff-

Bank did not take any steps to sell the food grains. Therefore, the defendant No.1 is not liable to pay interest from 28.2.2000. It was also averred that the market value of the food grains stored in the warehouse of defendant No.2 was 6,45,405/-, whereas the amount of loan was only Rs.3,44,383/-, therefore, the same could have been easily adjusted. It was further pleaded that the liability, if any, is of defendant No.2 as well.

5. The defendant No.2 also filed the written statement in which the claim of the plaintiff was denied. It was also denied that defendant No.2 had pledged the receipt of warehouse with the plaintiff-Bank. It was pleaded that the in-charge of the godown, namely, Mr. Govind Sharma had prepared forged receipts in connivance with the defendant No.1. It was averred that the in-charge of the godown was not authorized to execute the lien note. It was further pleaded that on physical verification of the godown, it was found that the forged receipts were prepared without keeping the material in the warehouse. Therefore, the First Information Report was lodged in Police Station, Mungaoli and thereupon offences under Sections 467,468 and 420 of the Indian Penal Code were registered. Similar defence was taken by defendants No. 1 & 2 in Civil Suit No. 4B/02 as well.

6. The trial Court vide judgment and decree dated 15.12.2005 inter alia held that defendant No.1 had availed of the cash credit facilities from plaintiff-Bank and had pledged the receipts, under Section 176 of the Contract Act, 1872 the plaintiff-Bank had the authority to sue for the debt, while retaining the pawn as collateral security. On the basis of pro-notes executed by defendant No.1 it was held that rate of interest was 20% with quarterly rests. It was further held that Bank merely sent notices to defendant No.2 and did not send the receipts to defendant No.2, therefore in view of Section 17 of Madhya Pradesh Agriculture Warehouse Act, 1947, the defendant No.2 could not have handed over the food grains to the plaintiff-bank . It was also held that the Bank did not physically verify the fact whether food grains were stored with defendant No.2 and on mere completion of formalities on paper, loan was sanctioned to defendant No.1. On the basis of evidence of Farhat Ali (DW.2), it was held that Ram Govind Sharma, the erstwhile godown in-charge prepared the forged receipts and criminal case is pending against him for offences under Sections 467, 468 and 420 of the Indian Penal Code and, therefore, defendant No.2 is not liable to make payment of the decretal amount. The trial Court also recorded a finding that though plaintiff-Bank is entitled to

receive food grains but no food grains are stored in the warehouse of defendant No.2. Accordingly, the suits, namely, Civil Suits Number 3B/2002 and 4B/2002 were decreed along with interest at the rate for a sum of Rs.4,85,169/- and Rs.6,82,668/- respectively along with 20% interest with quarterly rest from the date of institution of suits till realization of the amount in question.

7. Learned counsel for the appellant in First Appeal No. 144/2007 and First Appeal No.444/2006 has invited the attention of this Court to Section 176 of the Contract Act (hereinafter referred to as 'the Act') and has submitted that the defendant No.1 had authorised the bank to sell the food grains pledged with it, in the case of default being made by the defendant No.1 and, therefore, the bank could have filed the suit for recovery of the amount in question, only after it had sold the food grains. It is also argued that there is no averment in the plaint regarding cheating by the defendant No.2 and no counter claim has been filed by the defendant No.2. Alternatively, it was submitted that the suit, should have been decreed against the defendant No.2 as well, and both the defendants should have been held jointly and severally liable for payment of the amount. It was submitted that there was no contract with regard to payment of interest and, therefore, the grant of interest by the trial court at the rate of 20% along with quarterly rest is arbitrary and is excessive. It is further submitted that the suit filed by the plaintiff is not maintainable and no amount of evidence can be looked into in the absence of pleadings. In support of aforesaid submissions, learned counsel for the appellant has placed reliance on the decisions of Supreme Court in *Lallan Prasad v. Rahmat Ali and another* (AIR 1967 SC 1322); *Hasmat Rai and another vs. Raghunath Prasad* (AIR 1981 SC 1711); *Central Bank of India vs. M/s Grains. and Gunny Agencies and others* (1988 JLJ 618); *Punjab and Sind Bank Gwalior vs. Nagrath Industries (Pvt) Ltd. and others* (1995 MPLJ 1004).

8. On the other hand, learned counsel for the plaintiff-bank in First Appeal No. 166/2006 and First Appeal No. 167/2006 has adopted the submissions made by learned counsel for the appellant in First Appeal No.144/2007 and First Appeal No.444/2006 and has submitted that the trial Court has grossly erred in exonerating the defendant No.2 from 1+1/5 liability to make payment of the decretal amount and defendant No.2 should have been held jointly and severally liable along with defendant No.1 to make payment of the loan. It is further submitted that after filing of the written statement by the defendant No.2, it came to the knowledge of the plaintiff that the food grains are not in

existence in the warehouse of defendant No.2. It was also pleaded that the food grains which were stored in the godown were lateron removed at the time of filing of the suit and, therefore, the bank was left with no option but to file the suit for recovery of the amount in question. While referring to Section 176 of the Act, it is contended that the plaintiff has two options, namely, to file a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security or to sell the goods pledged by giving the pawnor reasonable notice of sale. In support of aforesaid submissions, reference has been made to decisions in the cases of *Kamla Prasad Jadawal vs. Punjab National Bank. New Delhi & others* (AIR 1992 MP 45); *State Bank of India vs. Smt. Neela Ashok Naik and another* (AIR 2000 BOMBAY 151); *Bank of Maharashtra vs. M/s Racmann Auto (P) Ltd.* (AIR 1991 DELHI 278).

9. We have considered the submissions made by learned counsel for parties. At this stage, we may advert to the pleadings of the parties and the evidence led by them. The plaintiff in the plaints filed in Civil Suit No.3B/2002 and Civil Suit No.4B/2002, in unequivocal terms has admitted that amount of loan was sanctioned in favour of the defendant No.1 after pledging the warehouse receipts in respect of the food grains kept in the warehouse of defendant No.2. This fact is evident from the averments made in paragraphs 2,3,6,7 and 10 to 21 and 26 of the plaint in Civil Suit No.3B/2002. Similar averments have been made in paras 2,4,6,7,8 and 10 to 21 in Civil Suit No. 4B/2002.

10. Vishnu Kumar Parashar, Branch Manager of the bank, who has been examined as PW.1 in Civil Suit No.3B/2002, in paragraph 32 of the cross-examination, has admitted that the fact that the food grains have been stored in the godown was verified by the Incharge of the godown and the plaintiff-bank had got an authority letter executed from the defendant No.1 that in case of default, the plaintiff-bank will have the authority to sell the food grains. Similarly, in paragraph 34 of the cross-examination, the aforesaid witness has admitted that the food grains stored in the godown were not sold. In paragraph 36 of the cross-examination, it has been admitted by the aforesaid witness that in view of receipts, namely, Exhibits P/3, P/14 and P/25, the loan has been advanced to defendant No.1, and the document of title in respect of food grains stored in the warehouse were with the plaintiff-bank. In paragraph 38 of his cross-examination, it has further been admitted that he along with other officers had visited godown and godown incharge had renewed the

receipts pledged in favour of the bank. Another witness, namely, Anand Kumar, Branch Manager of the Bank, has been examined as PW.2 in Civil Suit No.3B/ 2002, who in paragraphs 23 and 24 of his cross-examination has admitted that the food grains of which reference was made in the receipts, namely, Exhibits P/3, P/14 and P/25, were kept in the godown of defendant No.2 and the receipts were pledged with the bank. It has further been admitted that bank was given the authority to sell the food grains in case of default being made by the defendant No.1 in repayment of the amount of loan.

11. Anil Kumar, who has been examined as DW.1 in Civil Suit No. 3B/ 2002 has admitted in his examination in chief that on pledging the receipts of food grains stored in the warehouse of defendant No.2, he had obtained the loan from the plaintiff-bank, and subsequently the receipts were renewed by Godown Incharge and that he had made request to the bank to sell the food grains stored in the warehouse of defendant No.2. In para 31 of his cross-examination aforesaid witness has not denied signature of Sunil Kumar on Ex.P/35. Sayyed Farhat Ali (DW.2) in Civil Suit No.3B/2002 in paragraph 5 of his cross-examination has admitted that Ramgovind Sharma was Incharge of the godown. In paragraph 14 of his cross-examination, he has stated that he has no knowledge whether the officers of the bank have physically verified the stock kept in the ware house.

12. In Civil Suit No. 4B/2002, Vishnu Kumar, PW.1, in para 33 of his cross-examination has admitted that prior to sanction of loan, Exhibits P/7, P/14, P/23 and P/24 were verified and signatures of godown incharge were verified by higher officers of the Bank. It is further admitted by him that the aforesaid receipts were renewed. In para 34 of his cross-examination, it is admitted by him that food grains pledged vide receipts in question were stored in the godown of defendant No.2 and the plaintiff-bank had authority to sell the same. It is also admitted by him that defendant No.1 had given notice that since his financial condition is not good, the food grains should be auctioned. In para 35 of his cross-examination, it is admitted by him that godown incharge while renewing the receipts had certified the fact that food grains are properly and safely stored. Anand Kumar (PW.2) has stated in para 24 of his cross-examination that Bank had the authority to sell the food grains. Rakesh Kumar, who has been examined as DW. 1 in Civil Suit Number 4-B/2002, has admitted in his examination in chief that by pledging the receipts in respect of food grains in the warehouse of defendant No.2, he had obtained loan from the

plaintiff-bank and the godown receipts were renewed by godown incharge and that he had made request to the bank to sell the food grains stored in the warehouse of plaintiff-bank. In para 19 of his cross-examination, aforesaid witness has admitted his signature on Exhibits P/23 to P/29, Exhibits P/36 to P/42 and Exhibit P/35. DW.2 Farhat Ali has stated in his evidence that Ram Govind Sharma was Incharge of the godown at the relevant time and documents, i.e., receipts Exhibits P/3, P/23 and P/24 bear his signature and the person in whose favour receipts are issued is entitled to lift the food grains from warehouse of defendant No.2.

13. Section 176 of the Contract Act, which is relevant for the purpose of controversy involved in these appeals, is reproduced below for the facility of reference:

> *"176. Pawnee 's right where pawnor makes default- If the pawnor makes default in payment of the debt, or performance; at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.*
>
> *If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."*

From perusal of Section 176 of the Contract Act, it is evident that a pawnee has three rights in cases of default by a pawnor, namely, he may bring a suit upon the debt, and he may retain the pawn as a collateral security, or he may sell it giving the pawnor reasonable notice of sale. The pawnee cannot have payment of debt and cannot retain the goods also.

14. At this stage, it is apposite to notice the well settled legal principles with regard to pawnee's right where pawnor makes default. The Supreme Court in the case of *Lallan Prasad* (supra), while dealing with the question whether appellant in that case was entitled to any relief, when his case was that respondent never delivered to him the goods and said agreement never

ripened into a pledge in para 17 held, the relevant extract of which reads as under:

> *"There is no difference between the common law of England and the law with regard to pledge as codified in Ss 171 to 176 of the Contract Act. Under S. 172 a pledge is a bailment of the goods as security for payment of a debt or performance of a promise, Section 173, entitles a pawnee to retain the goods pledged as security for payment of a debt and under section 175 he is entitled to receive from the pawner any extraordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pawnee and provides that in case of default by the pawner the pawnee has -(1) the right to sue upon the debt and to retain the goods as collateral security, and (2) to sell the goods after reasonable notice of the intended sale to the pawner. Once the pawnee by virtue of his right under S. 176 sells the goods the right of the pawner to redeem them is of course extinguished. But as aforesaid the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawner. So long, however, the sale does not take place the pawner is entitled to redeem the goods on payment of the debt. It follows, therefore, that where a pawnee files a suit for recovery of debt, though he is entitled to retain the goods he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt and, therefore, if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree. If it were otherwise, the result would be that he would recover the debt and also retain the goods pledged and the pawner in such a case would be placed in a position where he incurs a greater liability than he bargained for under the ,contract of pledge. The pawnee, therefore, can sue on the debt retaining the pledged goods as collateral security. If the debt is paid he has to return the goods with or without the assistance of the Court and appropriate the sale*

proceeds towards the debt."

Thus, it is evident that pawnee files a suit for recovery of debt, though he is entitled to retain the goods, he is bound to return them on payment of debt. The right to sue for debt assumes that he is in position to redeliver the goods on payment of the debt and, therefore, if has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree. If the debt is paid, the goods have to be delivered. The aforesaid decision was referred to with the approval by the Supreme Court in the case of *Balkrishan Gupta and others vs. Swadeshi Polytex Ltd. and another* (AIR 1985 SC 520) and in the case of *Central Bank of India vs. Siriguppa Sugars and Chemicals Ltd. and others* (AIR 2007 SC 2804). The Division Bench of this Court in *Central Bank of India* (supra) has held that under an agreement to pledge a party can contract out of its liability in respect of acts of God but not from the liability arising out of negligence of its servants. In the case of *Punjab and Sind Bank Gwalior* (supra), the debtor had handed over possession of factory premises to the bank, as it was unable to pay its due. The trial court decreed the suit, however the trial court did not grant interest in respect of the property which was handed over to the bank. The bank, therefore, filed the suit. In this context, an observation was made in concluding paragraph that since goods were kept at the disposal of the bank, it should have proceeded to sell the same and realise the proceeds.

15. The Supreme Court in the case of *Infrastructure Leasing and Financial Services Ltd. Vs. B.P.L. Ltd.*, (2015) 3 SCC 363, has held that as per Section 176 of the Act when the pawnor makes default in making the payment, the pawnee may bring a suit upon the debt or promise and retain the good(s) pledged as a collateral security. A pawnee has both collateral and concurrent rights and can institute a suit for the purpose of realization of the said debt or promise while retaining the goods as a collateral security. Section 176 also makes it clear that it is the discretion of the pawnee and it gives an option to him and merely because pawnee has filed a suit for recovery, that would not affect or destroy the charge or the right of the pawnee in respect of the pledged goods or the collateral security. Thus, it is within the domain of discretion of pawneee (sic:pawnee) to file a suit for recovery of a debt and yet retain the collateral security or pledged goods.

16. In the backdrop of aforesaid well settled legal position, the issues which arise for consideration in these appeals are twofold, namely, whether in

view of law laid down by the Supreme Court in the case of *Lallan Prasad* (supra), the plaintiff could have filed the suit while retaining the pawn and whether the defendant Number 2 can also be held jointly and severally liable to repay the decretal amount.

17. From perusal of plaint in Civil Suit No. 3-B/2002 it is evident that on 26.11.1998 and 30.3.1999 sums of Rs. 1,07,000/-, Rs.99,000/- and Rs.1,35,000/- with 20% quarterly rest were sanctioned to defendant No.1. In para 22 of the plaint, it is averred that on 24.2.2000 accounts were closed and notice dated 24.2.2000 was sent and the defendant No.1 executed the receipt (Exhibit P-35). The DW.1, namely, Anil Kumar in para 31 of his cross-examination has not denied the signature of Sunil Kumar in Exhibit P-35. In the aforesaid document, defendant No.1 has acknowledged the liability of Rs.3,44,383/-. In para 26 of the plaint, it is stated that defendant No.1, in reply to notice, acknowledged the liability and asked the plaintiff-bank to take delivery of food grains from defendant No.2. It is pertinent to mention that it is not the case set up in the plaint that plaintiff bank approached defendant No.2 for obtaining delivery of food grains and no suggestion has been made in cross-examination to defendant No.2 that plaintiff bank approached the defendant No.2 to take delivery of food grains and same was denied. The plaintiff's witnesses have also stated that foodgrains were stored in the godown of defendant No.2.

18. Similarly from perusal of plaint in Civil Suit No. 4-B/2002, it is evident that on 12.11.1998, 26.11.1998 and 30.3.1999 sums of Rs.93,000/-, Rs.1,28,000/- and Rs. 1,68,000/- along with 20% quarterly rests were sanctioned to defendant No.1. In para 22 of the plaint, it is averred that defendant No.1 by executing receipt (Exhibit P-36) acknowledged the liability to the tune of Rs.4,78,115/- as on 24.2.2000. In para 27 of the plaint, it is averred that in reply to notice while acknowledging liability the defendant No.1 requested the plaintiff bank to sell the food grains. The DW.1, namely, Rakesh Kumar in para 19 of his cross-examination has admitted his signature on Exhibit P-36 and other documents executed in favour of the bank. It is noteworthy that it is not the case of the plaintiff in the plaint that plaintiff bank approached the defendant No.2 for obtaining delivery of food grains and no suggestion has been made in cross- examination to defendant No.2 that plaintiff bank approached the defendant No.2 to take delivery of food grains and same was denied. The plaintiff's witnesses have also stated that goods were

stored in the godown of defendant No.2.

19. The details of the receipts, the value of food grains, the date on which amount of loan was transferred in the account of defendants No.1 in Civil Suits No.3-B/2002 and 4-B/2002 are reproduced for the facility of reference in the form of chart :-

Civil Suit No.3-B/2002

Date of Receipt	Value of food grains	Date on which amount of loan was credited to the account of defendant No.1	Principal amount of loan
10/11/98	1,95,000	26.11.1998	1,07,000
23.11.1998	1,80,405	26.11.1998	99,000
30.03.1999	2,70,000	30.3.1999	1,35,000
Total	**6,45,405**		**3,41,000**

Civil Suit No.4-B/2002

Date of Receipt	Value of food grains	Date on which amount of loan was credited to the account of defendant No.1	Principal amount of loan
10.11.1998	1,68,750	12.11.1998	93,000
23.11.1998 23.11.1998	1,80,405 1,80,405	26.11.1998 } 26.11.1998 }	1,98,000
30.03.1999	3,30,500	30.3.1999	1,68,000
Total	**8,60,060**		**4,59,000**

20. From the evidence on record referred to in the preceding paragraphs, following facts are axiomatic:-

(i) The factum of taking of the amount of loan by the defendants No.1 in both the civil suits by pledging the receipts in respect of food grains stored in the warehouse of defendant No.2 is not in dispute.

(ii) Anil Kumar, who has been examined as DW.1 in Civil Suit No.3-B/2002, in para 31 of his cross-examination has not denied the execution of the receipt (Exhibit P-35) and has acknowledged his liability as on 24.2.2000 to pay a sum of Rs. 3,44,383/-. Similarly, Ramesh Kumar, who has been examined as DW.1 in Civil Suit No.4-B/2002 in paragraph 19 of his cross-examination has admitted his signature on Exhibit P-36, and has acknowledged his liability as on 24.2.2000 to pay the amount to the tune of Rs.4,78,115/-.

(iii) From perusal of paragraph 26 of the plaint in Civil Suit No.3-B/2002, it is evident that the defendant No.1 in reply to notice dated 24.2.2000 had asked the plaintiff-bank to take delivery of the food grains from the defendant No.2 and to sell the same. Similarly, in paragraph 27 of the plaint in Civil Suit No.4-B/2002, it is averred by the plaintiff that the defendant No.1 while sending reply to notice dated 24.2.2000 had requested the plaintiff to sell the food grains.

(iv) From close scrutiny of the plaints in Civil Suits No.3-B/2002 and 4-B/2002, it is evident that it is neither the case of the plaintiff-bank that it approached the defendant No.2 for obtaining delivery of food grains nor any suggestion has been made to the witness of the defendant No.2, namely, Farhat Ali that the plaintiff-bank had approached the defendant No.2 to take delivery of the food grains and the same was denied to them.

(v) The plaintiff's witnesses in both the civil suits, namely,

Civil Suit No.3-B/2002 and Civil Suit No.4-B/2002, namely Vishnu Prasad (PW.1) in paragraphs 32 and 34 of his cross-examination, respectively has admitted that the bank had authority to lift the food grains and to sell the same in view of the receipts Exhibits P/3, P/14, P/25 and Exhibits P/3, P/14, P/23 and P/24, respectively. Similarly, the aforesaid witness in paragraph 35 of the cross-examination recorded in Civil Suit No.3-B/2002 has stated that Godown Incharge had informed him that pesticides were sprinkled on the food grains on 21.9.1999 whereas in Civil Suit No. 4-B/2002 in paragraph 38 of the cross-examination, the aforesaid witness has stated that while renewing the receipts on 21.9.1999 the Godown Incharge had informed him that the food grains are in proper condition.

(vi) Admittedly, when the plaintiff-bank had the. authority to sell the pledged food grains, yet on receipt of the reply to the notice dated 24.2.2000, the plaintiff-bank did not take any steps for selling the food grains. Instead of taking action for selling the food grains the plaintiff-bank chose to file Civil Suit No. 3-B/2002 on 24.11.2001 whereas Civil Suit No. 4-B/2002 was filed on 19.11.2001.

21. Thus, even though the plaintiff-bank had the authority to sell the pledged goods, despite receipt of request by the defendant No.1 in reply to the notice dated 24.2.2000, the plantiff bank did not take any action to sell the food grains. There is neither any pleading nor any evidence on record to suggest that the plaintiff-bank had approached the defendant No.2 along with the receipts and requested it to deliver the food grains pledged to the plaintiff-bank. In view of the principle ingrained in Section 176 of the Contract Act as interpreted by the Supreme Court in the case of *Lallan Prasad* (supra) and *Infrastructure Leasing* (supra), the bank after filing of the suits for recovery of the debt, though was entitled to retain the goods yet it was bound to return the same on payment of the debt. The right to sue on the debt assumes that the plaintiff-bank was in a position to redeliver the goods on payment of the

debt. In the instant case, from the material available on record, it is evident that on the date of filing of the suit the plaintiff-bank was in a position to redeliver the goods. The plaintiff-bank cannot be permitted to recover the debt as well as to retain the pledged goods. The plaintiff bank after recovery of the amount of debt at this point of time is not in a position to deliver the food grains which is a perishable commodity. In peculiar fact situation of the cases in hand if the plaintiff bank is permitted to recover the amount in its entirety, the same is impermissible in law as plaintiff bank is not in a position to deliver the food grains to plaintiff No.1. Besides that, it would tantamount to putting premium on the default committed by the plaintiff bank as it failed to sell the food grains despite specific requests made by defendants No1. in both the suits in replies to notices dated 24.2.2000. Therefore, in view of the preceding analysis, the plaintiff bank is entitled to recover the amount of loan which was admittedly sanctioned to the defendants No.1 in both the suits, namely, Civil Suit No.3-B/2002 and Civil Suit No.4-B/2002 along with 20% quarterly rest from the date on which the amount was credited in the account of defendant No.1 till 24.2.2000.

22. The contention raised by learned counsel for the appellant that the suits filed by the plaintiff-bank were not maintainable, as it did not sell the pledged food grains and the suits could have been filed only after the pledged food grains were sold, is misconceived as the same is made on misinterpretation of Section 176 of the Contract Act, as has been held by the Supreme Court in the case of *Lallan Prasad* (supra) and *Infrastructure Leasing and Financial Services Ltd.* (supra). Similarly, the contention that defendant No.2 ought to have been held jointly and severally liable to make payment of the decretal amount also does not deserve acceptance, in the absence of any material on record that the plaintiff-bank made any attempt to obtain the pledged goods from the defendant No.2 or had requested it to deliver the same to the plaintiff-bank. The contention that there is no agreement with regard to rate of interest also deserves to be negatived in view of the overwhelming documentary evidence on record, namely, the documents executed by the defendants No.1 in both the suits in favour of the plaintiff-bank while sanctioning the amount of loan which mention the rate of interest.

23. In the peculiar fact situation of the case, as the plaintiff bank failed to sell the food grains which were perishable in nature despite request by the defendant and taking into account the fact that plaintiff-bank is not in a position

to deliver the food grains at this point of time, we deem it appropriate to direct that the plaintiff bank shall be entitled to recover the amount of debt along with 20% quarterly rest from the date on which the amount was credited in the accounts of defendants No.1 in both the suits till 24.2.2000 after adjustment of the value of the food grains, which were pledged with the plaintiff-bank as on 24.2.2000, which in Civil Suit No.3-B/2002 is Rs.6,45,405/- whereas the same in Civil Suit No.4-B/2002 is Rs.8,60,060/-. The plaintiff-bank shall adjust the value of the food grains in both the Civil Suits as on 24.2.2000 from the amounts which are due to it on 24.2.2000. The plaintiff-bank shall be entitled to recover remainder amounts of the adjustment due to it as on 24.2.2000 from the defendants No.1 both the civil suits with 20% quarterly rest till realization of the amount.

24. In the result, First Appeal No.166/2006 and First Appeal No.167/2006 are dismissed whereas the judgments and decrees passed in Civil Suits No.3-B/2002 and 4-B/2002 are modified to the extent mentioned above. In the result, First Appeal No.144/2007 and First Appeal No.444/2006 are disposed of.

Order accordingly.

I.L.R. [2016] M.P., 2807
APPELLATE CRIMINAL
Before Mr. Justice Sushil Kumar Gupta
Cr.A. No. 815/2012 (Gwalior) decided on 31 January, 2015

BATO @ VEERU ...Appellant
Vs.
STATE OF M.P. ...Respondent

(Alongwith Cr.A. No. 816/2012)

Penal Code (45 of 1860), Sections 363 & 366/34 - Kidnapping - **Conviction challenged on the ground that girl was major and consenting party - Most of the witnesses turned hostile - Conviction is made on the omnibus statements and there are material contradictions - Held - Since at the time of incident prosecutrix was not major her consent does not amount to consent in the eyes of law - Nothing could be brought in the cross-examination of the witnesses - They are reliable and trust worthy - There is no perversity, infirmity in the judgment of the trial**

Court - Conviction is hereby affirmed - However, since the appellants have suffered jail sentence of 3 years and 10 months, jail sentence of the appellants is reduced to the period already under gone by them - Appeal is partly allowed. (Paras 13, 14, 15, 16 & 19)

दण्ड संहिता (1860 का 45), धाराएँ 363 व 366/34 – व्यपहरण – दोषसिद्धि को इस आधार पर चुनौती दी गई कि लड़की वयस्क एवं सहमत पक्षकार थी – अधिकतर साक्षीगण पक्षविरोधी हो गये – सर्वग्राही कथनों पर दोषसिद्धि की गई और उनमें तात्विक विरोधाभास है – अभिनिर्धारित – चूंकि घटना के समय अभियोक्त्री वयस्क नहीं थी, उसकी सहमति, विधि की दृष्टि में सहमति की कोटि में नही आती – साक्षियों के प्रति परीक्षण में कुछ नहीं लाया जा सका है – वे विश्वसनीय एवं विश्वासपात्र हैं – विचारण न्यायालय के निर्णय में कोई विपर्यस्तता, निर्बलता नहीं – एतद्द्वारा दोषसिद्धि अभिपुष्ट – तथापि, चूंकि अपीलार्थीगण ने 3 वर्ष और 10 महीने का जेल दण्डादेश भुगत लिया है, इसलिए अपीलार्थीगण का जेल दण्डादेश ऐसी पूर्व में ही भुगताई जा चुकी अवधि तक के लिए घटाया गया – अपील अंशतः मंजूर।

D.S. Tomar, for the appellant in Cr.A. No. 815/2012.
G.S. Chauhan, for the appellant in Cr.A. No. 816/2012.
M. Bhardwaj, P.P. for the respondent/State.

JUDGMENT

SUSHIL KUMAR GUPTA, J. :- The judgment passed in this appeal shall also govern the disposal of connected Criminal Appeal No.816/2012 (Ganeshram Vs. State of M.P.) since both have arisen from the same common judgment.

2. Feeling aggrieved with the judgment of conviction and order of sentence dated 31.8.2012 convicting the appellants under Sections 363 and 366 of IPC and sentencing them to suffer four years R.I. with a fine of Rs.5,000/- for each of the offences, the appellants have knocked the doors of this Court by preferring this appeal as well as connected Criminal Appeal No.816/12.

3. Facts of the case, in brief, are that complainant has lodged a report that on 31.7.2011 at 3 O'clock in the night he was sleeping in his house. His sister was also sleeping nearby. When in the morning he awoke, he did not find his sister. On this report, missing person report No.4/11 was registered and enquiry was conducted. During enquiry, statements of Matua and Neksiya were recorded and they stated that appellant Bato @ Veeru has taken away

the prosecutrix on the pretext of marriage and appellant Ganeshram and accused Kalu have helped him. Thereafter, the police registered the FIR at Crime No.105/11 against the appellants and Kalu for the offence punishable under Sections 363, 366, 34 of IPC.

4. After investigation, police submitted the charge-sheet against the appellants and Kalu in the committal Court which committed the case to the court of Session and from where it was received by the trial court for trial.

5. The learned Trial Court framed the charges under Sections 363 and 366 of IPC against the appellants which they denied and pleaded for trial. In examination under Section 313 of Cr.P.C., they pleaded innocence and false implication. They did not examine any witness in support of their defence.

6. In the trial in order to prove the charges, prosecution examined as many as 11 witnesses and placed Ex.P/1 to P/16, the documents on record.

7. The learned trial Court after appreciating and marshalling the evidence convicted and sentenced the appellants as mentioned above.

8. In this manner, present appeal and connected Criminal Appeal No.816/2012 have been filed.

9. Learned counsel for the appellants has submitted that prosecutrix was major and a consenting party. She herself left her house. Appellant Bato @ Veeru did not abduct the prosecutrix, but she herself went with the appellant, and therefore, no offence under Section 366 of IPC is made out. Learned counsel further submitted that most of the witnesses turned hostile during trial and only on the omnibus statements of the witnesses, the appellants have been convicted. It is also submitted that there are material contradictions and omissions in the statements of the witnesses. In the alternative, it is submitted by learned counsel for the appellants that the appellants are facing the agony of criminal trial for the last four years and they are in jail since 15.8.2011, and therefore, sentence awarded to them may be reduced to the period which they have already undergone.

10. On the other hand, learned counsel for the State has supported the impugned judgment and submitted that Court below has not committed any illegality in convicting and sentencing the appellants, and therefore, no interference is warranted.

11. Heard the learned counsel for the parties and perused the record of trial Court.

12. First of all, I would like to consider the arguments advanced by learned counsel for the appellants on the following points:-

(A) Whether the prosecutrix was major at the time of incident ?

(B) If yes, whether prosecutrix herself went with appellant Bato @ Veeru and was a consenting party ?

(C) Whether the prosecution witnesses are not reliable and trustworthy, and hence, conviction recorded is liable to be set aside ?

(D) Whether sentence awarded to the appellants can be reduced to the period which they have already undergone?

Regarding question No.A

13. The prosecutrix (PW-4) has stated in her cross-examination that she was 15 years old at the time of incident. Her father Neksia (PW-2) stated that her daughter was 14 years of age at the time of incident. Anil Kumar Dangi (PW-11), In-charge Headmaster of Govt. Higher Secondary School, Durgapur, stated that prosecutrix was admitted in the school in the year 2009 in class V and on the basis of admission entry (Ex.P/14), her date of birth is 19.5.1997. He also stated that this date of birth was entered in the register (Ex.P/14) on the basis of school leaving certificate (Ex.P/15). The mark-sheet of class V (Ex.P/16) was also produced by this witness which proves prosecutrix's date of birth as 19.5.1997. Therefore, on the basis of school record as well as statement of the witnesses, it is proved that at the time of incident i.e. 31.7.2011, the age of the prosecutrix was 14 years, two months and twelve days. As such, at the time of incident, she was below 16 years of age and was not major.

Regarding question No.B

14. The prosecutrix (PW-4) stated in her statement that before 4-5 months when she had gone to answer the call of nature, at that time, appellant Veeru came there and asked to accompany him, he will get her marriage solemnized at a good place. On the basis of this false promise, she went with him. At that time, appellant Ganeshram also came there and both the appellants took her

to Shivpuri by bus. Appellant Veeru threatened to kill her by means of knife if she cried. In cross-examination, she specifically denied that because there is enmity in between her family and family of the appellants, she is stating against the appellants. There is nothing in her cross-examination to disbelieve her testimony.

15. For a moment even if it is presumed that prosecutrix herself went with the appellant Bato, even then when the prosecutrix was minor and had gone with appellant Bato on the basis of false promise of appellant Bato that he will get her marriage solemnized at a good place, her consent does not amount to consent in the eyes of law. Therefore, it is proved that prosecutrix was minor and was not a consenting party.

Regarding question No.C

16. Apart from the statement of the prosecutrix (PW-4), prosecution has examined ten witnesses, namely Ramkrishna (PW-1), Neksiya (PW-2), Matua (PW-3), Bhanusingh (PW-5), Ravi Mehtar (PW-6), Janaksingh (PW-7), Rajendra Sharma (PW-8), Narendra Sharma (PW-9), Mahavir Prasad (PW-10) and Anil Kumar Dangi (PW-11), but nothing has been brought in their cross-examination to disbelieve their evidence. On perusal of the evidence and material available on record, I am of the considered view that prosecution witnesses are reliable and trustworthy. I have not found any perversity, infirmity or anything contrary to the propriety of law in the judgment of trial Court in holding the appellants guilty for the aforesaid offence, therefore, there is no scope in the case for acquittal of the appellants. Consequently, the conviction of the appellants is hereby affirmed.

Regarding question No.D

17. Learned counsel for the appellants submitted that considering the long pendency of the case, mental agony of the appellants suffered during such period and that the appellants have already suffered jail sentence for almost three years and ten months including remission period since 15.8.2011, therefore, by adopting a lenient view their jail sentence be reduced to the period already undergone by them.

18. I do not find it fit to extend the benefit of the provisions of Probation of Offenders Act to the appellants.

19. Coming to the alternative prayer of learned counsel for the appellants

for reducing the jail sentence, I have found some substance in it. It is apparent on record that the appellants are facing the mental agony of the case since long from the date of their arrest and also suffered jail sentence of almost three years and ten months and as per available record, they do not have any criminal antecedents and in such premises, they appear to be first offenders. Thus, considering all these circumstances by adopting a lenient view, I deem it fit to reduce the jail sentence of the appellants to the period which they have already undergone.

20. Therefore, affirming the conviction of the appellants under Sections 363 and 366 of IPC, this appeal is partly allowed and the jail sentence of the appellants for each of the offences is reduced to the period already undergone by them. There is no change in the fine amount which was imposed by the learned trial Court.

21. Both the appeals are partly allowed to the extent indicated above by affirming the conviction of the appellants under Sections 363 and 366 of IPC and reducing their jail sentence for each of the offences to the period already undergone by them.

Appeal partly allowed.

I.L.R. [2016] M.P., 2812
CRIMINAL REVISION
Before Mr. Justice S.K. Palo
Cr.R. No. 167/2013 (Gwalior) decided on 9 April, 2015

PRASHAT GOYAL ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 211 - Framing of charge - Requirement* - Prima facie case - Strong suspicion based on material on record. (Para 14)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 211 – आरोप विरचित किया जाना – आवश्यकता – प्रथम दृष्ट्या मामला – अभिलेख पर उपलब्ध सामग्री के आधार पर ठोस संदेह।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 211, Evidence Act (1 of 1872), Section 113 and Penal Code (45 of 1860),

Sections 304-B & 306 - Framing of charge **- Presumption u/S 113 - Applicable for consideration. (Para 14)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 211, साक्ष्य अधिनियम (1872 का 1), धारा 113 एवं दण्ड संहिता (1860 का 45), धाराएँ 304–बी व 306 – आरोप विरचित किया जाना – धारा 113 के अंतर्गत उपधारणा – विचार हेतु प्रयोज्य है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 211, Evidence Act (1 of 1872), Section 113 and Penal Code (45 of 1860), Sections 304-B & 306 - Framing of charge **- At this stage, the Court should not hold elaborate enquiry and in depth appreciation of evidence to arrive at conclusion that the material produced is sufficient or not for conviction - Meticulous finding of material is not permissible. (Paras 14 & 15)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 211, साक्ष्य अधिनियम (1872 का 1), धारा 113 एवं दण्ड संहिता (1860 का 45), धाराएँ 304–बी व 306 – आरोप विरचित किया जाना – इस प्रक्रम पर, न्यायालय को यह निष्कर्ष निकालने हेतु विस्तृत जाँच एवं साक्ष्य का गहन विवेचन नहीं करना चाहिए कि क्या प्रस्तुत की गई सामग्री दोषसिद्धि हेतु पर्याप्त है अथवा नहीं – सामग्री का सूक्ष्म निष्कर्ष अनुज्ञेय नहीं है।

D. Criminal Procedure Code, 1973 (2 of 1974), Section 211 and Penal Code (45 of 1860), Sections 304-B & 306 **- Charge framed - Specific allegation of active involvement - Name of accused not casually mentioned. (Paras 10 & 11)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 211 एवं दण्ड संहिता (1860 का 45), धाराएँ 304–बी व 306 – आरोप विरचित – सक्रिय आलिप्तन के विनिर्दिष्ट आक्षेप – अभियुक्त का नाम नैमित्तिक रूप से उल्लिखित नहीं किया गया।

Cases referred:

(2012) 10 SCC 471, AIR 2010 SC 2592.

Ankur Mody, for the applicant.
Mukund Bharadwaj, P.P. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

S.K. PALO , J. :- This revision under Section 397/401 of Cr.P.C. has been filed challenging the order dated 19.02.2013 passed by the 9th Additional Sessions Judge, Gwalior, in Sessions Trial No.101/13 whereby charges under Section 304-B in alternative 302 in alternative 306 and under Section 498-A of IPC has been framed against the petitioner/accused.

2. It is alleged that deceased Amrita Agrawal, wife of Tarun Agrawal, aged 25 years died on 06.09.2012 in suspicious circumstances by hanging. Therefore, offence under Section 304-B read with Section 34 of IPC was registered against her mother-in-law, two sisters-in-law and the applicant,the husband of the sister-in-law of the deceased.

3. During investigation it was found that the accused persons demanded two lacs rupees as dowry and were harassing the deceased. Husband of the deceased was in the habit of taking alcohol. His mother Shobha Agrawal, Sister Chanda and petitioner Prashant repeatedly 'taunting' the deceased for she did not bring sufficient dowry. On their instigation her husband Tarun Agrawal used to commit cruelty with the deceased. On 26.09.2012, deceased was harassed by her husband, brother-in-law, sisters-in-law and the applicant. She was beaten and threatened and thrown out from the house. Deceased narrated her maternal home and informed all the incidents. She told this to her father, mother accompanied by Govind Agrawal.

4. The father of the deceased accompanied with Govind Agrawal and Anant Agrawal went to her matrimonial home, where all the accused persons were present. Accused persons demanded 2,00,000/- rupees. Her father Mohan requested that he be given 7-8 days time to arrange such money. After several requests by Mohan, the deceased Amrita was allowed to stay in her in-laws house. The accused persons also threatened him that if 2,00,000/- rupees is not arranged, Amrita will be dealt and Tarun will go for second marriage.

5. On 8.8.2012 when Mamta Agrawal came to her matrimonial home, she was morose. When asked for the reasons she narrated that if the money is not arranged she will be killed by her husband, her mother-in-law and her sisters-in-law and husband of sister-in-law applicant Prashant Agrawal. On 6.9.2012 when by chance father Mohan went to her in-laws place, he came to know about the death of his daughter Amrita Agrawal. Similar statement

has been given by her mother Shobha Agrawal and brother Amit Agrawal.

6. Charge-sheet was filed. After committal of the case, 9th Additional Sessions Judge, Gwalior, vide order dated 19.02.2013 framed charge against the accused persons including the petitioner.

7. The petitioner claimed that the impugned order is not sustainable in the eyes of law. No evidence is available against the applicant. The applicant married with Pooja, the sister-in-law of the deceased on 19.11.2002 and he is not living at her maternal house. He is residing at B-8, Samadhiya Colony, Taraganj, Lashkar. The petitioner has not committed any offence. Therefore, the charge framed against the petitioner vide order dated 19.02.2012 be set-aside.

8. Learned Panel Lawyer opposed the application and submitted that presence of the applicant has been permanently shown by the witnesses at the matrimonial home of the deceased. It would not be correct to say that deceased was not subjected to harassment by the applicant.

9. Cruelty was allegedly committed with the deceased for demand of dowry. She was subjected to cruelty as contemplated in a Clause "A" and Clause "B" to explanation of Section "498-A." Truely that such cruelty has been practiced by her husband and his relatives. The applicant do not claimed that he is not relative of her husband.

10. Learned counsel for the petitioner relied on *"Geeta Mehrotra and another Vs. State of U.P."* reported in (2012) 10 SCC 471 in which the Hon'ble Supreme Court in a petition under Section 482 of Cr.P.C. held that "a casual reference to the family members of the applicant (un-married sister and elder brother of husband) in FIR as co-accused (as well as to parents of husband) - Absence of any specific allegation and prima facie case against co-accused held - Proceedings quashed."

11. This citation is not applicable in the present case. For the reason that the name of the applicant is not casually mentioned in the present case. There is specific allegation of disclosure of active involvement of the applicant.

12. True, that for the fault of the husband, the in-laws or other relations cannot, in all cases be held to be involved in the case of demand of dowry.

13. In *"Dasrath Vs. State of M.P.* (AIR 2010 SC 2592)", the Apex

Court held that:-

> "1. that the death of a woman has been caused by burns or bodily injury or occurs otherwise than under normal circumstances;
>
> 2. that such death has been caused or has occurred within seven years of her marriage; and
>
> 3. that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry as also the presumption under Section 113-B Indian Evidence Act are fully established the case of prosecution".

14. In the present case after going through the Police statements it cannot be denied that there was no definite evidence of ill-treatment having immediate proximity to date of death of the deceased. Thus, the charge framed for ill treatment for dowry does not seem to be without any basis. At this moment presumption as to abetment of suicide to the deceased under Section 113 of Evidence Act could not be ruled out. Besides, at the stage of framing of charge the Court is not to hold an elaborate enquiry. Only primafacie case is to be seen. Indepth appreciation of evidence is impermissible at the stage of framing of charge. The Court is not required to appreciate the evidence and arrive at the conclusion that the material produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then charge has to be framed.

15. Meticulous finding of materials at this stage is uncalled for and the standard of test and judgment which is finally applied before recording the finding of conviction against the accused is not to be applied, at the stage of framing the charge. A strong suspicion based on the material of record, would be sufficient to frame the charge.

16. That being so, the impugned order is not called for interference. Hence, the present petition under Section 497 read with Secion 401 of Cr.P.C. sans merit and is dismissed.

Revision dismissed.

I.L.R. [2016] M.P., 2817
CRIMINAL REVISION
Before Mr. Justice C.V. Sirpurkar
Cr.R. No. 2257/2015 (Jabalpur) decided on 14 March, 2016

PRASHANT MISHRA ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 12 & 15 - Grant of bail to Juvenile **- Learned Sessions Judge had declined to grant bail to juvenile by upholding the reasoning of Juvenile Justice Board - Held - In view of the report of the Probation Officer and the circumstances under which the offence is alleged to have been committed and the fact that the guardians of the juvenile are clearly not in a position to exercise any disciplinary control over him, in case of release on bail, the juvenile would expose himself to moral, psychological and physical dangers - It would not be in the interest of justice to release him on bail - Revision is dismissed. (Paras 9 & 10)**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धाराएँ 12 व 15 – किशोर को जमानत प्रदान की जाना – विद्वान सत्र न्यायाधीश ने किशोर न्याय बोर्ड का तर्क कायम रखते हुए किशोर को जमानत प्रदान करने से मना किया – अभिनिर्धारित – परिवीक्षा अधिकारी के प्रतिवेदन को दृष्टिगत रखते हुए एवं परिस्थितियाँ जिसके अंतर्गत अभिकथित रूप से अपराध कारित किया गया है तथा तथ्य कि किशोर के संरक्षक स्पष्ट रूप से उस पर कोई अनुशासनात्मक नियंत्रण रखने की स्थिति में नहीं, जमानत पर छोड़े जाने की दशा में, किशोर स्वयं को नैतिक, मानसिक एवं शारीरिक खतरों में डालेगा – उसे जमानत पर छोड़ा जाना न्याय हित में नहीं होगा – पुनरीक्षण खारिज।

Cases referred:

Cr.R.No. 838/2014 order passed on 21.11.2014, 2006 Cr.L.J. 1892, 2005 Cr.L.J. 3182.

Pramod Kumar Thakre, for the applicant.
Ramesh Kushwaha, P.L. for the non-applicant/State.

ORDER

C.V. SIRPURKAR, J. :- This criminal revision is directed against the

order dated 24.08.2015 passed by Sessions Judge, Tikamgarh, in criminal appeal No.184/2015 under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred to in this order as the "the Act"), whereby learned Sessions Judge had declined to grant bail to juvenile in conflict with law and release him in the custody of his mother.

2. The juvenile in conflict with law was admittedly 16 years old on the date of offence. As per prosecution case, at around 09.00 p.m. on 30.06.2015., victim Kailash Rajak was returning home after working in the house of mother of the juvenile. When he reached the house of Bablu Mishra, the juvenile, who appeared to be intoxicated, asked him to give Rs.50/- for buying liquor. When the complainant refused to part with money, the juvenile filthily abused him and inflicted a blow with knife on his neck, resulting in bleeding. The juvenile also threatened kill him because he was not giving him money. Vinod Rajak and Pradeep Rajak intervened and rescued the victim form the clutches of the juvenile. The victim lodged FIR against the juvenile; whereon a first information report under Sections 324, 294, 327, 506 of the IPC was registered.

3. The application was moved on behalf of the juvenile under Section 12 of the Act for bail, which was dismissed by learned Principal Magistrate, Juvenile Justice Board, Tikamgarh, observing that though, the gravity of the offence is not relevant while considering the application for bail to a juvenile in conflict with law, on the basis of report of Probation Officer, it was clear that the guardians of the juvenile do not exercise any disciplinary control over his activities. The juvenile is addicted to various kinds of intoxicants and indulges in criminal activities to raise money for aforesaid purpose. Learned Magistrate further observed that in aforesaid circumstances, if the juvenile is released on bail, he would land himself moral, physical and psychological danger; therefore, his application for bail was rejected.

4. The order of the Principal Magistrate of Juvenile Justice Board was challenged in appeal under Section 52 of the Act, which was dismissed by impugned order. Learned Sessions Judge relied upon the judgment rendered by this Court in the case of *Inder Singh Vs. State of M.P.* Dated 21.11.2014 passed in Cr.R.No.838/2014, *Rikki Singh Vs. State of Chattisgarh,* 2006 Cr.L.J. 1892 and *Sandeep Vs. State,* 2005 Cr.L.J. 3182 and dismissed the appeal, upholding the reasoning of Learned Principal Magistrate, Juvenile Justice Board.

5. Learned counsel for the revision petitioner has assailed the impugned judgment on the ground that learned Sessions Judge totally ignored the fact that the offence is not a serious one. In fact it only falls under Section 324 of the IPC. As per the final report, the offence under Section 307 of the IPC was added on the advice of superior Police Officers. It has further been submitted that the juvenile has been in custody for past 8 months and it would not be conducive to his moral and psychological wellbeing to keep him confined in a remand home for an indefinite period.

6. In view of the aforesaid legal position, reverting back to the facts of the case at hand, one may see that alleged offence may not be termed as heinous; however, what is relevant for the purpose of bail is the manner in which it was committed and social and domestic background of the juvenile as also his mental and psychological disposition and his proclivities.

7. The juvenile is alleged to have assailed the victim with knife because he refused to give him money for buying liquor. At the time of offence, he was already under the influence of some intoxicant. The report dated 11.07.2015 submitted by the Probation Officer is also revealing. It is stated in no uncertain terms therein that the father and the parental grand-mother of juvenile had expired in a motor accident on 15.11.2011; however, even before the aforesaid incident, juvenile had run away from his home and lived in places like Delhi, Meerut etc. After the death of his father and grand-mother, he returned home; however, during his stay away from home, he had become addicted to intoxicants. He consumes various kind of intoxicants like Ganja, Whitener ink etc. He even goes to the extent of rubbing the paste used for repairing puncture on a piece of cloth and inhales the odor for getting his kick. For the purpose of buying these intoxicants, he needs money and for raising the same, he sells the house-hold goods and takes money from the boys and villagers. He beats up people when they refuse to part with money. He is considered by the villagers to be short-tempered and disobedient. His conduct was not considered to be good. His mother also discloses that he is not socially adaptable and mostly stays alone in his room, he doesn't meet people. After the death of his father, he is looked after by his parental grand-father and mother; however, they are unable to exercise any kind of disciplinary control over him. In order to indulge in his addiction of intoxication, he even man handles his grand-father and mother and misbehaves with them.

8. In the opinion of the Probation Officer, his rehabilitation in the family

may lead to further development of criminal tendencies in the juvenile and if he is restored to his family he may, in all probability, expose himself moral, psychological and physical dangers.

9. In view of the report of the Probation Officer and the circumstances under which the offence is alleged to have been committed, it appears that in the case of his release on bail, the juvenile would expose himself to moral, psychological and physical dangers because it is obvious that he is addicted to various kinds of intoxicants and is more than likely to indulge in criminal activities to raise money. His guardians i.e. mother and the grand-father are clearly not in a position to exercise any disciplinary control over him. If he indulges in criminal activities to raise money for buying liquor etc., the victims may be inclined to retaliate at some point, putting the juvenile in physical danger. In aforesaid circumstances, it would not be in the interest of justice to release the juvenile on bail just yet, regardless of the fact that he has already spent 8 months in remand home. However, simply denying the bail to the juvenile is not the way out. His stay in the observation home should be utilized for the purpose of deaddiction and reformation. He needs to be cured of his addiction, if possible, and properly counseled with a view to reclaim him as a useful member of the society.

10. In aforesaid circumstances, this application for grant of bail to the juvenile and for releasing him in the custody of his mother is dismissed. The petitioner shall be free to renew the prayer after the expiry of a period of three months in the event the case against him is not disposed of till then. Meanwhile, proper counseling shall be arranged for him and necessary steps for curing him of his addiction to intoxicants shall be taken.

11. It has been informed that proper facilities for aforesaid purpose are not available at Tikamgarh. Though, such facilities at Sagar at distance of 119 Kms are available; therefore, the Superintendent of Observation Home at Tikamgarh is directed to transfer the juvenile to the Observation Home at Sagar. It shall be the responsibility of the Superintendent of the Observation Home at Sagar:

(i) to produce the juvenile before the J.J.B. at Tikamgarh on all dates of hearing;

(ii) to arrange for suitable counseling of the juvenile with a view to curb his criminal proclivities;

(iii) to take necessary steps towards curing of the juvenile of his addiction to intoxicants.

The monthly progress report of the juvenile on the first date of every month, shall be submitted by the Probation Officer at Sagar to the Principal Magistrate, Juvenile Justice Board, Tikamgarh, who shall be free to pass such orders in the interest of juvenile as may be deemed necessary, in order to attain aforesaid twin objectives.

Order accordingly.

I.L.R. [2016] M.P., 2821
CRIMINAL REVISION
Before Mr. Justice C.V. Sirpurkar
Cr.R. No. 2797/2015 (Jabalpur) decided on 21 March, 2016

RAJU ADIVASI & ors. ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 401 and Explosive Substances Act (6 of 1908), Sections 4, 5 & 7 - **Framing of Charge u/S 4, 5 of the Act, 1908, assailed on the ground that the consent of the District Magistrate as envisaged u/S 7 of the Act, 1908 has not been filed alongwith the charge sheet - Consent by District Magistrate was granted and was filed on 13.08.2015 and charge was framed on 28.09.2015 - Held - Trial commence only at the stage of framing of charge and not when cognizance is taken - Court may proceed up to the stage of framing of charge without consent of District Magistrate - Charge can be framed after consent being granted and placed on record - Trial Court has ample power and discretion to receive any document before framing of charge - All documents are not required to be filed alongwith the final report. (Paras 7, 9 & 13)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 397 व 401 एवं विस्फोटक पदार्थ अधिनियम (1908 का 6), धाराएँ 4, 5 व 7 – अधिनियम, 1908 की धारा 4, 5 के अंतर्गत आरोप विरचित किये जाने को इस आधार पर चुनौती दी गई कि जिला मजिस्ट्रेट की सहमति, जैसा कि अधिनियम, 1908 की धारा 7 के अंतर्गत परिकल्पित है, आरोप पत्र के साथ प्रस्तुत नहीं की गई – जिला मजिस्ट्रेट द्वारा सहमति प्रदान की गई और 13.08.2015 को प्रस्तुत की गई तथा 28.09.2015 को आरोप विरचित

किया गया था – अभिनिर्धारित – विचारण केवल आरोप विरचित किये जाने के प्रक्रम पर आरंभ होता है न कि जब संज्ञान लिया जाता है – न्यायालय, आरोप विरचित करने के प्रक्रम तक जिला मजिस्ट्रेट की सहमति के बिना कार्यवाही कर सकता है – सहमति प्रदान होने पर और अभिलेख पर लाये जाने के पश्चात् आरोप विरचित किया जा सकता है – विचारण न्यायालय को आरोप विरचित करने के पूर्व किसी दस्तावेज को प्राप्त करने की पर्याप्त शक्ति और विवेकाधिकार है – सभी दस्तावेजों को अंतिम रिपोर्ट के साथ प्रस्तुत करना अपेक्षित नहीं।

Cases referred:

(2013) 10 SCC 705, AIR 2014 SC 1400, 2002 Cr.L.J. 2367.

Akhil Singh, for the applicants.
Amit Pandey, P.L. for the non-applicant/State.

ORDER

C.V. SIRPURKAR, J. :- This criminal revision has been filed on behalf of the accused persons Raju Adivasi and Ramkishore challenging the order dated 28.9.2015 passed by the Court of Additional Sessions (supplied:Judge), Nagod, District Satna, in Session Trial No.128/2015, whereby learned Additional Sessions Judge had dismissed the application filed on behalf of the accused persons under Sections 227 and 228 of the Code of Criminal Procedure and had framed multi-headed charges against them under Sections 33 (1) (b) and Section 41 read with Section 42 of the Indian Forest Act, 1927 and Sections 4 and 5 of the Explosive Substances Act, 1908 (hereinafter referred to in this order as "the Act").

2. The petitioners/accused persons have restricted their challenge to framing of charge under Sections 4 and 5 of the Act. Framing of charge against the accused persons under the Act has been assailed solely on the ground that the prosecution has failed to comply with provisions of Section 7 thereof and; therefore, learned trial Judge grievously erred in framing charge thereunder. Inviting attention of the Court to the judgment rendered by the Supreme Court in the case of *Anil Kumar Vs. M.K. Ayappa,* (2013) 10 SCC 705, learned counsel for the petitioner has contended that admittedly the consent of the District Magistrate as envisaged by the Section 7 of the Act, was not filed along with the charge-sheet. It was not filed even till the matter was committed to the Court of Session. When the trial Court proceeded to consider framing of charge on 7.8.2015, it was noticed that the letter of consent is not annexed

to the final report. Thereafter, the Public Prosecutor procured and filed the letter of consent along with an application and subsequently the letter was taken on record. Learned counsel for the petitioners/accused persons submitted that filing of the letter of consent just before consideration of the charge, does not fulfill the requirement of Section 7 of the Act and; therefore, the charge under Sections 4 and 5 of the Act, as framed against the accused persons is not sustainable in the eye of law. Hence, it has been prayed that the charge under aforesaid provisions be quashed.

3. Learned panel lawyer for the respondent State on the other hand has supported the order framing charge under the provisions of Explosive Substances Act, 1908.

4. On perusal of the record and due consideration of rival contentions, the Court is of the view that this criminal revision must fail for the reasons hereinafter stated.

5. It is not in dispute before this Court that the letter of consent issued by the District Magistrate, Satna, was not filed along with the final report. The criminal case was committed to the Court of Session without such consent. The consent was granted on 13.8.2015 and on the same day, it was filed along with an application, before the Additional Sessions Judge. The charge in the case was considered and framed on 28.9.2015. Thus, it is also not in dispute that the consent had been granted by the District Magistrate before consideration and framing of charge.

6. Section 7 of the Act reads as hereunder:

> *7. **Restriction on trial of offences** - No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.*

7. A plain reading of aforesaid provision makes it abundantly clear that the restriction is placed on the power of the Court to proceed to the trial of any person for an offence under the Act without the consent of the District Magistrate. No such restriction is placed upon the power of the Court to take cognizance of any such offence. Thus, a Judicial Magistrate is not precluded from receiving the final report in a case involving offences under the Act and commit the case for trial to the Court of Sessions. Now, the question that arises for consideration is when does the trial actually commence?

8. A five (supplied:Judge) Bench of the Supreme Court in the case of *Hardeep Singh Vs. State of Punjab*, AIR 2014 SC 1400 has held that:

> *"35. In view of the above, the law can be summarized to the effect that as 'trial' means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the 'trial' commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."*

Emphasis supplied.

9. In view of aforesaid definitive pronouncement of a five (supplied:Judge) Bench of the Supreme Court, it is luminously clear that the trial commences only at the stage of framing of the charge and not when cognizance is taken. As such, in a case involving offences under the Explosive Substances Act, the Court may proceed up to the stage of framing of charge without consent from the District Magistrate; however, the Court cannot consider and frame charge without such consent being granted and placed on the record of the case.

10. In this view of the matter, the reliance upon the case of *Anil Kumar* (supra), is misplaced. In that case, the Supreme Court had held that where jurisdiction is exercised on a complaint filed in terms of Sections 156(3) or 200 of the Cr.P.C., the Magistrate is required to apply his mind and in such a case, the Special Judge/Magistrate cannot refer to the matter under Section 156 (3) of the Cr.P.C. for investigation against a Public Servant without a valid sanction order under Section 19 (1) of the Prevention of Corruption Act, 1988.

11. Section 19 (1) of the Prevention of Corruption Act, 1988 is reproduced herein below for ready reference:

> *19. Previous sanction necessary for prosecution - (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, save as otherwise provided in the Lokpal and*

Lokayuktas Act, 2013.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

12. It may be noted that under sub-section 1 of Section 19 (1) of the Prevention of Corruption Act, 1988, the embargo is placed upon taking cognizance of an offence and not on proceeding to the trial. Thus, sub- section (1) of Section 19 of the Prevention of Corruption Act, 1988, is not *pari materia* with Section 7 of the Explosive Substances Act, 1908. As such, the principle of law laid down by the Apex Court in the case of *Anil Kumar* (supra) does not, in any manner, advance the cause of the petitioner.

13. The second objection that has been halfheartedly taken in this regard is that the learned Additional Sessions Judge had no jurisdiction to receive any document just before framing of charge. All documents for the prosecution are required to be filed along with the final report.

14. A co-ordinate Bench of this Court in the case of *Raju Vs. State of Madhya Pradesh,* 2002 Cr.L.J 2367 has held that:

'"Under these provisions the learned trial Court had ample power and discretion to interfere and control conduction of trial properly, effectively and in manner as prescribed by law. While conducting the trial Court is not required to sit as a silent spectator or umpire but to take active part well within the boundaries of law. In the present case so many important documents were not got proved though filed along with charge sheet, so many important documents as pointed hereinabove, were not filed which all could be important and relevant for the just decision of a trial, and

the same could be got proved and directed to be produced by trial Court under S. 165 of Evidence Act and 311 of Cr. P.C.

15. Thus, the second objection has no force and is accordingly rejected. No other ground has been raised.

16. On the basis of foregoing discussion, this Court is of the view that learned Additional Sessions Judge committed no illegality, irregularity or impropriety in framing charge against the accused persons/petitioners under the provisions of Explosive Substances Act, 1908.

17. Thus, no interference by this Court under revisionary jurisdiction is warranted.

18. Consequently, this criminal revision is dismissed.

Revision dismissed.

I.L.R. [2016] M.P., 2826

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sushil Kumar Gupta

M.Cr.C. No..794/2015 (Gwalior) decided on 28 January, 2015

PREETAM LODHI ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 144 & 195 (1)(a)(i) and Penal Code (45 of 1860), Section 188 **- Application for quashing of FIR u/S 482 of Cr.P.C. - FIR - Violation of the order of District Magistrate u/S 144 of Cr.P.C. by creating road block by the petitioner and his 50-60 supporters - No permission obtained of rally - Subsequently, FIR lodged by concerned S.H.O. u/S 188 of IPC - Whether a Court can take cognizance of offence punishable u/S 188 of IPC on the basis of FIR lodged by the S.H.O. - Held - No, in the present case the petitioner has violated the prohibitary order of the District Magistrate and as per Section 195(1)(a)(i) of IPC no court shall take congnizance u/S 188 of IPC except on a complaint in writing of the concerned public servant and in this case the FIR has been lodged by S.H.O. whereas complaint in writing**

ought to have been lodged by District Magistrate, so the concerned FIR is quashed. (Paras 6 to 11)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 144 व 195 (1)(ए)(i) एवं दण्ड संहिता (1860 का 45), धारा 188 – प्रथम सूचना प्रतिवेदन अभिखण्डित किये जाने हेतु दं.प्र.सं. की धारा 482 के अंतर्गत आवेदन – प्रथम सूचना प्रतिवेदन – याची और उसके 50–60 समर्थकों द्वारा मार्ग में अवरोध निर्मित कर दं.प्र.सं. की धारा 144 के अंतर्गत जिला मजिस्ट्रेट के आदेश का उल्लंघन किया गया – रैली के लिए कोई अनुमति अभिप्राप्त नहीं की गई थी – तत्पश्चात् संबंधित थाना प्रभारी द्वारा भा.दं.सं. की धारा 188 के अंतर्गत प्रथम सूचना प्रतिवेदन दर्ज किया गया – क्या थाना प्रभारी द्वारा दर्ज कराए गए प्रथम सूचना प्रतिवेदन के आधार पर, भा.दं. सं. की धारा 188 के अंतर्गत दण्डनीय अपराध का संज्ञान लिया जा सकता है – अभिनिर्धारित – नहीं, वर्तमान प्रकरण में याची ने जिला मजिस्ट्रेट के प्रतिषेधात्मक आदेश का उल्लंघन किया है और भा.दं.सं. की धारा 195(1)(ए)(i) के अनुसार संबंधित शासकीय सेवक की लिखित शिकायत के सिवाय भा.दं.सं. की धारा 188 के अंतर्गत कोई न्यायालय संज्ञान नहीं लेगा और इस प्रकरण में थाना प्रभारी द्वारा प्रथम सूचना प्रतिवेदन दर्ज कराया गया है जबकि जिला मजिस्ट्रेट द्वारा लिखित में शिकायत दर्ज कराई जानी चाहिए थी, इस कारण संबंधित प्रथम सूचना रिपोर्ट अभिखण्डित।

Case referred:

(1994) 4 SCC 95.

P.S. Bhadauria, for the applicant.
R.K. Shrivastava, P.L. for the non-applicant/State.

ORDER

SUSHIL KUMAR GUPTA, J. :- This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR registered at Crime No.689/14 for the offence punishable under Section 188 of IPC at police Station, Bahodapur, Distt. Gwalior.

2. As per prosecution case, on 15.8.2014 the SHO Bahodapur on receiving the information about the jam when reached at Central Jail, Gwalior, alongwith force, he saw that applicant was making glorification of himself from his 50-60 supporters by garlanding and sloganeering. Applicant and his supporters made sloganeering for about half an hour and created a law and order problem by obstructing the traffic by their vehicles. Thereafter, they in the form of rally proceeded towards Shinde Ki Chhawani. As per the order

of D.M.Gwalior dated 18.7.2014 on the aforesaid date the provisions of Section 144 of Cr.P.C. were in force and without permission any kind of procession, rally etc. was absolutely prohibited. As such, the applicant and his supporters have committed breach of Section 144 of Cr.P.C. which is punishable under Section 188 of IPC.

3. Learned counsel for the petitioner submitted that FIR has been registered against the petitioner against the settled principles of law. It is further submitted that petitioner did not disobey any prohibitory order and the cognizance under Section 188 of IPC can be taken only on the basis of written complaint of a public servant concerned. As per the provisions of Section 195(1)(a)(i) of Cr.P.C. even Court cannot take cognizance of offence under Section 188 of IPC without a written complaint of the concerned public servant. On these grounds, learned counsel for the petitioner prays for quashment of the FIR.

4. Per contra, learned Panel Lawyer for the State opposes the submissions advanced by learned counsel for the petitioner and prays for dismissal of the petition.

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

6. From perusal of the FIR, it appears that it has been registered by the SHO, Bahodapur, himself without any written complaint of the concerned public servant.

7. The relevant provision of Section 195(1)(a)(i) of Cr.P.C. reads thus:

> "No Court shall take cognizance-
>
> (a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
>
> (ii).....
>
> (iii).....
>
> except on the complaint in writing of 'the public servant concerned' or of some other public servant to whom he is administratively subordinate."

8. The Hon.Apex Court in *State of U.P. vs. Mata Bhikh and others,* (1994) 4 SCC 95 in para 6 and 7 observed as under :

"6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 188 of the Indian Penal Code becomes void ab initio. See *Daulat Ram v. State of Punjab,* 1962 Supp 2 SCR 812. To say in other words a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order. Nonetheless, when the court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no court can take cognizance of any offence punishable under Sections 172 to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate.

7. A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate i.e. some other public servant who is his official superior and under whose administrative control he works."

9. In the present case also, if the petitioner has disobeyed or violated the

prohibitory order of the District Magistrate, Gwalior, then only District Magistrate has a right to file a complaint in writing against the petitioner.

10. From the bare perusal of the aforesaid provision of law under Section 195(1)(a)(i) of Cr.P.C. and in the light of dictum of Hon.Apex Court in *Mata Bhikh and others* (supra), undoubtedly the law does not permit taking cognizance of any offence punishable under Section 188 of IPC unless there is a complaint in writing by competent public servant. In the present case, no such complaint has been filed.

11. Consequently, the FIR registered at Crime No.689/14 for the offence punishable under Section 188 of IPC at police Station, Bahodapur, Distt. Gwalior, deserves to be and is hereby quashed.

Order accordingly.

I.L.R. [2016] M.P., 2830
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No. 3864/2015 (Indore) decided on 1 July, 2015

SATYANARAYAN ...:Applicant
Vs.
STATE OF M.P. ...Non-applicant

Penal Code (45 of 1860), Section 420 and Evidence Act (1 of 1872), Sections 45 & 73 - Opinion of expert - Cheating **- Prosecution story is that the accused issued a cheque on 10.09.2004 while his account was closed on 05.07.2004 - According to the accused, he issued cheque on 10.09.2002 - The Complainant made overwriting in the date of cheque - To prove that there is overwriting, he wants to examine the Handwriting Expert, but the Courts below dismissed the application - Date of issuance of cheque goes to the very root of the matter therefore, the application allowed and hence, it was ordered that the questionable cheque be examined by the Handwriting Expert. (Paras 2 & 3)**

दण्ड संहिता (1860 का 45), धारा 420 एवं साक्ष्य अधिनियम (1872 का 1), धाराएँ 45 व 73 – विशेषज्ञ का मत – छल – अभियोजन का प्रकरण यह है कि अभियुक्त ने दिनांक 10.09.2004 को चैक जारी किया, जबकि उसका खाता दिनांक 05.07.2004 को बंद हो चुका था – अभियुक्त के अनुसार, उसने दिनांक 10.09.2002 को चैक जारी किया था – परिवादी ने चैक की तिथि में अधिलेखन किया –

अधिलेखन को सिद्ध करने के लिए वह हस्तलिपि विशेषज्ञ का परीक्षण कराना चाहता था, परंतु निचले न्यायालयों ने आवेदन खारिज कर दिया – चैक जारी किए जाने की तिथि मामले की तह तक जाती है इसलिए, आवेदन स्वीकार किया गया तथा यह आदेशित किया गया कि प्रश्नगत चैक का परीक्षण हस्तलिपि विशेषज्ञ द्वारा किया जावे।

Vinay Gandhi, for the applicant.
Amit Singh Sisodiya, for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

ALOK VERMA, J. :- This application under section 482 of Cr.P.C. is directed against the order dated 13.02.2015 passed by learned 5th Additional Sessions Judge, Mandsaur in Cr.R. No.32/2015 dated 13.02.2015 by which he confirmed the order passed by learned Judicial Magistrate First Class in Criminal Case No.2905/2009 dated 09.01.2015 whereby, learned Magistrate dismissed an application filed by present applicant under section 45 and 73 of the Evidence Act.

2. The brief facts of the case are that present applicant is facing trial under section 420 of IPC in Crime No.642/2004 registered at Police Station – City M.S.R. District – Mandsaur. As per the allegation of the prosecution story, present applicant allegedly issued a cheque on 10.09.2004 while, his account was closed on 05.07.2004. According to the present applicant, he issued this cheque on 10.09.2002. The complainant made overwriting in the date of the cheque and made it to appear that cheque was issued on 10.09.2004 and, therefore, if it is proved that the cheque was issued on 10.09.2002, no case is made out against him. To prove that there is overwriting, he wants to examine the Hand Writing Expert but the courts below dismissed his application and, therefore, this application is filed. After going through the impugned orders, it is apparent that the prosecution in this case, examined one Hand Writing Expert as PW-5. However, the Hand Writing Expert admitted that he only submitted his opinion in respect of the signature on the cheque and did not examine the cuttings on the date of the cheque. Learned Additional Sessions Judge observed in para 8 of the impugned judgment that in this case, there is no charge in respect of the date on the cheque bu (sic:but) the charge is that the accused issued the cheque after closing his account. However, the observation made by learned Additional

Sessions Judge appears entirely erroneous as, it is apparent from the record that account was closed in July, 2004 and if the present applicant proves that the cheque was issued on 10.09.2002 then, this would go to the very root of the matter.

3. In this view of the matter in the considered opinion of this Court, both the courts below erred in not allowing the application filed by the present applicant. Therefore, this application is allowed. It is directed that the applicant may be allowed to get the questionable cheque examined by the Hand Writing Expert and then the statement of the same Hand Writing Expert may be recorded by the Court.

4. With this direction, the application stands disposed of.

5. C.c as per rules.

Application allowed.

I.L.R. [2016] M.P., 2832
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice S.K. Palo
M.Cr.C. No. 1647/2009 (Gwalior) decided on 13 July, 2015

HARISH KULSHRESTHA ...Applicant
Vs.
VIKRAM SHARMA ...Non-applicant

A. Negotiable Instruments Act (26 of 1881), Section 138 - **Questioned cheque was not produced before the Drawee Bank within six months - Complainant has not observed the legislative intent - No criminal liability of the drawee. (Para 10)**

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – प्रश्नगत चेक छह माह की अवधि के भीतर उपरवाल बैंक के समक्ष प्रस्तुत नहीं किया गया – परिवादी ने विधायिका के आशय पर विचार नहीं किया – उपरवाल का कोई आपराधिक दायित्व नहीं।

B. Criminal Procedure Code, 1973 (2 of 1974), Sections 362 & 482 - Bar u/S 362 - **Exercise of jurisdiction u/S 482, when warranted - No provision in the Code of Criminal Procedure authorizing the High Court to review its orders passed in exercise of its revisional jurisdiction - Such power cannot be exercised under the cloak of Section 482 of the**

Code of Criminal Procedure. **(Para 16)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 362 व 482 – धारा 362 के अंतर्गत वर्जन – धारा 482 के अंतर्गत क्षेत्राधिकार का प्रयोग, कब आवश्यक है – दण्ड प्रक्रिया संहिता में ऐसा कोई उपबंध नहीं है जो उच्च न्यायालय को पुनरीक्षण अधिकारिता के अंतर्गत उसके द्वारा पारित आदेशों का पुनर्विलोकन करने हेतु प्राधिकृत करता हो – दण्ड प्रक्रिया संहिता की धारा 482 की आड़ में ऐसी शक्ति का प्रयोग नहीं किया जा सकता।

Cases referred:

2012 (3) MPLJ 217, AIR 2001 SC 43, (2001) 3 SCC 609, (2008) 2 SCC (Cri) 186.

V.D. Sharma, for the applicant.
Arun Pateria, for the non-applicant.

ORDER

S.K. Palo, J. :- This petition under Section 482 of Cr.P.C. has been filed to recall the order dated 07.01.2009 passed in M.Cr.C. No.616/2009 by this Court.

2. The facts just necessary to adjudicate the present petition are that a cheque of Rs.2,97,000/- was issued by respondent/accused Vikram Sharma in favour of the complainant/petitioner which was submitted for collection and upon presentation the said cheque was dishonoured. It was alleged that, in spite of the notice of demand, the amount was not paid, hence, the respondent accused Vikram Sharma has committed an offence which is punishable under Section 138 of the Negotiable Instruments Act (which shall be referred hereinafter as an "NI Act").

3. A complaint case was filed by petitioner/complainant Harish Kulshreshtha, to prosecute the accused/respondent under Section 138 of the Act. After taking cognizance in the matter, the learned Trial Court framed charge against respondent/accused Vikram Sharma under Section 138 of the NI Act by the learned Special Judge, Morena, on 16.04.2007. Subsequently, on 25.05.2007, an application was moved by the respondent/accused Vikram Sharma before the Trial Court by which the respondent claimed that the said cheque was said to have dishonoured because of non-availability of fund but it was dishonoured due to a different reason. As no witnesses have been

examined so far the case has been fixed for recording of evidence. The plea of the accused Vikram Sharma in the charge be amended suitably.

4. This application was opposed by the petitioner/complainant Harish Kulshrestha. The learned Trial Court vide order dated 15.06.2007 discussed the matter in detail and held that the application deserves to be dismissed as there was no necessity to amend the plea written on 16.06.2007. Learned trial Court has held that on prima facie it was found that the cheque was dishonoured by State Bank of Indore, Branch Kampoo, Gwalior, for "out of rate" which is interpreted as "insufficient available of fund." The 'cheque return memo' showing "out of date" is not required to be written as "out of date" is written in column No.16. Therefore, it is actually "out of date" which means out of estimated amount or value, meaning thereby insufficient of fund.

5. The order dated 15.06.2007 was under challenge in Criminal Revision No.616/2007 by the accused/respondent. This Court allowed the revision and set aside the impugned order.

6. This Court vide order dated 2.1.2009 while deciding the revision has opined that,

> "From perusal of the record it is evident that the cheque is dated 10/04/05 while the cheque was returned by the State Bank of Indore, Branch Gwalior on 13/10/05 and reason has been mentioned in the memorandum which is annexed to the petition as Annexure P/1 is cheque out of date'. By no stretch of imagination it can be read as cheque of rate. As admittedly, in this case the cheque was not presented before the drawer's bank within the statutory period of six months, the Criminal Court had no jurisdiction to issue the process against the petitioner. The impugned order being contrary to law is thus not sustainable. The petition is accordingly allowed and the impugned order is set-aside".

7. The present petition has been filed by the complainant/petitioner in this background with the aforesaid prayer stating that the order dated 07.01.2009 has been passed on a wrong notion and not in accordance with the record. It is further claimed that the revision was presented for amending the plea in the charge whereas no request was made to discharge the petitioner.

8. During the course of arguments counsel for the petitioner strenuously

argued that the disputed cheque was dated 10.04.2005 and the drawing bank was State Bank of Indore, Kampoo Branch, Gwalior. The cheque was produced for collection within the prescribed period i.e. six months. The complainant/petitioner produced the cheque with Oriental Bank of Commerce on 08.10.2005 within the prescribed time. Subsequently, Oriental Bank of Commerce sent the cheque to the drawer bank i.e. State Bank of Indore Branch, Kampoo, Gwalior, for collection and on 13.10.2005 the drawee bank State Bank of Indore returned the unpaid cheque with the endorsement that cheque " out of rate". Reliance has been placed by the counsel for the petitioner in *Kushalbhai Ratanbhai Rohit & Ors Vs. The State of Gujarat*, decided in Special Leave Petition (Cri.)No.453 of 2014, in which the Hon'ble Supreme Court has held that a Judge's responsibility is very heavy, particularly in a case where a man's life and liberty hang upon his decision – Nothing can be left to chance or doubt or conjecture- Thus, Judge can recall or review his earlier judgment which is yet to be signed.

8.A. It is pertinent to note that the words used are "yet to be signed"

9. Per contra, learned counsel for the respondent/accused vehemently argued that the particulars of offence was explained on 16.04.2009 and the accused could not explain the things hence filed application for correction in the plea, it was not because of "insufficiency of the fund", the cheque was dishonoured but, it was because of other reasons. When this request was refused by the Court vide order dated 15.06.2007, the accused/respondent filed the revision which was registered as MCRC 616/2007. While deciding the matter, this Court held that the cheque was not presented before the drawee Bank within the statutory period of six months. This view of the Court is fortified by the decisions rendered in *Amit Duney Vs. Arvind Dubey* reported in 2012(3) M.P.L.J.217, *Hari Singh Mann Vs. Harbhajan Singh Bajwa and others*, reported in AIR 2001 S.C. 43 and *Shri Ishar Alloy Steels Ltd Vs. Jayaswals Neco Ltd*, reported in (2001) 3 SCC 609.

10. The questioned cheque was not produced before the drawee bank within six months. The complainant has not observed the legislative intent. Therefore, there is no criminal liability of the drawyee.

11. In *Shri Ishar Alloy Steels Ltd Vs. Jayaswals Neco Ltd*, (2001) 3 SCC 609, the Hon'ble Supreme Court has held that,

"Negotiable Instruments Act, 1881-Ss. 138, 3 and 72 –

> Expression "the bank", occurring in proviso (a) to S. 138 – Meaning – Held, **means the drawee bank and not the collecting bank of payee** – Hence, in order to attract the criminal liability of the drawer the cheque **must be presented to the drawee bank within the statutory period either personally or through a collecting bank"**

12. Statutory time limit for presenting the cheque to the bank is six months, the "bank" as explained by the Hon'ble Supreme Court is the "drawyee bank" and not the "collecting bank". It is further made clear that the criminal liability of the drawer can be fasten only when the cheque is presented to the drawer bank within the statutory period either personally or through a collecting bank. The drawer bank sent the "cheque return memo" on 13.10.2005 does not show that the cheque was presented to the drawee bank on or before 09.10.2005.

13. Therefore, the observation made by this Court in the order dated 07.01.2009 cannot be held to be a stray remark.

14. Besides the above, Hon'ble the Supreme Court in *R. Rajeshwri Vs. H.N. Jagadish* reported in (2008) 2 SCC (Cri) 186 has held that,

> "B. Criminal Procedure Code, 1973- Ss.362 and 482 – Bar under S.362-- Exercise of jurisdiction under S. 482, when warranted – In view of specific bar created under S.362 in regard to exercise of jurisdiction of High Court to review its own order, held, ordinarily exercise of jurisdiction under S.482 would be unwaranted-- Only in some rare cases, High Court may do so where a judgment has been obtained from it by practising fraud —Herein, such a case has not been made out".

15. Further more Hon'ble the Apex Court in *Hari Singh Mann Vs. Harbhajan Singh Bajwa and others*, reported in AIR 2001 S.C. 43 has opined that,

> "Criminal P.C. (2 of 1974), Ss. 482, 362- Review of judgment/ order- Is not permissible under Code – Court cannot under cloak of S. 482 exercise such power – Practice of filing miscellaneous petitions after disposal of main case – is unwarranted".

16. In this view of the matter there is no provision in the Code of Criminal

Procedure authorizing the High Court to review its orders passed in exercise of its revisional jurisdiction. Such power cannot be exercised with an aid or under the clock (sic:cloak) of Section 482 of Code of Criminal Procedure. Section 362 of Code maintain that no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes "functus officio" and dis-entitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law.

17. As that may be, the order dated 07.01.2009 cannot be altered or recalled except to the extent of correcting a clerical or arithmetical error.

18. In this premises, the present petition sans merit and is therefore dismissed.

Application dismissed.

I.L.R. [2016] M.P., 2837
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No. 5624/2015 (Indore) decided on 3 August, 2015

MEHARAZUDDIN ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) - Counting of period of detention for the purpose of filing Chargesheet - **Accused surrendered before the Court on 15.12.2014 and first day would complete after passage of 24 hours i.e. on 16.12.2014 - Therefore, counting shall begin from 16.12.2014 and not from 15.12.2014. (Para 5)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167 (2) – आरोप पत्र दाखिल करने के प्रयोजन हेतु निरोध अवधि की गणना – अभियुक्त ने दिनांक 15.12.2014 को न्यायालय के समक्ष समर्पण किया एवं प्रथम दिन 24 घंटे व्यतीत होने के उपरांत अर्थात् दिनांक 16.12.2014 को पूर्ण होगा – अतएव, गणना दिनांक 16.12.2014 से प्रारंभ की जावेगी न कि दिनांक 15.12.2014 से।

Cases referred:

2008 (3) MPHT 18 (CG), AIR 1986 SC 2130.

Virendra Sharma, for the applicant.
Mini Ravindrarn, for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

ALOK VERMA, J. :- This application is directed against the order passed by learned 4th Additional Sessions Judge, Dewas in CRR No.37/2015 whereby, learned Additional Sessions Judge dismissed the revision filed against the order passed by learned JMFC in Criminal Case No.487/2014 dated 14.02.2015.

2. The brief facts giving rise to this application are that chargesheet was filed by the Police Station – Kotwali, District – Dewas, on 13.02.2015 under sections 306 and 498-A of IPC. On this date, the accused filed an application under section 167(2) of Cr.P.C. It was mentioned in the application that the accused Mehrazuddin surrendered before the Court on 11.12.2014, however, he was not taken into custody and the Court directed him to appear on 12.12.2014. On that day, Presiding Officer was on leave and, therefore, the matter was further adjourned for 15.12.2014 and on which date, the accused Meharazuddin was taken into custody and sent on judicial remand. The contention of the accused was that charge-sheet was filed on 61st day after he was sent to custody and, therefore, he should be given benefit of bail under section 167(2) of Cr.P.C.

3. Learned revisional court in para 9 of the order observed that when he was sent to custody on 15.12.2014, counting of days shall begin from 16.12.2014 and if days are counted from 16.12.2014, charge-sheet was filed on 60th day and not 61st day, therefore, no case is made out for grant of bail under section 167(2) of Cr.P.C.

4. Learned counsel for the applicant filed an order of Chhattisgarh High Court in the case of *Pitloo Singh Rajput Vs. State of Chhattisgarh* reported in 2008 (3) MPHT 18 (CG) in which it was observed that word detention authorised by the Magistrate used in section 167(2) of Cr.P.C. began when the accused is produced before the Magistrate and sent to judicial custody after granting remand. The period for which he remanded in police custody shall not be counted for this purpose because that detention is not authorised by the Magistrate. For this,

Chhattisgarh High Court placed reliance on the judgment of Hon'ble the Supreme Court in the case of *Chaganti Satyanarayana and others Vs. State of Andhra Pradesh* reported in AIR 1986 SC 2130.

5. However, in the present case, the accused surrendered before the Court on 15.12.2014 and first day would complete after passage of 24 hours i.e. on 16.12.2014, therefore, counting shall begin from 16.12.2014 and not from 15.12.2014. In this view of the matter, no illegality was committed by the revisional court and no interference is called for.

6. Accordingly, this application is devoid of merit, liable to be dismissed and is hereby dismissed.

7. C.c as per rules.

Application dismissed.

I.L.R. [2016] M.P., 2839
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Alok Verma
M.Cr.C. No. 6371/2015 (Indore) decided on 19 August, 2015

VINDHYA ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 311 & 482 - Recall of witness **- Document received subsequently using provisions of Right to Information Act - Application filed to recall the Complainant to confront him with the document, in which totally contrary story was narrated - Application for recall of Complainant for limited purpose and confront him with the documents received subsequently allowed. (Paras 6 & 7)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 311 व 482 – साक्षी को पुनः बुलाया जाना – सूचना का अधिकार अधिनियम के उपबंधों का उपयोग करते हुए दस्तावेज बाद में प्राप्त किया गया – उक्त दस्तावेज, जिसमें पूर्णतः विपरीत कहानी वर्णित थी, को परिवादी के सम्मुख रखने के लिए उसे पुनः बुलाये जाने हेतु आवेदन प्रस्तुत – सीमित उद्देश्य हेतु परिवादी को पुनः बुलाए जाने एवं पश्चात् में प्राप्त दस्तावेज को उसके सम्मुख रखने हेतु प्रस्तुत आवेदन स्वीकार किया गया।

Cases referred:

LAWS (SC)-2007-7-77, 2014 Cri.L.J. 671, 1991Cri.L.J. 1521.

Nidhi Bohra, for the applicant.
Amit Singh Sisodiya, for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

ALOK VERMA, J. :- This application under section 482 of Cr.P.C. is directed against the order passed by learned Special Judge under SC/ST (Prevention of Atrocities) Act under section 311 of Cr.P.C. dated 24.06.2015 by which, learned Judge dismissed the application filed by the present applicant to recall the complainant Shiv Narayan and confront him with various documents that present applicant received subsequently using provisions of Right to Information Act.

2. The brief story according to the prosecution is that complainant Shiv Narayan and his family is residing as tenant in the house of the present applicant. On 17.07.2013, the complainant and his wife Soram bai were going to work as labourers. They were stopped by the present applicant. Present applicant insisted that wife of the complainant should not go to work as labourer and instead of work for her. She wanted her for some illegal purpose and offered her Rs.800/-. Subsequently, it is alleged that present applicant took the complainant inside the house and there acid was thrown on him by co-accused due to which he lost his eye site.

3. Subsequently, it is alleged by present applicant that complainant Shiv Narayan filed a written complaint before the Collector, Shajapur on 02.12.2014. After recording of his statement before the Court and in this complaint, he said that acid was thrown by his wife Soram bai and he also implicated his sister-in-law Teju bai and alleged that they both are trying to sale their daughters Bhavna and Varsha to various persons for prostitution. Subsequent to this, he also filed similar complaint in the office of Superintendent of Police, Shajapur, and also his statement was recorded. Present applicant prays by filing an application under section 311 of Cr.P.C. to recall the complainant to confront him with the documents in which totally contrary story was narrated.

4. Learned Judge held that such subsequent event cannot be taken into consideration as, this would collapse the criminal justice system and no case would reach to its logical conclusion.

5. Counsel for the applicant places reliance on the judgment of Hon'ble

the Supreme Court in the case of *Iddar Vs. Aabida reported in LAWS* (SC)-2007-7-77, in case of *Sister Mina Lalita Baruwa Vs. State of Orissa and others* reported in 2014 Cri.L.J. 671 and in the case of *Mohanlal Shamji Soni Vs. Union of India and another* reported in 1991 Cri.L.J. 1521.

6. So far as the present applicant is concerned, the allegations made in the complaint filed by the present applicant to the Collector in December, 2014, is entirely different than the version he gave to the police and also in his statement before the Court. Both stories are opposite to each other and each of them cannot stand, only one of them can pass test of truthfulness and, therefore, assertions of the complainant before the Collector and his statement before the Court are just opposite to each other and facts stated before the Collector goes to the root of the matter and in this view of the matter, if the application under section 311 of Cr.P.C. is not allowed, this would result in serious miscarriage of justice. Therefore, I find that learned Judge erred while disallowing the application under section 311 of Cr.P.C.

7. Accordingly, this application under section 482 of Cr.P.C. deserves to be allowed and is hereby allowed. The order passed by learned Special Judge dated 24.06.2015 is set aside. The application filed by the applicant under section 311 of Cr.P.C. is allowed. It is directed that the complainant be recalled for limited purpose and confront him with the documents received by the present applicant under Right to Information Act.

8. Needless to say that while confronting the complainant with the documents, provisions of the Evidence Act should be followed.

9. C.c as per rules.

Application allowed.

I.L.R. [2016] M.P., 2841
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sujoy Paul
M.Cr.C. No. 3271/2008 (Gwalior) decided on 31 August, 2015

A.K. SHARMA ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Sections 200 & 482

and Penal Code (45 of 1860), Sections 323, 325, 326, 341, 294, 352, 354 & 506 (Part II) - Quashment of proceedings **- Applicant working as Commanding Officer in NCC - Complainant working as Lascar, Class IV employee in NCC - Complainant is habitual latecomer, act of insubordination, false complaints etc. - Petitioner intimated acts of Complainant to his seniors by three letters immediately - Complaint was filed by the Complainant later on - Held - Court below has not examined the documentary evidence before taking cognizance, and the complaint by the Complainant is an afterthought, so as to take vengeance and is a counter blast on the part of the Complainant - Criminal complaint is hereby dismissed - Petition allowed. (Paras 13 to 19)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 200 व 482 एवं दण्ड संहिता (1860 का 45), धाराएँ 323, 325, 326, 341, 294, 352, 354 व 506 (भाग II) – कार्यवाहियों को अभिखण्डित किया जाना – आवेदक एन.सी.सी. में कमाण्डिंग ऑफिसर के रूप में कार्यरत – परिवादी एन.सी.सी. में चतुर्थ श्रेणी कर्मचारी होकर लस्कर (खलासी) के रूप में कार्यरत है – परिवादी आदतन विलंब से आती है, अनधीनता का कृत्य, असत्य शिकायतें इत्यादि – याची ने तीन पत्रों के द्वारा परिवादी के इन कृत्यों की सूचना अपने वरिष्ठों को तत्काल भेजी – बाद में परिवादी द्वारा परिवाद प्रस्तुत किया गया – अभिनिर्धारित – निचले न्यायालय ने संज्ञान लेने के पूर्व दस्तावेजी साक्ष्य का परीक्षण नहीं किया, एवं परिवादी द्वारा प्रस्तुत परिवाद सोच विचार उपरांत एवं बदला लेने की नीयत से की गई जवाबी कार्यवाही है – दाण्डिक परिवाद एतद्द्वारा खारिज – याचिका स्वीकार।

Case referred:

1998 (5) SCC 749, AIR 1992 SC 604, (2008) 8 SCC 232, (2008) 14 SCC 1, 2015 (1) SCC 513, 1988 (1) SCC 692, (2012) 1 SCC 520.

Raju Sharma, for the applicant.
Vijay Sundaram, P.L. for the non-applicant No. 1/State.
None for the non-applicant No. 2 despite service.

ORDER

SUJOY PAUL, J. :- The petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. to assail the complaint proceedings in Criminal Case No.12332/2006.

2. Brief facts necessary for adjudication of this matter are that the petitioner is an officer in Indian Navy. He has rendered 27 years of unblemished

service. The petitioner remained posted in 03 MP Naval NCC Unit Gwalior between 04.04.2004 to 15.12.2005. The respondent No.2 was also posted in the said Unit at the relevant time. She was working as a Lascar a class IV post. She was appointed on compassionate ground due to death of her husband.

3. Shri Raju Sharma, learned counsel for the petitioner contends that respondent No.2 was highly arrogant and was involved in acts of insubordination and making false complaints against the officers. The respondent No.2 was posted on attachment in NCC Group Headquarters from where she reported back to 03 MP Naval Unit NCC on 01.06.2005. Her routine duty was from 9:30 AM to 5:30 PM excluding one hour of lunch break. It is urged that similarly posted Lascars always reported on their duty in time but respondent No.2 never turned up in time. She was a habitual latecomer and whenever she was apprised about it, her standard answer was that she will come as per her own wish.

4. Shri Raju Sharma, learned counsel for the petitioner contends that on 7.7.2005, the respondent No.2 again came late. The Chief Instructor asked her about the reason for coming late. She started arguing and misbehaving with the Chief Instructor. The petitioner was the Commanding Officer of the Unit and therefore Chief Instructor reported the matter to the petitioner regarding the conduct of respondent No.2. It was in relation to her late coming, refusing to lift the official suit case of Commanding Officer and even refusing to bring/serve tea. He also apprised the petitioner that respondent No.2 is not following the daily roster of Lascars and further refusing to carry the DAK/ Treasury duties.

5. The case of the petitioner is that he called respondent No.2 in the presence of Office Superintendent and Chief Instructor and asked her about the choice of duty in which she will feel comfortable. She in turn, started abusing the petitioner. She used very filthy and improper language and misbehaved with petitioner. The petitioner immediately apprised the higher authorities about the incident dated 07.07.2005. The reliance is placed on Annexure P/1 dated 07.07.2005 which is addressed to the Deputy Director General, NCC Directorate, Bhopal. The President Court of Enquiry, NCC Group Headquarter was also apprised by the petitioner by filing Annexure P/2 dated 07.07.2005. The petitioner even intimated about this incident to Officer- in-charge of Police Station Kampoo/Mahila Thana on the same day

i.e. 07.07.2005.

6. Shri Raju Sharma has taken pains to contend that the respondent No.2 preferred a complaint on 08.07.2005. This was done as an after thought and in order to protect herself from any disciplinary action which may be taken by the department for her act of disobedience and indiscipline.

7. Learned counsel for the petitioner further submits that she subsequently approached the District Programme Officer, Human Rights Commission etc. Petitioner upon receiving notices from said authorities filed his detailed reply. All such authorities were satisfied with the explanation given by the petitioner and therefore no action was taken by Human Rights Commission and the Programme Officer. The document dated 10.11.2005 (Annexure P/5) is relied upon by the petitioner to show that á senior officer of the rank of CSP conducted a detailed enquiry and found that allegations against the petitioner are factually incorrect. Shri Sharma submits that later on respondent No.2 filed a complaint on 29.10.2005 before the Judicial Magistrate First Class, Gwalior. It is contended in the said complaint that petitioner has committed offence under Sections 323, 325, 326, 341, 294, 352, 354, 506 (Part.II) of the IPC and under Sections 3(1) (10), 3 (1)·(11), 3 (1) (12) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The court below took the cognizance by its order dated 11.10.2006.

8. Criticizing the order dated 11.10.2006, it is submitted that learned court below has erred in taking cognizance on certain sections of IPC. Although, said court was right in holding that the allegations made under various sections of Atrocities Act are without there being any basis.

9. The bone of contention of Shri Raju Sharma is that the organization like Navy and NCC cannot run unless strict discipline is maintained. The petitioner in order to maintain discipline asked respondent No.2 that she should come in time, she in turn misbehaved with the petitioner and used improper and filthy language. When petitioner promptly reported this matter to the higher authorities, respondent No.2 thought that "offence is the best defence" and she preferred complaint after few months before the court below. The said complaint was like a house of cards and court below should not have entertained this application without application of mind. He placed reliance on various judgments to contend that the complaint is in fact an after thought and malicious act on the part of respondent No.2. For this reason, it is urged that criminal

proceedings be set aside.

10. Shri Vijay Sundaram, learned Panel Lawyer supported the proceedings. He submits that the order dated 11.10.2006, whereby a complaint was directed to be registered, is not called in question. Hence no interference is warranted. In addition, he submits that at this stage, factual matrix of the matter cannot be gone into.

11. The respondent No.2 has not chosen to appear despite service.

12. I have bestowed my anxious consideration on rival contentions of the parties and perused the record.

13. In the aforesaid factual backdrop, it is clear that petitioner preferred representations Annexure P/1, P/2 and P/3 on the date of incident i.e. 07.07.2005. The complaint of respondent No.2 Annexure P/4 is later in time. Thereafter, she preferred the criminal complaint on 29.10.2005. The court below recorded her statement and found that allegations relating to Atrocities Act are not established. However, bailable warrant was ordered to be issued against the petitioner for offence under various sections of IPC.

14. In the opinion of this Court, in the relief clause of the petition, the petitioner has challenged the entire proceedings of criminal Case No.12332/ 2006. Thus, this prayer is wide enough to include the order dated 11.10.2006. Whether or not said order is specifically challenged, it is covered in the relief clause. Thus, this objection of Shri Sundaram is rejected.

15. This is trite law that at this stage interference by this Court can be made on limited grounds. Correctness of reasons ordinarily cannot be gone into in a proceeding of this nature. However, it is noteworthy that the Apex Court in 1998 (5) SCC 749 *(Pepsi Foods Vs. Special Judicial Magistrate)* opined that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course on mere asking because complainant entered the witness box and brought two witnesses in support thereof. The order of Magistrate, summoning the accused must reflect his application of mind. The court is required to examine the nature of allegations made by the complainant and also the evidence both, oral and documentary, in support thereof. The Apex Court further opined that if Magistrate's order suffers from non application of mind, the proceedings can be assailed under Section 482 Cr.P.C. If the order impugned is tested on the anvil of the principle laid down aforesaid, it will be clear that the court below has registered the

matter only on the basis of deposition of the complainant and other witnesses. The court below has not examined the documentary evidence and has not given any finding as to when the complainant preferred representations about the incident. Version of respondent No.2 was treated to be gospel truth and on mere asking, the complaint was registered.

16. The Apex Court in AIR 1992 SC 604 *(State of Haryana Vs. Bhajan Lal)* summarized the ground on which an FIR or complaint can be called in question in a proceedings filed under Article 226 of the Constitution/Section 482 Cr.P.C. It reads as under:-

> *7. Where a criminal proceedings is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

17. A plain reading of the aforesaid parameters makes it clear that criminal proceedings can be called in question if it is actuated with malafide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused. In the present case, the chain of events show that the complaint filed by the respondent No.2 was an after thought and it is designed to take vengeance on the petitioner. The Apex Court in (2008) 8 SCC 232 *(Priya Vrat Singh & Ors. Vs. Shyam Ji Sahai)*, (2008) 14 SCC 1 *(Rukmini Narvekar Vs. Vijaya Satardekar & Ors)* and *Rajib Ranjan & Ors. Vs. R. Vijaykumar* (2015 (1) SCC 513, followed the ratio decidendi of *Bhajan Lal* (supra). In *Priya Vrat Singh* (supra), the Apex Court has taken notice of the fact that inspite of service of notice, none appeared for the complainant. Same is the case here.

18. It is noteworthy that in 1988 (1) SCC 692, *(Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojtrao Angre)*, the Apex Court held that it is for the court to take into consideration any special feature which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. As noticed, respondent No.2 has not chosen to appear in this matter to assist the court. In (2012) 1 SCC 520 *(Anita Malhotra Vs. Apparel Export Promotion Council & another)*, the Apex Court opined that where the documents relied on by defence are beyond suspicion or doubt, same can be relied upon. In the present case, the

respondents have not chosen to raise their eyebrows on the genuineness of the defence documents filed as annexures. Some documents aforesaid are official correspondence. Thus, I find no reason to doubt the said documents. In the aforesaid factual scenario, in my opinion, the order of court below is improper and passed in a routine manner. If the said proceedings are permitted to continue, it will be travesty of justice. The complaint, in my view is a counter blast on the part of respondent No.2. Thus, the petitioner is not required to undergo rigmarole of the criminal proceedings.

19. Resultantly, the criminal complaint proceeding in Criminal Case No.12332/2006 is quashed. Petition is allowed.

Application allowed.

I.L.R. [2016] M.P., 2847

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice S.K. Palo

M.Cr.C. No. 3659/2012 (Gwalior) decided on 30 September, 2015

PAPPU RAI ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

A. Evidence Act (1 of 1872), Section 27 - Confessional Statement - **Facts disclosed u/S 27 of Indian Evidence Act can be used only against the persons making disclosure and not against any other persons. (Para 8)**

क. साक्ष्य अधिनियम (1872 का 1), धारा 27 – संस्वीकृति कथन – भारतीय साक्ष्य अधिनियम की धारा 27 के अंतर्गत प्रकट किए गए तथ्य केवल ऐसा प्रकटन करने वाले व्यक्तियों के विरूद्ध ही प्रयोग किये जा सकते हैं एवं किन्हीं अन्य व्यक्तियों के विरूद्ध नहीं।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Excise Act, M.P. (2 of 1915), Section 34-A - **Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge, inherent powers should be used to quash the proceedings - Held - In view of the fact that no evidence is available against the petitioner except the disclosure of co-accused u/S 27 of Evidence Act, the FIR, so far it relates to the accused, deserves to be quashed. (Paras 9 & 10)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34–ए – जहाँ आक्षेप किसी अपराध का गठन करते हैं, परंतु कोई विधिक साक्ष्य प्रस्तुत न किए जाने पर अथवा ऐसी साक्ष्य प्रस्तुत किए जाने पर जो स्पष्टतः अथवा प्रत्यक्षतः आरोप सिद्ध करने में विफल रहती है, वहाँ कार्यवाहियों को अभिखण्डित किए जाने हेतु अंतर्निहित शक्तियों का प्रयोग किया जाना चाहिए – अभिनिर्धारित – साक्ष्य अधिनियम की धारा 27 के अंतर्गत सह–अभियुक्त द्वारा किए गए प्रकटन को छोड़कर याची के विरूद्ध अन्य कोई साक्ष्य उपलब्ध न होने के तथ्य के आलोक में, प्रथम सूचना प्रतिवेदन, जहाँ तक यह अभियुक्त से संबंधित है, अभिखण्डित किए जाने योग्य है।

Cases referred:

1994 (II) MPWN 72, 2012 (4) MPHT 116, (2005) 1 SCC 122, AIR 1960 SC 866, 1992 Supp (1) SCC 335.

H.K. Shukla, for the applicant.
Kuldeep Singh, P.L. for the non-applicant No. 1/State.
None for the non-applicants No. 2 to 5.

(Supplied: Paragraph numbers)

ORDER

S.K. Palo, J. :- This petition under Section 482 of Cr.P.C. has been filed for quashing the FIR against the petitioner. Pappu Rai in respect of Crime No. 208/2012 registered at Police Station Bahodapur for offence punishable under Section 34-A of MP Excise Act.

2. Factual matrix is, when the police party Bahodapur was patrolling in Anandnagar, they received an information that at Jalalipur Road, in front of Gyansingh Yadav's houses a tractor trolly carrying illegal liquor is stationed. The police party reached the spot. Seeing the police party two persons jumped from the tractor and fled away. Two other persons were caught who disclosed their names as Kallu Batham and Kashiram Batham resident of Village Ladhedi. On search in the tractor trolly found to be 371 boxes of silver whiskey, zin and country made liquor which were seized. Kallu Batham and kashiram Batham were arrested. On their interrogation they have stated that the contraband belongs to accused Pappu Rai resident of Village Ghasmandi, the value of contraband Rs. 8,76,720/- alongwith tractor trolly were seized.

3. On behalf of the petitioner, it is contended that the petitioner has been

falsely implicated. Gyan Singh let out the house to one Rajesh Singh and Dalchand resident of Rasulabad. Therefore, Gyan Singh is not in possession of the house. Rajesh was residing in the house. Therefore, the petitioner had no control and possession of Gyan Singh Yadav's house. The recovered country made liquor were seized from the house situated at Sagartal Road, Gwalior. The house where goods were lying belong to Gopal Singh Yadav. The liquor was seized from the house not from the tractor trolly. The newspaper Nai Duniya published this information on the same day. The Police lodged the report which is fictitious and deserves to be quashed.

4. It is also argued by the learned counsel for the petitioner that on the basis of disclosure statement of the co-accused under Section 27 of Evidence Act. The petitioner has been implicated whereas, such statement recorded against the petitioner is a week (sic:weak) evidence. No liquor has been seized from the petitioner. Cognizance has been taken by the Police against the petitioner is absolutely illegal. Counsel for the petitioner contends that except of the aforesaid disclosure statement, there is no other evidence on record against the petitioner which may establish that illegal liquor belonging to the petitioner. It is also not the case of prosecution that vehicle in which the illegal liquor which was being transported belong to the petitioner.

5. Learned Panel Lawyer for the State opposed the petition stating that the petitioner is the owner of the illicit liquor. The accused persons who were caught in the spot were only the small fishes.

6. This Court in *Ashok Nanda* (Supra) para 12 has observed as under:

> "As far as the evidence of memoranda given by the co-accused persons under Section 27 of the Evidence Act is concerned, their confessional statements to police cannot be accepted as legal evidence against petitioners in the absence of any other incriminating piece of evidence. Except the above circumstances, absolutely no other evidence has been collected and produced by the prosecution prima facie to indicate that petitioners hatched conspiracy with other accused person to commit murder of complainant Rajendra Agal."

7. This Court in *Prakash Singh Vs. State of M.P.*, 1994(11) MPWN 72 has held as under:-

"The statement admissible under Section 27 of the Evidence Act are the statements which could be used as evidence against the maker and not against any other person. Under Section 27 only portions of information given by an accused which are admissible are those which relate distinctly to the facts discovered thereby. Consequently, facts but involve other accused are inadmissible under Section 27 against the later".

8. This Court in *Raghu Thakur Vs. State of M.P., 2012 (4)M.P.H.T.* 116 has observed in para 6 and (sic:as)under:

"A plain reading of Section 27 of Indian Evidence act indicates that the statement under section 27 of Indian Evidence Act is an exception to the ban impose upon the Courts to utilize the confessional statement made under Sections 25 and 27 of Indian Evidence Act, so as to protect a person making disclosure from being falsely implicated by the police in whose custody that persons remains at the time of making disclosure. The provision of Section 27 of Indian Evidence Act further indicates that the facts disclosed under Section 27 of Indian Evidence Act can be used only against the persons making disclosure and not against any other persons."

9. So far as invoking the powers under Section 482 of Cr.P.C. for quashing the criminal proceeding is concerned, the Apex Court in the case of *Zandu Pharmaceutial Works Ltd. and others Vs. Mohd. Sharaful Haque and another*, (2005)1 SCC 122, in great detail considered the scope of powers under Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding relying on the earlier decision rendered by the Apex Court in the Case of *R.P. Kapur Vs. State of Punjab* AIR 1960 SC 866 and *State of Haryana Vs. Bhajan Lal*; 1992 Supp (1) SCC 335. in which it was held:

"In *R.P. Kapur Vs. State of Punjab* this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

i. Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want to sanction;

ii. Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

iii. Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

10. In view of the aforesaid discussions and the legal position and in view of the fact that no evidence is available against the petitioner except the disclosure of co-accused under Section 27 of Evidence Act. The Crime No. 208/2012 under Section 34-A of M.P. Excise Act registered at Police Station Bahodapur, District Gwalior. So far as it relates to the petitioner Pappu Rai deserves to be quashed.

11. Consequently, this petitioner (sic:petition) is allowed and FIR registered at Crime No. 208/2012 under Section 34-A of M.P. Excise Act at Police Station Bahodapur, District Gwalior. So far as it relates to the petitioner Pappu Rai is hereby quashed.

Application allowed.

I.L.R. [2016] M.P., 2851

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sujoy Paul

M.Cr.C. No. 3850/2012 (Gwalior) decided on 14 October, 2015

KAMAL KISHOR ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

(Alongwith M.Cr.C. No. 4196/2012, M.Cr.C. No. 4197/2012 & M.Cr.C. No. 4198/2012)

A. Copyright Act, (14 of 1957), Sections 63 & 64 - **Allegation against the petitioner is that the spark plugs found in his possession were not original but duplicate - Held - The allegation does not fall within the 'work' as defined in the Act, which means a literacy, dramatic, musical or artistic work, a cinematograph film or sound recording - Spark plug cannot**

be treated as artisitic work, and therefore, Section 63 of the Act has no application in the present case - Further held - The satisfaction of Police Officer about the applicability of Section 63 is sine qua non for exercising the powers under Section 64. (Paras 15 & 17)

क. प्रतिलिप्यधिकार अधिनियम (1957 का 14), धाराएँ 63 व 64 – याची के विरूद्ध आरोप यह है कि उसके आधिपत्य में पाए गए स्पार्क प्लग मूल न होकर उनकी अनुकृति थे – अभिनिर्धारित – उक्त आरोप अधिनियम में परिभाषित 'कृति' की परिधि में नहीं आता है, जिसका आशय किसी साहित्यिक नाट्य, संगीतात्मक अथवा कलात्मक, चलचित्र अथवा ध्वनि अभिलेखन की कृति से है – स्पार्क प्लग को कलात्मक कृति के रूप में नहीं माना जा सकता है, एवं इसलिए धारा 63 वर्तमान प्रकरण में लागू नहीं होगी – आगे यह भी अभिनिर्धारित – धारा 64 में प्रदत्त शक्तियों के प्रयोग हेतु, धारा 63 की प्रयोज्यता के विषय में पुलिस अधिकारी की संतुष्टि अनिवार्य है।

***B. Copyright Act, (14 of 1957), Sections 63 & 64 - Interpretation of Statutes - Construction of Penal Statutes* - A penal provision must receive strict construction - Section 63 is a penal provision prescribing offences relating to copyright or other rights conferred by the Copyright Act, and therefore, must be strictly construed. (Para 14)**

ख. प्रतिलिप्यधिकार अधिनियम (1957 का 14), धाराएँ 63 व 64 – कानूनों का निर्वचन – दाण्डिक कानूनों का गठन – किसी दाण्डिक उपबंध का गठन कड़ाई से किया जाना आवश्यक है – धारा 63 एक दाण्डिक उपबंध है जो कि प्रतिलिप्यधिकार अधिनियम के अंतर्गत प्रदत्त प्रतिलिप्यधिकार एवं अन्य अधिकारों से संबंधित अपराधों को विहित करती है, एवं इसलिए इसका अर्थ कड़ाई से लगाया जाना चाहिए।

***C. Copyright Act, (14 of 1957), Sections 63 & 64 - Practice (Criminal) - Investigation by the Complainant himself - Effect thereof* - Unless in a given situation a case of prejudice is made out, the order/ enquiry would not get vitiated - In judging the question of prejudice, the Court must act with a broad vision and look to the substance and not to technicalities - Unless it is shown that the concerned Police Officer was personally interested to get the conviction of the accused, no interference is warranted. (Paras 19 & 20)**

ग. प्रतिलिप्यधिकार अधिनियम (1957 का 14), धाराएँ 63 व 64 – परिपाटी (दाण्डिक) – स्वयं परिवादी द्वारा अन्वेषण – उसका प्रभाव – किसी दी गई

परिस्थिति में जब तक कि प्रतिकूल प्रभाव का प्रकरण निर्मित नहीं किया जाता, तब तक आदेश/जाँच दूषित नहीं होगी – प्रतिकूल प्रभाव के प्रश्न पर निर्णय करते समय न्यायालय को वृहद् दृष्टिकोण रखना चाहिए एवं विशिष्टिताओं को न देखते हुए सार देखना चाहिए – जब तक कि यह दर्शित न हो कि संबंधित पुलिस अधिकारी अभियुक्त की दोषसिद्धि हेतु व्यक्तिगत रूप से हितबद्ध था, प्रकरण में हस्तक्षेप किए जाने की आवश्यकता नहीं है।

Cases referred:

AIR (1995) SC 2339, 2002 (3) MPHT 146, (2004) 5 SCC 223, (2004) 5 SCC 230, (2009) 11 SCC 690, (1976) 1 SCC 15, (2013) 3 SCC 594, (1969) 3 SCC 392, (1998) 6 SCC 651, (1998) 6 SCC 554, (2002) 8 SCC 68, (2015) 3 SCC 220.

Atul Gupta, for the applicant.
A.S. Rathore, P.L. for the non-applicant/State.

ORDER

SUJOY PAUL, J. :- Regard being had to the similitude in the questions involved in these cases, these petitions were analogously heard on the joint request and decided by this common order.

2. Facts are taken from M.Cr.C.No. 3850/12. The Assistant Sub Inspector (ASI), Shri H.R.Godsar lodged an FIR in Crime No.130/10 in Police Station, Karera against all petitioners under Sections 63 and 64 of Copyright Act (for short, the "Act"). On account of said FIR, criminal cases were registered against all the petitioners. According to FIR, Mico Spark Plugs were found in possession of all the petitioners. These plugs were compared with original plugs. It was found that the spark plugs which were found in possession of the petitioners were not original but were duplicate one. After completing investigation, challans were filed separately against all petitioners before Judicial Magistrate First Class (JMFC), Karera. Cognizance was taken by the Magistrate on 30.12.2010 and charge under Section 63 of the said Act was framed against all the petitioners.

3. The petitioners, feeling aggrieved with the order dated 30.12.2010 filed four criminal revisions before Additional Sessions Judge, Karera. The said court by common order dated 27.4.2012 dismissed the said revisions.

4. Shri Atul Gupta, learned counsel for the petitioner, submits that he is

challenging the charge and the order of the revisional court on three points.

5. Firstly, as per Copy Right Act, the officer below the rank of Sub Inspector was incompetent to seize the property or conduct the investigation. In the present matter the ASI has wrongly seized the property and conducted the investigation.

6. Secondly, the aforesaid ASI who was complainant could not have conducted the investigation. This is against the principle of fair play in action. He relied on AIR (1995) SC 2339 *(Megha Singh vs. State of Haryana)*, which is followed by this court in 2002 (3) MPHT 146 *(Jeetsingh vs. State of MP)*.

7. Lastly, it is urged that a bare perusal of FIR and Section 63 of Copy Right Act, it would be clear that no offence for prosecution is made out against the petitioner.

8. Prayer is opposed by Shri A.S.Rathore, learned Panel Lawyer.

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

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

11. Before dealing with rival contentions advanced at the bar, it is apt to refer to the introduction by which the Copyright Act of 1957 was brought into force. In ancient days, creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognised only after the invention of printing press which enabled the reproduction of books in large quantity practicable. In India the first legislation of its kind, the Indian Copyright Act, was passed in 1914 which was mainly based on the U.K. Copyright Act, 1911.

12. During present modern time, new means of communication like broadcasting, litho-photography, television, etc., have made inroads in the Indian economy with the result that it became essential to fulfill international obligations in the field of copyright. This necessitated that a comprehensive legislation may be introduced to completely revise the copyright law. In the result, Copyright Bill of 1957 was introduced in the Parliament. The Statement of Objects and Reasons of said Act shows that it was introduced in order to

protect the rights and obligations of authors. The erstwhile definition of copyright was enlarged to include the exclusive right to communicate works by radio diffusion. A cinematograph film will have a separate copyright apart from its various components, namely, story, music, etc. Artistic work under the Act means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture; and any other work of artistic craftsmanship. Similarly, the words "broadcast" and "cinematograph film" are defined in the definition clause. Section 2 also defines "dramatic work", "lecture", "literary work", "musical work", "performance", "performer", etc. Section 2(y) defines "work" as under:-

"(y) "Work" means any of the following works, namely:-

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording."

13. Shri Atul Gupta firstly contended that the Assistant Sub-Inspector was not right in seizing the property or conduct the investigation. This argument has a thread relation with his last submission wherein he contended that a plain reading of FIR read with Section 63 of the Act cannot lead this Court to a conclusion that an offence is made out. For better appreciation of this contention, it is apt to quote Sections 63 and 64 of the Act, which reads as under:-

"63. Offence of infringement of copyright or other rights conferred by this Act – Any person who knowingly infringes or abets the infringement of-

(a) the copyright in a work, or

(b) any other right concerned by this Act except the right conferred by Section 53-A.

shall be punishable with imprisonment for a term which shall not be less than six months but which may extended to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business] 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 or a fine of less than fifty thousand rupees.

Explanation – Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

64. Power of police to seize infringing copies – (1) Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

(2) Any person having an interest in any copies of a work or plates seized under sub section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application, as he may deem fit."

(Emphasis Supplied)

14. I deem it apposite to first deal with first and last contention of the petitioner. Section 63 is a penal provision. It prescribes offences relating to copyright or other rights conferred by the Copyright Act. This is trite law that a penal provision must receive strict construction. In the present case, the allegation against the petitioners is that certain spark plugs were found in their possession, which are duplicate and not original.

15. The pivotal question is whether this allegation falls within the ambit of Section 63 of the Act. As noticed, Section 63 talks about "copyright in a work". The "work" means a literary, dramatic, musical or artistic work, a cinematograph film or sound recording. The allegation relating to duplicate spark plug, by no stretch of imagination, falls within the ambit of "work", as defined in the Act. If the scheme of the Act is minutely examined, it is clear that it does not cover any other right, which may be even remotely relatable to a spark plug. In other words, the spark plug cannot be treated as an artistic work and, therefore, Copyright Act itself has no application in relation to allegation of possessing duplicate spark plugs. A careful reading of the Act further shows that no other right concerned by the Act is infringed by the petitioners. Thus, as per Section 63 of the Act, no offence is committed by the petitioners. As per story of the prosecution, Section 63 of the Act is not attracted.

16. Section 64 of the Act, in no uncertain terms, makes it clear that any police officer not below the rank of Sub-Inspector can seize copy of the work or plate if he is satisfied that an offence under section 63 in respect of infringement of copyright in any work is made out. Thus, before exercising the power of seizure, there has to be a satisfaction that an offence under section 63 is made out.

17. As analyzed above, Section 63 of the Act itself has no application relating to a duplicate spark plug. Hence, the power under section 64 could not have been exercised. In other words, the satisfaction of police officer about applicability of section 63 is *sine qua non* for exercising the power under section 64. In the present case, it is clear that section 63 is not attracted, hence, exercise of power under section 64 is without authority of law. Thus, to the said extent I find force in the argument of Shri Atul Gupta.

18. Second contention of Shri Gupta was that since Asstt. Sub-Inspector was the complainant, he was not competent to conduct the investigation. His contention is based on the judgment of Supreme Court in *Megha Singh* (supra) and judgment of this Court in *Jeetsingh* (supra). However, it is seen that *Meghasingh* (supra) was considered by Supreme Court in subsequent judgments. In (2004) 5 SCC 223 *(State represented by Inspector of Police, Vigilance & Anticorruption, Tiruchirapalli, T.N. vs. V. Jayapaul)*, the Apex Court opined that on closer analysis of decision of Meghasingh, we do not think that any such broad proposition was laid down in that case. The

proposition was that a police officer, who in the course of discharge of his duties, finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of information furnished by him. In (2004) 5 SCC 230 *(S.Jeevanantham vs. State through Inspector of Police, T.N.)*, the Apex Court again considered the judgment of *Meghasingh* (supra) and opined that the police officer conducted the search, recovered the article and registered the case and even seized the material. As a part of his official duty later he investigated the case and filed the charge sheet. He was not in any way personally interested in the case. Thus, the Supreme Court did not find any bias in the process of investigation and did not interfere with the matter.

19. In (2009) 11 SCC 690 *(Bhaskar Ramappa Madar and others vs. State of Karnataka)*, the judgment of *Meghasingh* (supra) was again considered. It is held that the decision of the Apex Court in *Bhagwan Singh vs. State of Rajasthan,* reported in (1976) 1 SCC 15, and *Meghasingh* (supra) has to be confined to the facts of said cases. In (2013) 3 SCC 594 *(State represented by Inspector of Police, Chennai vs. N.S. Gnaneswaran),* the Apex Court after considering *Meghasingh, Jayapaul* (supra) and other relevant judgments opined that the issue requires to be examined on the touchstone of consideration of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, the order/enquiry would not get vitiated. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. See, (1969) 3 SCC 392 *(Jankinath Sarangi v. State of Orissa)*; (1998) 6 SCC 651 *(State of U.P. vs. Shatrughan Lal)*; (1998) 6 SCC 554 *(State of A.P. vs. Thakkidiram Reddy)*; and (2002) 8 SCC 68 *(Debotosh Pal Choudhury v. Punjab National Bank).*

20. Recently, in (2015) 3 SCC 220 *(Vinod Kumar vs. State of Punjab),* the Apex Court again considered the earlier judgments on this point. After elaborate analysis, their Lordships of Supreme Court opined that the principle laid down in *S.Jeevanantham* (supra) would be squarely applicable to the present case. Unless it is shown that the concerned police officer was personally interested to get the appellant convicted, no interference is warranted. Thus, principle of bias/prejudice is again applied by the Apex Court.

21. In the present case, nothing is pointed out to show that the concerned ASI had any bias/prejudice against the petitioner. Hence, the judgment of

Meghasingh (supra) cannot be mechanically applied in favour of the petitioner. This point is, therefore, decided against the petitioner.

22. In view of aforesaid findings, it is clear that as per prosecution story, no case is made out to attract the provisions of Copyright Act. Hence, the petitioners deserve to succeed.

23. Resultantly, the proceedings against all the petitioners in Criminal Cases No.1194/2010, 1191/2010, 1192/2010 and 1193/2010 are hereby set aside. Petitions are allowed.

Copy of this order be sent to learned trial Court. Registry is directed to keep a true copy of the order in all the connected Misc.Cri.Cases.

Application allowed.

I.L.R. [2016] M.P., 2859

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice S.C. Sharma

M.Cr.C. No. 1987/2012 (Gwalior) decided on 2 December, 2015

PRITHVIRAJ SINGH ...Applicant

Vs.

STATE OF M.P. & anr. ...Non-applicants

Penal Code (45 of 1860), Section 82 **- Accused is alleged to have executed a sale deed fraudulently when he was four years of age through his father - Police authorities have registered a case under Sections 420, 467, 468, 471, 34 of I.P.C. against the applicant and his father - Father is no more - Applicant has not signed the sale deed - Criminal proceedings are not maintainable against the accused by virtue of Section 82 of I.P.C., as he was only 4 years of age at the relevant point of time - F.I.R. quashed under Section 482 of Cr.P.C. (Paras 5 to 8)**

दण्ड संहिता (1860 का 45), धारा 82 – अभियुक्त ने अभिकथित रूप से कपटपूर्वक एक विक्रयपत्र अपने पिता के माध्यम से निष्पादित किया, जब उसकी आयु 04 वर्ष थी – पुलिस प्राधिकारियों ने भा.दं.सं. की धारा 420, 467, 468, 471 एवं 34 के अंतर्गत आवेदक एवं उसके पिता के विरूद्ध मामला दर्ज किया – पिता अब नहीं रहे – आवेदक ने विक्रय पत्र पर हस्ताक्षर नहीं किए थे – भा.दं.सं. की धारा 82 के आधार पर अभियुक्त के विरूद्ध दाण्डिक कार्यवाहियाँ पोषणीय नहीं हैं, क्योंकि संबद्ध समयावधि में उसकी आयु मात्र 04 वर्ष थी – दं.प्र.सं. की धारा 482

के अंतर्गत प्रथम सूचना प्रतिवेदन अभिखण्डित।

Parties through their counsel.

(Supplied: Paragraph numbers)

ORDER

S.C. SHARMA, J. :- Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the F.I.R. lodged on 17.02.2012.

2. Facts of the case reveal that a complaint was lodged by one Colonel Ravindra Singh-respondent No.2 against the present applicant Prithviraj Singh stating that fraudulently a sale deed has been executed by Prithviraj Singh on 30.03.1967 through his father.

3. Learned Magistrate has directed the police authorities to take action in the matter and the police authorities has registered a F.I.R. by taking recourse of Section 156 (3) of the Cr.P.C.

4. Learned counsel appearing for the applicant has vehementally argued before this Court that the date-of- birth of the applicant is 17.03.1962 and he was a child aged about 4 years at the relevant point of time and by no stretch of imagination, F.I.R. can be lodged for some offence which has not been committed by the child in respect of the sale deed and he was not a signatory also in respect of the sale deed in question. It is an undisputed fact that the child, aged about 4 years has not signed the sale deed and same has been signed by his father.

5. In the present case, the father of the applicant is no more. It is only the applicant against whom there is an allegation that he has executed a sale deed when he was a four years old child. Police authorities have registered a case under Sections 420, 467, 468, 471, 34 of IPC against the present applicant and father of the applicant, who is no more.

6. Learned counsel for the respondent No.2 has also not disputed the fact that the applicant has not signed the sale deed.

7. This Court, after careful consideration of the F.I.R. and after hearing the learned counsel for the parties and also after perusal of the certificate, which is on record and the same reflects the date-of-birth of the applicant as

17.03.1962, really fails to understand as to how the criminal proceedings are maintainable against the present applicant, who was a child of 4 years at the relevant point of time when the sale deed was executed on his behalf by his father.

Section 82 of IPC read as under: -

"82 -Act of a child under seven years of age - Nothing is an offence which is done by a child under seven years of age."

8. The aforesaid statutory provision of law makes it very clear that nothing is an offence which is done by a child under seven years of age. Therefore, this Court is of the considered opinion that the F.I.R. registered at crime No.67/2012 against the present applicant deserves to be and is accordingly quashed.

9. This Court is of the considered opinion that once it has been established before this Court that the applicant was aged 4 years at the relevant time, the question of initiating proceedings against the applicant does not arise. The present petition preferred under Section 482 of Cr.P.C. stands allowed.

Application allowed.

I.L.R. [2016] M.P., 2861
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sheel Nagu
M.Cr.C. No. 8271/2015 (Gwalior) decided on 12 January, 2016

VIKASH RAGHUVANSHI ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) - Cancellation of Bail - Breach of the condition imposed on bail - **Merely lodging of the first information report does not amount to the commission of an offence and it is only an allegation - Whether the offence has been committed prima facie or not is considered at the time of framing of charges - Once the charges have been framed for subsequent offence, it means the condition of bail order is violated, which leads to the cancellation of bail. (Paras 5 & 6)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) – जमानत निरस्त की जाना – जमानत पर अधिरोपित शर्त का भंग – मात्र प्रथम सूचना प्रतिवेदन दर्ज किया जाना किसी अपराध के कारित किये जाने की कोटि में नहीं आता तथा यह केवल एक अभिकथन है – अपराध प्रथम दृष्ट्या कारित किया गया है अथवा नहीं, इस पर विचार आरोप विरचित करते समय किया जाता है – एक बार किसी पश्चात्वर्ती अपराध हेतु आरोप विरचित कर लिए जाएं तो इसका अर्थ यह होता है कि जमानती आदेश की शर्त का उल्लंघन किया गया है, जो जमानत के निरस्तीकरण की ओर ले जाता है।

Cases referred:

(2014) 10 SCC 754, 2011 Cr.L.J. 3850, (1978) 1 SCC 118, Cr.R. No. 100/2015 order passed on 01.04.2015.

Shivendra Singh Raghuvanshi, for the applicant.
Girdhari Singh Chouhan, P.L. for the non-applicant No. 1/State.
Rajmani Bansal, for the non-applicant No.2.

(Supplied: Paragraph numbers)

ORDER

SHEEL NAGU, J. :- Present petition under Section 439 (2) of the Code of Criminal Procedure has been preferred for cancellation of bail granted to respondent No.2 vide order dated 06.08.2013 in shape of Mcrc. No.5849/2013 after rejection of first two i.e. Mcrc. No.7316/2013 and Mcrc No.1505/2015 on 25.10.2013 & 17.4.2015 respectively with liberty to file properly constituted petition under Section 439(2) of Cr.P.C. and after the charges are framed in the subsequent offence. Thus, the present application has been filed after framing of the charge for cancelling bail granted to respondent No.2.

2. Learned counsel for the rival parties are heard.

3. Learned counsel for the petitioner seeking cancellation bail has brought on record the subsequent event of filing of an FIR bearing Crime No.13/2014 dated 09.01.2014 where the offence alleged is of house trespass and criminal intimidation against respondent No.2 by one Randheer Singh Raghuvanshi [one of the witnesses in Crime No.663/2012]. This subsequent offence is alleged against respondent No.2. It is further submitted by learned counsel for the petitioner that charges have been framed against respondent No.2 in

the said subsequent offence on 22.06.2015 under Section 447 and 506II of IPC and therefore in this factual background cancellation of bail which was granted to respondent No.2 by order dated 06.08.2013 in shape of Mcrc No.5849/2013 is sought on the ground that respondent No.2 has involved in another offence intimidating one of the prosecution witnesses in Crime No.663/2012 in which he was granted bail.

4. Learned counsel for respondent No.2 contends that the cause of filing of an FIR bearing Crime No.13/2014 dated 09.01.2014 alleging offence punishable under Sections 447 and 506 of IPC against respondent No.2 by one Randheer Singh [a witness in the criminal prosecution bearing Crime No.663/2012] does not give a legitimate cause to the petitioner to seek cancellation of bail of respondent No.2. It is submitted by placing reliance on the decision of the Hon'ble Apex Court in the case of *Abdul Basit alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another* reported in (2014) 10 SCC 754. (Para 11, 19 and 20 of the said judgment) that bail once granted cannot be cancelled by the same court as that would amount to review of the order of grant of bail and since the concept of review/recalling of bail once granted is foreign to the scheme of the Code of Criminal Procedure, hence, no case for cancellation of bail is made out. For ready reference and convenience, paragraphs 11, 19 and 20 relied upon by learned counsel for respondent No.2 of the decision rendered by the Hon'ble Court in the matter of *Abdul Basit* (supra) are reproduced below:

> "11. The short question that falls for our consideration and decision is whether the exercise of jurisdiction by the High Court under Section 439(2) of the Code is justified in the instant case?
>
> 19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

> 20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law."

5. At the very outset, this Court may refer to the decision of the Rajasthan High Court in the matter of *State of Rajasthan Vs. Mubin* reported in 2011 Cr.LJ 3850 in which it has been laid down that the cause for seeking cancellation of bail on the ground of commission of a subsequent offence matures after the subsequent offence fructifies into framing of charge. Relevant para of the said judgment is reproduced below:

> "9. The primary question which is to be considered by us in this case is as to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other words, can it be said that a person has committed an offence when a first information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be levelled against the accused person at that stage. As a matter of fact, the question as to whether an offence has been prima facie committed or not is considered when an opinion is formed by the Court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provisions under Section 228, Cr.P.C. and the terminology used at the stages prior to it. The

relevant provision of the Code of Criminal Procedure is a (sic:as) under:-

"228.- Framing of charge. – (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate) shall try the offence in accordance with the procedure for the triable of warrant cases instituted on a police report.

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused."

6. In other words, an accused can be said to have committed an offence only when a Court, after considering the material before it and hearing the parties, forms an opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of framing of charge when the concerning court forms an opinion for presuming that the accused has committed the offence and not at any earlier point of time. The word 'commit' as per Johnson Dictionary means "to be guilty of a crime."

"In such view of the matter, merely on filing of first information reports against the accused applicants, it cannot be said that they had committed any offence, during the period of bail. Consequently, they did not breach the conditions so imposed by the Court while granting order of bail on 12.09.2006.

10. For the aforesaid reasons, we are of the view that the accused applicants had not committed any breach of conditions

imposed on them on 12.09.2006. Moreover, the accused applicants were awarded acquittal by the learned trial court on 5.5.2006 and it is against the said judgment that the prosecution had preferred the present appeal in which they were given the benefit of bail, during the pendency of the same. The accused applicants are in custody since 12.06.2008.

7. There is no manner of doubt and the fact is not disputed by the learned counsel for respondent No.2 that Randheer Singh Raghuvanshi who has been subjected to criminal intimidation in the subsequent offence was a prosecution witness in Crime No.663/2012 and therefore one of the conditions i.e. condition no.3 prescribed in the order of bail granted to respondent No.2 dated 06.08.2013 in Mcrc. No.5849/2013 appears to have been *prima facie* breached.

8. Before concluding, it would be appropriate to deal with the submissions put forth by learned counsel for respondent No.2 with regard to the decision rendered by the Hon'ble Apex Court in the matter of *Abdul Basit* (supra). The said decision of *Abdul Basit* (supra) was based upon the factual matrix that certain accused was granted default bail by the Sessions Court on 12.03.2013. Being aggrieved, the victim therein preferred the petition before the Gauhati High Court seeking cancellation of bail on the ground that the directions of the learned Sessions Judge, Kareemganj, to conduct further investigation of the case under Section 173(8) of the Code do not tantamount to re-investigation in the case and hence do not render the charge-sheet submitted by the police in the aforesaid case infructuous and therefore in this background it was contended that the accused ought not to have been extended the benefit of default bail under Section 167(2)(a)(i) on the ground of charge-sheet not having been filed within 90 days. Guwahati High Court by a judgment dated 16.07.2013 cancelled the bail and while doing so observed thus:

> "4....there can be no difficulty in holding that granting of bail contrary to law or contrary to law laid down by the Apex Court can constitute a valid ground for cancellation of bail already granted; this will no (sic) fall foul of Section 362 of the Code."

9. On being aggrieved by the said cancellation of bail the accused approached the Apex Court which led to passing of the said judgment in the

case of *Abdul Basit* (supra) where the Apex Court while referring to the provisions of Section 439 and 362 of Cr.P.C. held that unless there are new circumstances a bail once granted cannot be cancelled by the same court which granted bail on circumstances and events which existed at the time of grant of bail. In other words, the Apex Court held that consideration of grant of bail is limited to the consideration of those circumstances and facts which existed during the period anterior to the grant of bail and if the said bail is sought to be cancelled on some grounds which existed prior to the order of grant of bail then the right forum to approach is the higher forum and not the same court which granted bail. The same forum which granted bail can be approached under Section 439(II) of Cr.P.C. only when there is some new circumstance which arises after the grant of bail. This proposition is fortified by the observation made by the Apex Court in the case of *Gurcharan Singh Vs. State (Delhi Admn.)* reported in (1978) 1 SCC 118. Relevant portion is reproduced below:

> "16. Section 439 of the new Code confers special powers on High Court ,or Court of Session regarding bail. This was also the position under Sec. 498 Cr. P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439 (2) of the new Code, the High Court or the Court of Session may direct any person who has been released oil bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who been admitted to bail under subsection (1) to be arrested and may commit him to custody. In other Words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session,it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). under

Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. it may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. *When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that leave copied up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a- vis the High Court .*

10. This view has further been fortified in the case of *Balveer Vs. State of Madhya Pradesh* passed by this Court in Criminal Revision No.100/2015 vide order dated 01/04/2015.

11. From the above, it is evident that the Apex Court in *Abdul Basit* (supra) while deciding the legality and validity of the order of cancellation of bail passed by the Guwahati High Court was dealing with the fact situation that whether any new circumstance had arisen after the grant of bail and the person seeking cancellation of bail based his arguments on the facts and circumstances which existed at the time of grant of bail or not.

12. The case before the Apex Court in *Abdul Basit* (supra) was not a case of misuse of liberty as in the case herein.

13. The law laid down by the Apex Court in the case of *Abdul Basit*

(supra) that the cancellation of bail on merits can be sought only before the higher forum is not applicable to the distinct facts and circumstances prevailing in the present case.

14. The petitioner has made out a case for cancellation of bail as respondent No.2 has misused the liberty granted to him by indulging in a subsequent crime bearing Crime No.13/2014 by intimidating one of the witnesses in Crime No.663/2012 in which private respondent was granted bail.

15. In view of the above, present petition stands allowed. The order of granting bail to respondent no.2 dated 06.08.2013 in shape of Mcrc. No.5849/2013 is hereby cancelled.

16. A copy of the order passed today be sent to the trial court for necessary compliance.

Application allowed.

I.L.R. [2016] M.P., 2869
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sheel Nagu
M.Cr.C. No. 2302/2013 (Gwalior) decided on 21 April, 2016

DEEPTI GUPTA (SMT.) & ors. ...Applicants
Vs.
SMT. SHWETA PARMAR ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 384 - Quashing of complaint - **To constitute an offence of extortion, the prosecution must prove that on account of being put into fear of injury, the victim delivers any particular property or valuable security to man putting him to fear - If there was no delivery of property or valuable security, then the important ingredient of an offence of extortion stands excluded - Mere threat or fear of injury, which has not led to creation of valuable security, cannot constitute offence of extortion.** **(Paras 7 & 11)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 384 – परिवाद का अभिखण्डित किया जाना – उद्दापन का अपराध गठित करने के लिए अभियोजन को सिद्ध करना चाहिए कि क्षति के भय में डालने पर, पीड़ित

द्वारा कोई विशिष्ट संपत्ति अथवा मूल्यवान प्रतिभूति भय में डालने वाले व्यक्ति को परिदत्त की गई – यदि वहाँ संपत्ति अथवा मूल्यवान प्रतिभूति का परिदान नहीं था, तब उद्दापन के अपराध का महत्वपूर्ण अवयव अपवर्जित हो जाता है – क्षति का भय अथवा धमकी मात्र, जिससे मामले में किसी संपत्ति या दस्तावेज का मूल्यवान प्रतिभूति में परिवर्तन न हुआ हो, उद्दापन के अपराध का गठन नहीं कर सकती।

Case referred:

(2007) 14 SCC 768.

Rajmani Bansal, for the applicants.
Ankur Mody, for the non-applicant.

ORDER

SHEEL NAGU, J. :- Inherent powers of this court under Section 482 of Cr.P.C. are invoked for assailing the order dated 8/2/2013 passed by the Judicial Magistrate First Class, Gwalior in complaint case No.1254/13 for taking cognizance of the complaint alleging offence punishable under Section 384 of I.P.C., and thereby issuing summons to the petitioners. Pertinently, petitioner No.1 is Smt. Dipti Gupta, who is said to be friend of Dr. Subhash Parmar, husband of respondent.

2. Learned counsel for the rival parties are heard.

3. Factual matrix giving rise to the present dispute is that on 21/6/2010 the respondent and Dr. Subhash Parmar entered into wedlock whereafter both started residing in matrimonial home at Bhopal but later from August, 2010 to May, 2010 they shifted to Gwalior. The respondent alleged that she was subjected to curelty (sic:cruelty) for dowry demand. It was further alleged that in connivance with one Dr. Dipti Gupta (petitioner No.1), who is alleged to be friend of husband Dr. Subhash Parmar, the respondent/wife was surreptitiously given drugs so that she may abort the unborn child, who was diagnosed by sonography to be of female sex. It was alleged that in this nefarious object, her husband Dr. Subhash Parmar and his friend Dr. Dipti Gupta succeeded as the unborn child was aborted. It is further alleged that in November, 2011, the respondent again became pregnant. The husband is alleged to have increased his dowry demand and acts of cruelty which compelled the respondent to leave her matrimonial home and start residing with her parents. It is further alleged that dowry demand of 25,00,000/- was made

by the husband and his parents which could not be met except exchange of an amount of Rs. 3,00,000/-. Meanwhile, the respondent/wife gave birth to a girl child, namely, Pihu. It is lastly alleged that sometime in November 2012, the husband threatened his wife/respondent that he has given the girl child to Dr. Dipti Gupta and the child will be returned to respondent/wife only if she gives an undertaking in writing that she would consent for a divorce in the divorce petition filed by the husband in the court. It is also alleged that on 13/1/2013, the respondent/wife alongwith her father and another person, namely, Vivek Mittal visited the residence of Dr. Dipti Gupta. It is alleged that said Dr. Dipti Gupta reiterated the threat of the husband of respondent that unless she (respondent/wife) consents to the request of divorce made by husband in the court, the daughter Pihu shall not be returned to the respondent.

4. In this factual background, an attempt was made to lodge the report but the same did not succeed whereafter the wife filed complaint under Section 200 of Cr.P.C. vide Annexure-P/2, dated 17/1/2013. Statements of the respondent/wife were recorded on 21/1/2013 alongwith her father on 22/1/2013 alleging aforesaid incidents. Consequently, by the impugned order dated 8/2/2013, the trial Judge took cognizance of the offence punishable under Section 384 of I.P.C., and issued summons which has brought the petitioners to this court.

5. To prove the offence under Section 384 of I.P.C., the prosecution *prima facie* has to establish the following ingredients as provided under Section 383 of I.P.C. :-

> **383. Extortion.**—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

6. The essential ingredients for constituting the offence of Extortion are :

(i) intention to put a person under fear of injury,

(ii) thereby induces dishonestly to

(a) deliver any property, or

(b) valuable security, or

(c) anything signed or sealed which may be converted into a valuable security,

(iii) to any person.

7. Thus, what is necessary for constituting an offence of extortion is that the prosecution must prove that on account of being put into fear of injury the victim delivers any particular property or valuable security to the man putting him into fear. If there was no delivery of any property or valuable security, then the important ingredient of an offence of extortion stands excluded.

8. The existence of "valuable security" is also an essential ingredient of the offence of extortion. Valuable security has been defined in Section 30 of I.P.C., as follows:-

> **"30. "Valuable security".**—The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right."

9. From bare reading of the said definition of valuable security, it is clear that valuable security comes into existence when a document creates extends, transfers, restricts, extinguishes or releases a legal right or where any person acknowledges that he/she lies under certain legal liability or that he does not have legal right.

10. Thus, valuable security can come into existence only when it has all the basic requisites recognized by law for a document to graduate into a valuable security. One of the essential features is that document should be signed by the maker since an unsigned document does not mature into a valuable security despite containing script pertaining to creation, extension, transfer, restriction, extinction or release of any legal right or acknowledgment of legal liability or absence of any right. The decision in the case of *Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and another* (2007) 14 SCC 768 is worthy of reference in this context. Paras 5 and 6 of the said decision being relevant

are reproduced below:-

> **"5.** Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Indian Penal Code in the following terms:
>
> > "383. Extortion:- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion"."
>
> **6.** A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence :
>
> > 1. The accused must put any person in fear of injury to that person or any other person.
> >
> > 2. The putting of a person in such fear must be intentional.
> >
> > 3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.
> >
> > 4. Such inducement must be done dishonestly."

11. Testing the factual matrix attending the present case on the anvil of the legal provisions and decision (supra), it is seen that the petitioners threatened the respondent/wife to give an express undertaking to consent for divorce with her husband Dr. Subhash Parmar in the divorce petition filed by the husband, which is pending before the court. Reading of the prosecution story contained in pleadings in the complaint and the supportive statements recorded, do not disclose that any such undertaking was ever written much less signed by the respondent/wife. There is not even an iota of material/evidence to show that any such undertaking was

given by which any liability was incurred or any right was given up by the respondent/wife due to the threat extended to her by the petitioners. Thus, "valuable security" as defined in section 30 of I.P.C. did not come into existence at all. The absence of valuable security coming into existence renders the offence of extortion untenable. Mere threat or fear of injury which has not led to creation of a valuable security cannot constitute offence of extortion as defined in section 30 of I.P.C.

12. Consequently, in the absence of any material to demonstrate the existence of any valuable security coming into being in the entire prosecution story, there arises no question of extortion being made out even on *prima facie* basis.

13. This court is thus of the considered view that cognizance taken by the court below of the offence punishable under section 384 of I.P.C. against the petitioners is untenable in the eye of law.

14. Consequently, the present petition is allowed. The impugned order dated 8/2/2013 passed by the Judicial Magistrate First Class, Gwalior in complaint case No.1254/13 is quashed to the extent of taking cognizance of the offence under Section 384 of I.P.C., against the petitioners. Remaining part of the impugned order shall remain intact.

15. No cost.

Application allowed.

I.L.R. [2016] M.P., 2874

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sheel Nagu

M.Cr.C. No. 6504/2013 (Gwalior) decided on 22 April, 2016

HARNAM SINGH & ors. ...Applicants

Vs.

STATE OF M.P. ...Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 306 - Abetment of suicide - Quashing of FIR* - Offence u/S 306 of the IPC - There is no straight jacket formula to pin point the fact and circumstances which fall within and without the definition of abetment - On receiving the news of the accused resiling**

from the proposal of marriage the deceased may have gone into the state of shock and compelling her to take the extreme step of ending her life by committing suicide - Whether the offence u/S 306 of the IPC is made out or not, cannot be decided at the preliminary stage when investigation is said to be inconclusive. (Paras 8, 11 & 15)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – प्रथम सूचना रिपोर्ट अभिखंडित की जाना – भा.दं.स. की धारा 306 के अंतर्गत अपराध – दुष्प्रेरण की परिभाषा के भीतर एवं बाहर आने वाले तथ्य एवं परिस्थितियों का सटीक निर्धारण करने के लिए कोई निश्चित सूत्र नहीं – विवाह के प्रस्ताव से अभियुक्त के पीछे हट जाने का समाचार प्राप्त होने पर मृतिका सदमे की स्थिति में चली गई होगी और आत्महत्या कारित कर अपना जीवन समाप्त करने का आत्यंतिक कदम उठाने के लिए विवश हुई – क्या भा.दं.सं. की धारा 306 के अंतर्गत अपराध बनता है अथवा नहीं, इसका विनिश्चय प्रारंभिक प्रक्रम पर नहीं किया जा सकता जब अन्वेषण को अनिर्णायक माना गया हो।

Cases referred:

AIR 2002 SC 1998, AIR 2010 SC 327, AIR 2011 SC 1238.

R.K. Sharma, for the applicants.
Mohd. Irshad, P.L. for the non-applicant/State.
Rajesh Shukla, for the non-applicant/complainant.

ORDER

SHEEL NAGU, J.:- This petition U/s 482 Cr.P.C. invokes the inherent powers of this court for quashment of the FIR dated 21.07.2013 bearing Crime No. 142/2013 registered at Police station Umri District Bhind alleging offence punishable u/s 306 r/w Sec. 34 of IPC and 3 / 4 of Dowry Prohibition Act against the petitioners No. 1, 2 and 3 who are brother in law (Jeth), husband and mother in law, respectively, of the deceased Poonam aged about 22 years.

2. Learned counsel for the rival parties are heard.

3. At the very outset, it would be appropriate to observe that by interlocutory order dated 5.9.2013 passed in this case the prosecuting agency was restrained from taking any coercive steps against the petitioners/accused as a result of which investigation has come to a stand still and charge sheet

could not be filed till date as is evident by the letter dated 01.02.2016 of the Station House Officer Umri, brought on record along with list of documents dated 04.02.2016.

4. The brief facts giving rise to the present petition are that marriage between the deceased and respondent No.2 was arranged & scheduled to be held. As a prologue to the said marriage, customary gift of cash and valuables were effected by parents of deceased in favour of the petitioners. The valuables as revealed by the statement of Manoj Devi (Mother of the deceased) U/s 161 Cr.P.C. were Rs. 7,73,000/- in cash, one Motor cycle, cooler, Samsung TV, LG Refrigerator, Washing Machine, Dressing Table, Sofa Set, Double Bed, utensils and clothings. These items were given as Lagun on 15.05.13 at the house of petitioners. On the very same day some time in the evening the petitioner No. 1 brother- in- law (Jeth) of the prospective husband telephonicaly called up and informed the parents of the deceased that unless and until further amount of dowry to the tune of Rs.2,27,000/- in cash is given, the marriage will not take place. It is alleged that this telephonic conversation was heard by the deceased. Immediately thereafter, she went to her room and committed suicide by hanging herself.

5. Learned counsel for the petitioner by referring to the decisions in the cases of *"Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh* reported in AIR 2002 SC 1998, *Gangula Mohan Reddy v. State of Andhra Pradesh* reported in AIR 2010 SC 327 and *M. Mohan v. State Represented by the Deputy Superintendent of Police with Velmurugan and Anr. v. State represented by the Superintendent of Police* reported in AIR 2011 SC 1238 "submits that in the attending facts and circumstances no abetment as defined u/s 107 IPC is made out. It is further submitted by him that there is no live and proximate link between the cause of demand of additional dowry on one hand and the suicide on the other. It is further submitted that element of mens rea in the entire episode is conspicuously missing. In this factual background it is urged that, no case of abetment to suicide is made out.

6. For convenience and read (sic:ready) reference sections 107 of IPC and section 306 of IPC are reproduced below.

"Section 107. Abetment of a thing

A person abets the doing of a thing, who—

First.— Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.

"Section 306. Abetment of suicide-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

7. The Apex Court in various decisions has held time and again that even on prima facie basis, the offence of abetment to suicide is made out only when the evidence and material collected by the prosecution which forms the bridge between the cause and the suicide, is strong, proximate and live enough that in the giving facts and circumstances the same can persuade the deceased to commit suicide.

8. There can be no straight jacket formula to pin-point the facts and circumstances which fall within and without the definition of abetment, for the obvious reason that when dealing with offence involving humans, variables like human sentiments, social and psychological compulsions and like factors assume relevancy for deciding the question whether even basic ingredients of offence are made out on a prima facie basis.

9. In the case at hand the deceased Poonam was one of the three daughters of Megh Singh Rajawat (father of the deceased) and Manoj Devi (Mother of the deceased). It is further brought on record in shape of statement of mother of deceased that the second daughter Neelam was deaf since birth. The pre-marriage ceremonies which gave rise to the impugned offence were in respect of the eldest among the three daughters of the parents who were primarily from rural background. It is common knowledge that in rural society due to lack of education and awareness, sons are preferred than daughters. Daughters are considered by majority of the rural population to be a liability. Marriages of daughters are treated to be an expensive affair for the parents of

the daughter as the prospective bridegroom and his relatives demand dowry in lieu of the assurance of the bride's peaceful stay at the matrimonial home. More often than not, it is seen that in rural areas where level of education and awareness is to the minimal, the quantum of dowry given before and after marriage is directly proportionate to the amount of matrimonial peace and tranquility extended to the wife at the matrimonial home.

10. Another aspects which deserves consideration is the importance of marriage in the mind of a girl of marriagable (sic:marriageable) age in rural areas, with no or insignificant education. With negligible education, a girl who is brought up in a male dominated society in the district of Bhind (MP) having one of the worst sex-ratios in the country, looks forward to the event of her marriage as the ultimate achievement in life. In case this event, despite being fixed (as is the case herein), is threatened to be canceled, the repercussions can be significant. The prospective bride may go into a spell of depression due to the bleek prospect of finding another match along with the social stigma cast by the society. In case the girl is of strong temperament she may withstand the trauma. However if she is of weak mental fibre she may take the extreme step of ending her life.

11. In this case it is seen that the father of the deceased had three daughters and therefore was psychologically bogged down by the faet that on three different occasions in the near future including the present one he would be subjected to financial strain. This state of mind of the father must have been well-known to the deceased. When her marriage was being fixed, she must have been under great psychological expectation that the marriage should somehow get solemnized without any hitch. With this psychology in mind, the deceased desperately wanted the marriage to come through and be solemnized. On receiving the news of the accused resiling from their proposal of marriage the deceased may have gone into the state of shock, compelling her to take the extreme step of ending her life by committing suicide.

12. True it is that the non-solemenization of marriage may not by itself become a lawful cause for constituting abetment of suicide, but the attending variable factors as illustrated above deserve consideration.

13. Whether it was justified on the part of the deceased herein to commit suicide depends upon several variables which are required to be established by collection of evidence by the police during investigation, which is informed

to be pending.

14. The live and proximate link between the cause (the threat of breaking the proposed marriage) and the suicide in an ordinary case may appear to be weak, but considering the additional circumstances of social and psychological constraints that the deceased was facing on the fateful day i.e. 15.05.2013, when she received threat by the petitioners of breaking the proposed marriage, these additional circumstances cannot be prejudged in favour of the accused at this early stage.

15. Whether these additional circumstances of psychological and social nature were enough and sufficient to constitute even on primafacie basis, an offence punishable u/S 306 of IPC cannot be decided at this preliminary stage when the investigation is said to be inconclusive.

16. It is for the trial Court while considering the question of framing of charge to delve into all these factors.

17. Before parting this court would be failing in it's duty to lay down a few illustrations which deserve consideration by the court while framing charge in cases of the nature at hand. Some of these variable circumstances are as follows:-

(a) Social background of the deceased,

(b) Educational background of the deceased,

(c) Economic status of the parents of the deceased,

(d) Temperament of the deceased,

(e) Presence or absence of live and proximate link between the cause and the suicide.

18. These circumstances are merely illustrative and not exhaustive since the limits of human mind and social constraints are unfathomable.

19. In the light of the above observations, this Court is of the considered view that in the attending facts and circumstances and in the supervening social and psychological factors it would not be appropriate to invoke the inherent powers of this Court to truncate the process of investigation.

20. Accordingly, this Court declines to interfere with the impugned FIR dated 21.7.2013 in its inherent powers u/S 482 Cr.P.C.

21. Consequently, the present petition u/S 482 Cr.P.C. stands dismissed.

22. Copy of this order be communicated by the registry to the concerned police station and learned Magistrate.

23. No costs.

Application dismissed.