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***Constitution – Article 14, 15, 25 & 26 – Religious Practice – Judicial Review* – Held – Courts have got no right to interfere with old age essential religious practices which is not opposed to public order, morality, health or any other fundamental rights – Courts are under obligation to follow religious text in cases of religious disputes and to follow the old practices prevalent in the religion so long as they do not violate constitutional rights of individual. [Aarsh Marg Seva Trust Vs. State of M.P.] (DB)…74**

संविधान – अनुच्छेद 14, 15, 25 व 26 – धार्मिक पद्धति– न्यायिक पुनर्विलोकन – अभिनिर्धारित – न्यायालय को ऐसी प्राचीन अनिवार्य धार्मिक पद्धतियों के साथ हस्तक्षेप करने का अधिकार नहीं दिया गया है जो कि लोक व्यवस्था, नैतिकता, स्वास्थ्य अथवा किन्हीं अन्य मौलिक अधिकार के विपरीत नहीं हैं – न्यायालय धार्मिक विवादों के प्रकरणों में धार्मिक मूलग्रंथ तथा धर्म में प्रचलित प्राचीन पद्धतियों का तब तक पालन करने के बाध्याधीन है जब तक वे व्यक्ति के संवैधानिक अधिकारों का उल्लंघन नहीं करते हों। (आर्ष मार्ग सेवा ट्रस्ट वि. म.प्र. राज्य) **(DB)…74**

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exercise of supervisory jurisdiction under Article 227, Courts have devised self- imposed rules of discipline on their power – Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available – High Court can also refuse to exercise power of superintendence during pendency of proceedings – Such power of superintendence cannot be invoked to correct an error of fact, which only a superior Court can do in exercise of its statutory power as Court of Appeal – Such power should only be used when the act shows gross failure of justice or grave injustice. [Mahesh Kumar Jha Vs. Union of India] (DB)…342

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***Court Fees Act (7 of 1870), Section 7(iv)(c) & 7(v)(a) – "Cancellation of Sale Deed" & "Declaration of Sale Deed as Void"* – Held – "Cancellation" implies that persons suing should be a party to the document – If executant wants to avoid sale deed then has to seek cancellation of sale deed and has to pay *ad-valorem* court fees u/S 7(iv)(c) whereas if non-executant seeking declaration of sale deed as void, then he has to pay as per second proviso to Section 7(v)(a) of the Act of 1870. [Godhan Singh Vs. Sanjay Kumar Singhai] …*4**

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(c) व 7(v)(a) – ''विक्रय विलेख का रद्दकरण'' व ''विक्रय विलेख की शून्य के रूप में घोषणा की जाना'' – अभिनिर्धारित – ''रद्दकरण'' विवक्षित करता है कि वाद लाने वाले व्यक्ति दस्तावेज के पक्षकार होने चाहिए – यदि निष्पादी विक्रय विलेख से बचना चाहता है तो उसे विक्रय विलेख को रद्द कराना होगा तथा 1870 के अधिनियम की धारा 7(iv)(c) के अंतर्गत मूल्यानुसार न्यायालय शुल्क का भुगतान करना होगा जबकि यदि गैर–निष्पादी विक्रय विलेख को शून्य करने की घोषणा चाहता है, तो उसे धारा 7(v)(a) के द्वितीय परंतुक के अनुसार भुगतान करना होगा। (गोधन सिंह वि. संजय कुमार सिंघई) …*4

***Court Fees Act (7 of 1870), Section 7(iv)(c) & 7(v)(a) – See – Hindu Minority and Guardianship Act, 1956, Section 8(1) & (2)* [Godhan Singh Vs. Sanjay Kumar Singhai] …*4**

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Criminal Practice – Test Identification Parade **– Held – In a matter, Apex Court concluded that, in TIP, number of persons should be "reasonably large" – In instant case, 4 persons participated in TIP, cannot be termed as improper or contrary to direction of Apex Court. [Deepak @ Nanhu Kirar Vs. State of M.P.] (DB)...495**

दाण्डिक पद्धति – पहचान परेड – अभिनिर्धारित – एक मामले में, सर्वोच्च न्यायालय ने निष्कर्षित किया है कि, पहचान परेड में, व्यक्तियों की संख्या यथोचित रूप से बड़ी होनी चाहिए – वर्तमान प्रकरण में, पहचान परेड में चार व्यक्ति सम्मिलित हुए, इसे अनुचित तथा सर्वोच्च न्यायालय के निदेशों के प्रतिकूल नहीं कहा जा सकता। (दीपक उर्फ नन्हू किरार वि. म.प्र. राज्य) **(DB)...495**

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 2(u) व 24 – लोक अभियोजक – शब्द ''कोई व्यक्ति'' – अभिनिर्धारित – शब्द ''कोई व्यक्ति'' का अर्थ है कोई व्यक्ति जिसे लोक अभियोजक द्वारा अनुदेश जारी किये गये हैं और इसमें सरकारी अधिवक्ता, डिप्टी/उप सरकारी अधिवक्ता, पैनल वकील या कोई अन्य तृतीय व्यक्ति शामिल है – राज्य की ओर से उपस्थित होने वाले सभी सरकारी अधिवक्तागण लोक अभियोजक माने गये हैं। (पवन कुमार जोशी वि. म.प्र. राज्य) **...352**

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 2(u) व 24 – देखें – संविधान – अनुच्छेद 226 (पवन कुमार जोशी वि. म.प्र. राज्य) **...352**

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 53–A(4) – डी.एन.ए. रिपोर्ट – अभिनिर्धारित – धारा 53–A(4) एक प्रक्रिया उपबंधित करती है तथा प्रत्येक प्रक्रियात्मक विफलता संपूर्ण परीक्षण को दूषित नहीं करेगी – मात्र चूंकि जांच का समय तथा अवधि का उल्लेख प्रतिवेदन में नहीं किया गया है, वह कथित रिपोर्ट को दूषित नहीं करेगा। (दीपक

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मारा गया था क्योंकि अकेले अपीलार्थी के लिए मृतिका को लटकाना संभव नहीं होगा, शव भी जमीन पर पड़ा पाया गया था – चोटें भी अंतिम घंटे में संघर्ष या प्रतिरोध उपदर्शित करती है – मृतिका की गर्दन खिंची हुई/लंबी हुई नहीं पायी गई थी, न ही जीभ बाहर निकली हुई थी – आत्महत्या की कल्पना अस्वीकार की गई – अपीलार्थी ने किसी निकटवर्ती निवासी को सूचना नहीं दी यहां तक कि मृतिका के माता–पिता को भी नहीं – अभियोजन ने मकान के भीतर मानव वध स्वरूप मृत्यु स्थापित की जहां मृतिका, अपीलार्थी के साथ अकेले निवासरत थी – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज। (कालू उर्फ लक्ष्मीनारायण वि. म.प्र. राज्य) **(SC)…555**

Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974) – Plea of Alibi – Burden of Proof **– Held – Once prosecution established a *prima facie* case, onus shifted on appellant to explain circumstances and manner in which deceased met homicidal death in matrimonial home as it was a fact specifically and exclusive to his knowledge – It is not a case of appellant that there had been an intruder in house at night – Appellant failed to furnish explanation u/S 313 Cr.P.C. therefore leaves no doubt for conclusion of his being the assailant of deceased. [Kalu alias Laxminarayan Vs. State of M.P.] (SC)…555**

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दण्ड संहिता (1860 का 45), धारा 302/149 व 148 – साक्ष्य का मूल्यांकन – साक्षीगण के कथन – विरोधाभास व लोप – अभिनिर्धारित – साक्षीगण के कथनों में अनेक तात्विक विरोधाभास – यह संदेह किया गया है कि वे तैयार किये गये साक्षीगण हैं, जो तोते

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abandoned the suit properties, pursuant to which auction was held by *Pawaidar* and lease was validly issued by *illaqedar* in favour of Gaya Din (Predecessors of Appellants/defendant) and they were in continuous possession of suit properties – Report of R.I. also states that *patta* was granted to Gaya Din – Order of Commissioner also establishes that interpolation in revenue entries were made by plaintiffs in connivance with patwari – First Appellate Court and High Court erred in not relying on these documents – Impugned judgments set aside – Plaintiff suit was rightly dismissed – Appeal allowed. [Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath] **(SC)…43**

रीवा राज्य भू–राजस्व तथा काश्तकारी संहिता, 1935, धारा 44, विंध्य प्रदेश जागीर उन्मूलन एवं भूमि सुधार अधिनियम (1952 का 11), धारा 26 व 28 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(1)(d)(i) – भूमिस्वामी के अधिकार – साक्ष्य का मूल्यांकन – अभिनिर्धारित – मौखिक एवं दस्तावेजी साक्ष्य यह स्थापित करते है कि प्रत्यर्थी/वादी के पिता ने वाद संपत्तियों का परित्याग कर दिया है, जिसके अनुसरण में पवईदार द्वारा नीलामी आयोजित की गई थी तथा इलाकेदार द्वारा गया दीन (अपीलार्थीगण/प्रतिवादी के पूर्वज) के पक्ष में विधिमान्य रूप से पट्टा जारी किया गया तथा वे वाद संपत्तियों पर निरंतर काबिज थे– आर.आई. का प्रतिवेदन भी यह बताता है कि पट्टा गया दीन को प्रदान किया गया था – आयुक्त का आदेश भी यह स्थापित करता है कि राजस्व प्रविष्टियों में प्रक्षेप, वादीगण द्वारा पटवारी की मौनानुकुलता के साथ किया गया था – प्रथम अपीली न्यायालय एवं उच्च न्यायालय ने इन दस्तावेजों पर विश्वास न कर त्रुटि की है – आक्षेपित निर्णय अपास्त – वादी का वाद उचित रूप से खारिज किया गया था – अपील मंजूर। (जगदीश प्रसाद पटेल (मृतक) द्वारा विधिक प्रतिनिधि वि. शिवनाथ) **(SC)…43**

***Right to Children of Free and Compulsory Education Act, (35 of 2009), Section 25 – Pupil-Teacher Ratio* – Held – A teacher does not have any justiciable right to successfully assail his transfer solely on ground that the same cause disturbance to pupil-transfer ratio prescribed in 2009 Act – Breach of pupil teacher ratio may confer a justiciable right to student but not to teacher because Act of 2009 is children-centric and not teacher-centric – Appeal dismissed. [Devendra Rajoriya Vs. State of M.P.]** **(DB)…665**

निःशुल्क और अनिवार्य बाल शिक्षा का अधिकार अधिनियम, (2009 का 35), धारा 25 – छात्र–शिक्षक अनुपात – अभिनिर्धारित – एक शिक्षक को केवल इस आधार पर अपने स्थानांतरण का सफलतापूर्वक विरोध का न्याय योग्य अधिकार नहीं है कि उक्त से अधिनियम 2009 में विहित छात्र–शिक्षक अनुपात को बाधा कारित होगी – छात्र–शिक्षक अनुपात का भंग छात्र को एक न्याय योग्य अधिकार प्रदत्त करता है लेकिन शिक्षक को अधिकार नहीं क्योंकि 2009 का अधिनियम बालक–केंद्रित है, और न कि शिक्षक–केंद्रित – अपील खारिज। (देवेन्द्र राजोरिया वि. म.प्र. राज्य) **(DB)…665**

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***Succession Act, Indian (39 of 1925), Section 63(c) – Will – Burden of Proof* – Held – It is for the propounder (defendant) of Will to remove all suspicious circumstances – No attesting witnesses were examined by defendant/respondents – Further, evidence of the scribe of the Will cannot be equated with that of attesting witnesses – Courts below wrongly shifted the burden of proof on Plaintiff that the Will was not forged or concocted – Respondents failed to prove the Will as per Section 63(c) – Appeal allowed. [Rajaram through L.Rs. Smt. Bhagwati Bai Vs. Laxman]** **...706**

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***Succession Act, Indian (39 of 1925), Section 63(c) – Will – Proof* – Held – Where the signature/thumb impression of testator of Will are not admitted, then Will is required to be strictly proved in accordance with provisions of Section 63(c) of the Act of 1925. [Rajaram through L.Rs. Smt. Bhagwati Bai Vs. Laxman]** **...706**

उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 63(c) – वसीयतनामा – सबूत – अभिनिर्धारित – जहां वसीयतनामें के वसीयतकर्ता के हस्ताक्षर/अंगूठा निशानी स्वीकृत नहीं है तब वसीयतनामें को 1925 के अधिनियम की धारा 63(c) के उपबंधों के अनुसरण में कठोरता से साबित किया जाना अपेक्षित है। (राजाराम द्वारा विधिक प्रतिनिधि श्रीमती भगवती बाई वि. लक्ष्मण) **...706**

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THE INDIAN LAW REPORTS M.P. SERIES, 2020
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JOURNAL SECTION

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

MADHYA PRADESH ACT
No. 15 OF 2020

THE MADHYA PRADESH NAGAR TATHA GRAM NIVESH (SANSHODHAN) ADHINIYAM, 2019

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MADHYA PRADESH ACT
No. 15 OF 2020

THE MADHYA PRADESH NAGAR TATHA GRAM NIVESH (SANSHODHAN) ADHINIYAM, 2019

[Received the assent of the Governor on 13 February, 2020; assent first published in the Madhya Pradesh Gazette (Extra-ordinary), dated 17 February, 2020, page Nos. 134 (11) to 134 (21)]

An Act further to amend the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973.

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

1. Short title and commencement. (1) This Act may be called the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, 20119.

(2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

2. Amendment of Section 2. In Section 2 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 23 of 1973) (hereinafter referred to as the principal Act),-

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

"(ea) "compensation" means the reconstituted final plot provided in the town development scheme to equalise the total value of original plot;

"(eb) "contribution" means the share of increment in value of the final plot to be levied from the land owner due to increase in value by providing infrastructure in town development scheme as per clause (f) of sub-section (4) of Section 50;";

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

"(i-1) "final plot" means a plot reconstituted in a town development scheme as a final plot;";

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

"(m-1) "original plot" means a portion of land held in single or joint ownership and numbered and shown as one plot in a town development scheme;".

3. Amendment of Section 17. In Section 17 of the principal Act, in clause (j), for full stop, semi-colon shall be substituted and thereafter the following new clause shall be added, namely:—

"(k) indicate in development plan, tentative delineation of town development scheme boundaries for preparation and implementation of these town development schemes over the plan period or in phases.".

4. Amendment of Section 38 In Section 38 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :—

"(2A) The State Government may also designate a government agency or a Government owned company or urban local body, as the Town and Country Development Authority, and may delegate specific duties and responsibilities such as the preparation and implementation of Town Development Schemes, to the exclusion of development authority of the town for such specific area within planning area:

Provided that the provisions of Sections 39 to 48 shall not be applicable to such agencies.

5. Substitution of Section 49. For Section 49 of the principal Act, the following Section shall be substituted, namely:—

"49. **Town Development Scheme. —** (1) The Town and Country Development Authority shall prepare and implement one or more town development schemes within its jurisdiction and in conformity with the proposals of the development plan. The town development scheme may be prepared for —

(a) an area that is proposed for future development in the development plan; or

(b) an area that is in the process of development; or

(c) the redevelopment of an already developed area; or

(d) any area that has been notified under the repealed provisions of the Act, as town development scheme but development has either not started or in progress,

in such manner as may be prescribed.

(2) A town development scheme may provide for any of the following purposes:

(a) acquisition, development sale, leasing or reconstitution of land for purpose of town expansion;

(b) reconstitution of plots for the purpose of buildings, roads, drains, sewage lines and other similar amenities;

(c) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial or other facilities;

(d) any other work of a nature such as that would bring about environmental improvements which may be taken up by the Town and Country Development Authority with the prior approval of the State Government.

(3) A town development scheme may provide for any of the following matters, namely:—

(a) the layout or re-layout of land, either vacant or already built upon;

(b) layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications;

(c) the construction, alteration and removal of buildings, bridges and other structures;

(d) the allotment or reservation of land for roads, open spaces, facilities for health and education and public purposes of all kinds;

(e) facilities for all transportation modes, particularly, the safe movement of pedestrians and non-motorized vehicles;

(f) facilities for physical infrastructure and municipal services including water supply, waste water management systems, storm water drainage, solid waste management and street lighting;

(g) the conservation of natural and cultural heritage;

(h) allocation of land for affordable housing for low and informal income groups;

(i) slum improvement, in-situ redevelopment or relocation and rehabilitation in conformity with the prevailing laws and policies in this regard;

(j) provisions to ensure ecologically sustainable development;

(k) reservation and allocation of land to the Town and Country Development Authority for sale to recover the cost of preparing and implementing the town development scheme and providing the infrastructure therein;

(l) any other residual infrastructure or work;

(m) any infrastructure or development work which may be necessary for such scheme in future;

(n) (i) the authority shall return to the extent possible 50 percent of original plot as final plot to the land owner. As far as possible the distribution of land in the scheme shall be as below :—

I. twenty percent for roads,

II. five percent for parks, play-grounds and open space,

III. five percent for social infrastructure such as school, dispensary, fire brigade, public utility place as earmarked in the draft town development scheme, and

IV. twenty percent for sale by appropriate authority for residential, commercial, low and informal income housing or industrial use depending upon the nature of development:

Provided that the percentage of the allotment of land specified in paragraphs I to IV may be altered by the development authority depending upon the nature of development and for the reasons to be recorded in writing;

(ii) the proceeds from the sale of land referred to in paragraph IV of sub-clause (i) shall be used for the purpose of providing infrastructural facilities;

(iii) the land allotted for the purpose referred to in paragraphs II and III of sub-clause (i) shall not be changed by variation of schemes for the purpose other than public purpose;

(o) development control regulations to be followed by all construction within the town development scheme including urban design guidelines to ensure the development of efficient, livable and aesthetically harmonious urban areas, provided that they are in conformity with the proposals and intent of the development plan.".

6. Substitution of Section 50. For Section 50 of the principal Act, the following Section shall be substituted, namely :—

"50. Preparation of town development schemes.-(1) (a) The Town and Country Development Authority shall submit a proposal for the preparation and implementation of a town development scheme with phasing plan to be followed, to the Director with a copy to the State Government. Within fifteen days of submission of the proposal to Director, the Development Authority shall issue a public notification of the proposal in the Gazette and in prominent Hindi newspapers. By

this notification the Director shall prohibit all development in the scheme area till further notification upon the approval or disposal of the proposal by the State Government.

(b) Town development scheme notified under the repealed provisions of the Act, but development has either not started or not been taken up for any reasons, shall lapse. However, where infrastructural development work was initiated and an expenditure upto 10 percent has been incurred as calculated on date of amendment in the Act, and land owners reimburse expenditure incurred on the scheme, to the development authority, the scheme shall lapse as may be prescribed:

Provided that, not later than six months, the town and development authority may draw a fresh scheme, as may be prescribed, till such time the Director shall prohibit all development in the scheme area, so as not to adversely afffect the viability of the scheme:

Provided further that the town development scheme, where any infrastructural development work is in progress with more than 10 percent of expenditure on the estimated cost as calculated on the date of amendment, the scheme shall continue as published under the provision of the Act.

(c) The Director shall examine the proposal and hold consultations with the concerned Development Authority officials and send the scheme along with his opinion or otherwise with development plan proposals to the State Government within one month of receipt of the proposal.

(d) Within three months from the date of receipt of the proposal, the State Government may either approve the proposal as it is or may approve with modifications or may reject the proposal with reasons after giving due opportunity of hearing to the Development Authority:

Provided that the State Government may extend the above specified period for another three months, if found necessary.

(2) As per the State Government's response, the Development authority shall issue a notification within one month in the Gazette and in minimum two prominent Hindi newspapers, declaring its intention to prepare the town development scheme or withdrawing its proposal, as the case may be.

(3) Not later than six months from the date of publication of the declaration under sub-section (2), the Town and Country Development Authority shall prepare a draft town development scheme in such form and manner as may be prescribed, together with a notice inviting objections and suggestions from any person with respect to the said draft town development scheme before such date as may be specified therein, such date not being earlier than thirty days from the date of publication of such notice:

Provided that on an application by the Town and Country Development Authority in that behalf, the State Government may, from time to time, by notification, extend the aforesaid period by such period or periods as may be specified therein, so however that the period or periods so extended shall not in any case exceed three months in the aggregate.

(4) The draft town development scheme shall contain the following particulars, namely:

(a) the area, ownership and tenure of each original plot;

(b) the particulars of land allotted or reserved under clause (d) of sub-section (3) of Section 49 and full description of all other details of the scheme under sub-section (3) of Section 49 as may be applicable:

Provided that the areas reserved for public purpose shall be proportionately distributed among the residents within the area of the scheme, other areas adjacent to the scheme or town level as may be prescribed, for the calculation of contribution;

(c) the details of final plots allocated to the owners in lieu of original plots;

(d) estimation of the value of original and final reconstituted plots;

(e) estimation of and apportionment of the compensation to or contribution from the beneficiaries of the scheme on account of the reconstitution of the plot and reservation of portions for public purpose;

(f) evaluation of the increment in value of each reconstituted plot and assessment of the development contribution to be levied on the plot holder:

Provided that the contribution shall not exceed half the increment in value;

(g) evaluation of the reduction in value of any reconstituted plot and assess the compensation payable thereof;

(h) an estimate of the net cost of the scheme to be borne by the appropriate Authority; and

(i) any other prescribed particulars.

(5) The cost of town development scheme shall include:—

(a) all sums payable by the Town and Country Development Authority under the provisions of the Act, which are not specifically excluded from the costs of scheme;

(b) all sums spent or estimated to be spent by the Town and Country Development Authority in the making and execution of the scheme;

(c) all sums payable as compensation for land reserved for or designated for any public purpose or for the purposes of the Town and Country Development Authority which is solely or partly beneficial to the owners of land or residents within the area of the scheme;

(d) all legal expenses incurred by the Town and Country Development Authority in the making and in the execution of the scheme;

(e) other incidental expenses such as statutory decree, change of law, and force majeure, shall be recovered by the land owners included in the scheme;

(f) twenty percent of the amount of the cost of infrastructure provided in the area adjacent to the area of the scheme, if necessary, for the purpose of and incidental to the scheme;

(g) the costs of the scheme shall be met wholly or in part by a contribution to be levied by the Town and Country Development Authority on each plot included in the final scheme calculated in proportion to the increment:

Provided that —

(i) (a) where the cost of the scheme does not exceed half the increment, the cost shall be met wholly by a contribution;

(b) where it exceeds half the increment, to the extent of half the increment it shall be met by a contribution and the excess shall be borne by the Town and Country Development Authority.

(ii) no such contribution shall be levied on a plot used, allotted or reserved for a public purpose or for the purpose of the Town and Country Development Authority which is solely beneficial to the owners of land or residents within the area of the scheme; and

(iii) the contribution levied on a plot used, allotted or reserved for a public purpose or for the purpose of the Town and Country Development Authority which is beneficial partly to the owners of land or residents within the area of the scheme or partly to the general public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment or reservation.

Explanation.- For the purpose of this Act, the increments shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of the original plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plots estimated, with a factor, as may be prescribed, without reference to improvements contemplated in the scheme:

Provided that in estimating such value, the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration;

(h) the owner of each plot included in the scheme shall be primarily liable for the payment of contribution leviable in respect of such plot.

(6) (a) If the owner of an original plot is not provided with plot in scheme or if the contribution to be levied from him under sub-section (4) is less than the total amount to be deducted therefrom under any of the provision of this Act, the net amount of his loss shall be payable to him by the Town and Country Development Authority. All payments due to be made to any person shall, as far as possible, be made by adjustment in such account with the Town and Country Development Authority in

respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment, shall be paid in cash or in such other manner as may be agreed upon by the parties.

(b) The net amount payable under the provision of this Act by the owner of a plot included in the scheme may be at the option of the contributor be paid in lump sum or in annual installments not exceeding six.

(c) If the owner elects to pay the amount by installments, interest at such rate as arrived at by adding two percent to the bank rate published under section 49 of the Reserve Bank of India Act, 1934 (No. 2 of 1934), from time to time, shall be charged per annum on the net amount payable.

(d) If the owner of a plot fails to exercise the option on or before the date specified in a notice issued to him in that behalf by the Town and Country Development Authority, he shall be deemed to have exercised the option of paying contribution in installments and the interest on the contribution shall be calculated from the date specified in the notice being the date before which he was required to exercise the option.

(e) If the owner of a plot fails to pay contribution in lump sum or in installments or does not appear after issuing the notice, a final notice of payment as calculated under clause (d) shall be issued for payment on or before the date specified in the notice, failing to appear after such notice issued to him in that behalf by the Town and Country Development Authority, the contribution of such amount shall be adjusted by deducting the land for the such amount due.

(7) (a) In the draft scheme referred to in sub-section (3) and (4), the size and shape of every plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, as far as possible, complies with the provisions of the scheme as regards rules to regulate the control of development.

(b) For the purposes of clause (a), the draft scheme may contain proposals:

(i) to form a final plot by reconstitution of an original plot by the alteration of its boundaries, if necessary;

(ii) to form a final plot from an original plot by the transfer of any adjoining lands;

(iii) to provide with the consent of the owners that two or more original plots which are owned by several persons or owned by persons jointly be held in ownership in common as a final plot, with or without alteration of boundaries;

(iv) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(v) to transfer the ownership of a plot from one person to another.

(8) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under sub-section (9), approve the draft scheme as published or make such modifications therein as it may deem fit.

(9) Notwithstanding anything contained in sub-section (7), the Town and Country Development Authority shall constitute a committee, to consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (3), consisting of the Chief Executive Officer of the said Authority, an officer nominated by the Director, an officer nominated by District Collector not below the rank of Tehsildar, Commissioner or Chief Municipal Officer or his nominee of such urban local body within whose jurisdiction the town development scheme is situated and Chief Executive Officer or his nominee of the Zila Panchayat in case the scheme lies wholly or partly in his jurisdiction.

(10) The committee constituted under sub-section (9) shall consider the objections and suggestions and give reasonable opportunity of to such persons affected thereby as are desirous of being heard and shall submit its report considering the provisions under sub-section (4) to the Town and Country Development Authority with recommendations for changes in the contents of the draft town development scheme to address the objections

and suggestions and to effect any improvements in the scheme that the committee deems fit to recommend:

Provided that the final publication of such draft scheme shall be notified after the layout proposed therein has been approved by the Director. Such final publication shall be notified not later than six months from the date of publication of the draft scheme under sub-section (3) failing which the draft scheme shall be deemed to have lapsed:

Provided further that any person intending to carry out any development or construction on final plot alloted to him by the Town and Country Development authority shall obtain permission as may be prescribed.

(11) Immediately after the town development scheme is approved under sub-section (10) with or without modifications, the Town and Country Development Authority shall publish in the Gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation.

(12) (a) Where a town development scheme has come into operation, all lands required by the Town and Country Development Authority for the purposes specified in following clauses:

(i) layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications etc;

(ii) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(iii) lighting;

(iv) water supply;

shall vest absolutely in the Town and Country Development Authority free from all encumbrances.

(b) Nothing in clause (a) shall affect any right of the owner of the land vested in the appropriate authority.".

7. Insertion of Section 50-A. After Section 50 of the principal Act, the following Section shall be inserted, namely:—

"50-A. Disputed Ownership. (1) Where there is a disputed claim to the ownership of any piece of land included in an area in respect

of which a declaration of intention to make a scheme has been made and any entry in the record of rights or mutation relevant to such disputed claim is inaccurate or inconclusive or in litigation, at any time prior to the date on which the Director, Town and Country Planning approves the scheme under sub-section (10) of Section 50, such claim shall be applicable on final plot mutatis mutandis, unless been decided by a competent court.

(2) In the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree as soon as practicable after such decree has been brought to the notice of the appropriate authority by the person affected by such decree.".

8. Amendment of Section 56. Section 56 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following new sub-section shall be inserted, namely:—

"(2) The lands reserved and allocated to the Town and Country Development Authority as per the provisions of Section 49 and vested in the Authority under sub-section (11) of Section 50 shall be transferred to the freehold ownership of the Town and Country Development Authority. This transfer having been done through the process of plot reconstitution under sub-section (7) of Section 50 with concomitant calculations of compensation and contribution under the provisions of sub-section (4) of Section 50, shall not be subject to the provisions of any legislation regarding land acquisition:

Provided that after the declaration of final scheme the Town and Country Development Authority shall without delay forward a copy of the final scheme to the District Collector of the region for the purpose of correcting the survey records.".

9. Substitution of Section 59. For Section 59 of the principal Act, the following Section shall be substituted, namely:—

"59. Development charges- (1) Where as a result of town development scheme, there is in the opinion of the Town and Country Development Authority, appreciation in the market value of lands adjacent to and affected by a scheme, the Town and Country Development Authority may, in lieu of providing for the acquisition of such land or framing a town development scheme, levy development charges on owners of such land:

Provided that such levy may also be charged on the land which is lying within the area of town development scheme, and is in the course of development, with prior permission of the Director.

(2) The development charges shall be an amount equal to one-third of the difference between the value of the land on the date of publication of the intention to prepare the town development scheme under sub-section (2) of Section 50 and value of the land on the date of development charges to levy.".

10. Amendment of Section 60. For sub-section (1) of Section 60 of the principal Act, the following sub-section shall be substituted, namely:—

"(1) During implementation of the development scheme, the Town and Country Development Authority shall, by a notice in such form and published in such manner as may be prescribed, declare of its intention to levy development charges in the area affected by the scheme or within the area of town development scheme, calling upon owners of land liable to pay development charges to submit objection, if any, within such period which shall not be less than thirty days from the date of publication of the notice, and to such authority as may be specified in the notice.".

11. Amendment of Section 78. Section 78 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following new sub-section shall be added, namely:—

"(2) No civil court shall have jurisdiction to entertain any dispute relating to town development scheme in respect of which the development authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.".

12. Amendment of Section 85. In Section 85 of the principal Act, in sub-section (2), for clause (xiii), the following clause shall be substituted, namely:—

"(xiii) (a) the manner of publication of declaration under section 50(1);

(b) the manner of publication of declaration under section 50(2);

(c) the form in which and the manner in which the town development scheme in draft form shall be published under section 50(3);

(d) the form and the manner in which the contents of town development scheme in draft form shall be published under section 50(4);

(e) the manner in which the permission on final plot of a town development scheme shall be issued under section 50(10);

(f) the manner in which the final town development scheme shall be published under section 50(11);".

13. Amendment of Section 87. In Section 87 of the principal Act, after the sub-section (2), the following new sub-section shall be added, namely:—

"(3) Notwithstanding the substitution of Section 49 and Section 50 by the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, 2019, anything done or any action taken for physical development after the final publication of scheme under repealed provision of Section 50, shall, in so far as it is inconsistent with the provision of this Act, be deemed to have been done or taken under the corresponding provision of this Act."

AMENDMENTS IN THE MADHYA PRADESH ARBITRATION RULES, 1997

[Published in Madhya Pradesh Gazette, Part 4 (Ga), dated 21 February 2020, page Nos. 257 to 268]

No.D-1221.–Amendments in **"The Madhya Pradesh Arbitration Rules, 1997"** in the Madhya Pradesh Gazette.

In exercise of the powers conferred by section 82 of the Arbitration & conciliation Act, 1996 (26 of 1996), the High Court of Madhya Pradesh, hereby, makes the following amendments in The Madhya Pradesh Arbitration Rules, 1997, namely :-

AMENDMENT

1. For rule 3, the following rule shall be substituted, namely :-

"3. (1) Definitions :

(a) In these Rules, "ACT" means the Arbitration and Conciliation Act, 1996.

(b) "Appeal" means an Appeal filed in the 'Court' under the Act;

(c) "Application" means an Application filed in the 'Court' under the Act;

(d) "Arbitral Award" includes an interim, a partial and a preliminary or final award;

(e) "Arbitrator" means person appointed as an Arbitrator in terms of the Act;

(f) "Chief Justice" means the Chief Justice of the High Court of Madhya Pradesh;

(g) "Code" means "The Code of Civil Procedure Code, 1908"; and

(h) "Rules" means "The Madhya Pradesh Arbitration Rules, 1997"

(2) The words and phrases not defined, in these Rules, shall bear the same meaning as defined under the Act."

2. For rule 4, the following rule shall be substituted, namely:-

"4. Application/Appeal :

(1) Save as otherwise provided in these Rules, all Applications/ Appeals, Affidavits and Proceedings, under the Act shall be as per the prescribed Fromats annexed herewith as Format no. 1, 2, 3 & 4.

(2) Every application under Section 9, Section 14, Section 27, Section 34, Section 39 and Section 43 of the Act shall be made in writing and shall be supported by an affidavit, It shall be divided into paragraphs, numbered consecutively, and shall contain the name, description and place of residence of the parties. It shall contain a statement in consise from-

(a) of the material facts constituting cause of action;

(b) of facts showing that the Court to which the application appeal is presented has jurisdiction;

(c) relief prayed for;

(d) names and addresses of the persons liable to be affected by the application; and

(e) original Arbitration Agreement or the Award.

(3) An application for enforcement of and arbitral award under Section 36 of a foreign award under Section 47 or Section 56 shall be in writing signed and verified by the Applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the particulers prescribed in Sub-rule (2) of Rule 11 of Order XXI of the Code.

(4) Every application for execution of Award under Chapter I- ***" New York Convention Awards"*** or Chapter II – "**Geneva Convention Awards"** of PART-II-***'Enforcement of certain Foreign Awards"*** of the Act shall be in the terms as prescribed under Sections 47 and 56 of the Act, as the case may be.

(5) Every application for enforcement of a foreign award shall be accompanied by and affidavit or affidavits showing that :-

(a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) the subject matter of award is capable of settlement by Arbitration under the law of India.

(c) the award has been made by the arbitral tribunal provided for in the submission to and arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to

opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India."

3. After rule 4, the following rule shall be added, namely :-

"4A. Mode of application/appeal :

Save as otherwise provided in these Rules, all Applications/Appeals shall be placed on board for admission after prior notice to all parties concerned.

(1) Procedure after filing of Application/Appeal and requisitioning of Lower Court Records:

(a) In cases, arising out of matters pending before the lower Court, Tribunal or Authority, the record shall not be requisitioned unless ordered by the Court.

(b) Where such record has been requisitioned, it shall be retained in the High Court/ District Court (as the case may be) only as long as absolutely necessary; otherwise it shall be returned and called back as convenience permits.

(2) In cases, arising out of judgments or orders finally adjudicating the case, the record of lower Court or Tribunal shall be requisitioned after admission of the case, notwithstanding the fact that no order requisitioning the record has been made by the Court or the Registrar.

(3) The Applicant/Appellant may file pleadings and/or evidence along with the memorandum of appeal or application which he considers necessary to enable the Court to appreciate the scope of dispute for the purpose of admission, interlocutory orders or disposal.

(4) Notice shall be served on all opposite parties and on such other persons as the Court may direct:

Provided that at the hearing of any such Application/Appeal, any person who desires to be heard in opposition to it and appears to the Court to be proper, may be heard, notwithstanding that he has not been served with the notice; but may be liable to costs in the discretion of the Court.

Provided further that where at the hearing of the Application/ Appeal, the Court is of opinion that any person who ought to have been served with notice of the Application/Appeal, has not been so served, the

Court may order such notice to be served and adjourn the hearing upon such terms, if any, as the Court may think fit.

(5) (a) All questions of fact arising for determination under this part shall be decided ordinarily upon affidavit, but the Court may direct that such other evidence be taken as it may deem fit.

(b) Where the Court orders that certain matters in controversy between the parties shall be decided on oral evidence, it may either itself record the evidence or may direct any Court or Tribunal or a Commissioner appointed for the purpose to record it in accordance with the procedure prescribed by law.

(6) The Court may in such proceedings impose such terms as to costs as it thinks fit.

(7) The Court may in its discretion, either before the opposite party is called upon to appear and answer or afterwards on the application of the opposite party, demand from the Applicant security for the costs of the application/appeal."

4. In Schedule A;

(i) at serial no. 1, in column No. 3, the figure "300" shall be substituted by the figure "500"

(ii) serial no. 2 and the entries relating thereto, shall be deleted.

(iii) at serial no. 3, in column No. 3, the figure "500" shall be substituted by the figure "1000"

(iv) at serial no. 4, in column No. 3, the figure "200" shall be substituted by the figure "350"

(v) at serial no. 5, in column No. 3, the figure "1000" shall be substituted by the figure "2000"

(vi) at serial no. 6, in column No.3, the figure "50" shall be substituted by the figure "100"

5. In Schedule B, in column No.3;

(i) at serial no. 1, the figure "300" shall be substituted by the figure "500"

(iii) at serial no. 2, the figure "300" shall be substituted by the figure "500"

(iv) at serial no. 3, the figure "500" shall be substituted by the figure "1000"

(v) at serial no. 4, the figure “300” shall be substituted by the figure “500”

(vi) at serial no. 5, the figure “500” shall be substituted by the figure “1000”

6. In rule 6, after the word “application”, the symbol and word "/appeal” shall be inserted.

7. In rule 8, after the word “application”, the symbol and word "/appeal” shall be inserted and at the end of para, after the word “applicant” the symbol and word "/Appellant” shall be inserted.

8. In rule 9, in sub-clause (2), after the word “application”, the symbol and word "/appeal” shall be inserted.

9. After rule 10, the following Formats shall be added namely;

Format No. 1
[Rule 4(1)]

IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE/BENCH AT GWALIOR

Arbitration Case No. ……/20……..

Cause Title

Applicant(s)	:	The name [Company/Institution/ Firm/ Person(s)]……., age……, father/husband's name..... .....occupation....., complete address……..……, fax number with S.T.D. Code ....…, and E-mail address …...……..., if any; of each Applicant
		Vs.
Non-Applicant(s)	:	The name [Company/Institution / Firm/ Person(s)]……, age ……, father/husband's name….....occupation……, complete address……....., fax number with S.T.D. Code ……, and E-mail address ……..., if any; of each Non Applicant

(An application under Section 11 of the Arbitration and Conciliation Act, 1996)

The Applicant(s) beg to submit for appointment of Arbitrator(s) on the following facts and grounds:-

1. There is an Arbitration Agreement dated …….. between Applicant & Non-Applicant.
2. Whether original/certified copy of the agreement is filed – if not, reason therefor:
3. The date …….. on which a request for referring the dispute to the Arbitration has been made by the Applicant to the Non-Applicant.
4. The description with date of reply of Non-Applicant, if any :

5. Details of remedies exhausted:

(a)……

(b)……

(c)……

The Applicant declares that he has taken all necessary steps for appointment of an Arbitrator(s).

6. Delay, if any, in filing the application and explanation therefor:
[State exact period within which the application is filed after expiry of statutory period for appointment of Arbitrator(s), if any]

7. Facts of the case:
(Give a concise statement of facts in chronological order in separate paragraphs)

8. Grounds urged:
[Separately state the grounds on which the relief(s) is /are claimed]

9. Specify whether any application was previously instituted before any Court, the status or result thereof along with copy of the order, if any.

OR

A declaration that no proceeding on the same subject matter has been previously instituted before any Court.

10. Relief Prayed for:
(Specify below the relief prayed for)

Name :

Place:……. **Signature**

Date:…….. **of Advocate for Applicant(s)**

Format No. 2
[Rule 4(1)]

IN THE DISTRICT COURT ……., MADHYA PRADESH

Miscellaneous Case No. ……./ 20……..

Cause Title

Applicant(s)	:	The name [Company/ Institution/Firm/ Person(s)].....…., age…...., father/husband's name…..... .....occupation…….....…., complete address…….....……., fax number with S.T.D. Code ..…., and E-mail address……....., if any; of each Applicant
		Vs.
Non-Applicant(s)	:	The name [Company/Institution/ Firm/ Person(s)]....., age…..., father/husband's name……..…... .....occupation....., complete address ....., fax number with S.T.D. Code ....……, and E-mail address…….……., if any; of each Non-Applicant

[An application under Section 9/14/27/34/39/43 (as the case may be) of the Arbitration and Conciliation Act, 1996]

The Applicant(s) beg to submit for …… on the following facts and grounds:-

1. There is an Arbitration Agreement dated ……. between Applicant & Non-Applicant.
2. Whether original/certified copy of the agreement is filed – if not, reason therefor;
3. The date ---------- on which a request for referring the dispute to the Arbitration has been made by the Applicant to the Non-Applicant.
4. The description with date of reply of Non-Applicant, if any;
5. Details of remedies exhausted :

(a) …….

(b) ....…….

(c) …….

The Applicant declares that he has taken all necessary steps for appointment of an Arbitrator(s).

6. Delay, if any, in filing the application and explanation therefor:
(State exact period within which the application is filed after expiry of statutory period for appointment of Arbitrator(s), if any)

7. Facts of the case:
(Give a concise statement of facts in chronological order in separate paragraphs)

8. Grounds urged:
(Separately state the grounds on which the relief(s) is/are claimed)

9. Specify whether any application was previously instituted before any Court, the status or result thereof along with copy of the order, if any.

OR

A declaration that no proceeding on the same subject matter has been previously instituted before any Court.

10. Relief Prayed for:
(Specify below the relief prayed for)

Name :

Place:……. **Signature**

Date:…….. **of Advocate for Applicant(s)**

Format No. 3
[Rule 4(1)]

IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE / BENCH AT GWALIOR

Arbitration Appeal No. ……./20……

Cause Title

Appellant(s)	:	The name [Company/Institution/Firm/ Person(s)] ……,age....., father/husband's name……..... occupation……, complete address ……..……., fax number with S.T.D. Code ….……, and E-mail address ……...……, if any; of each Appellant
		Vs.
Non-Appellant(s)	:	The name [Company/Institution/Firm/ Person(s)] …..……., age ....., father/husband's name……..... occupation……, complete address ……, fax number with S.T.D. Code …...…..., and E-mail address ……..., if any; of each Non-Appellant

(An appeal under Section 37 of the Arbitration and Conciliation Act, 1996)

Claim in appeal valued at Rs. ……..

Court Fees paid Rs. ……..

Claim before the Tribunal …….……...

Amount awarded …….…….

Being aggrieved by the award as detailed in paragraph (I) below, the Appellant prefers this appeal on the following facts and grounds :

(I) Particulars of the Award :

(a) Case number : ……..……
(b) Date of the Award : …...……...
(c) Award passed by : ……...…….
(d) The name of the Member : ……

(e) Designation and place of sitting of the Tribunal : ……

(II) Particulars of the Agreement :

1. Date : ……..……

2. Place :……..……

(III) Particulars of the Facts (in chronological order) :

1. ……...…….

2. …….

(IV) Details of Order passed by the Tribunal (in Short) :

……..……

……

(V) Other relevant Facts :

.....……..…….....

.....……..…….....

(VI) Grounds of appeal :

1. ……

2. ……....

(VII) Relief Claimed in appeal :

……..……

……

(VIII) Caveat :

That, no notice of lodging a caveat by the opposite party is received.

OR

Notice of caveat is received and the Appellant has furnished the copies of the memo of appeal together with copies of the annexure (if any) to the Caveator.

Date : ……

Place : ……

(Signature)
Advocate for Appellant(s)

Note : To be filed in duplicate.

Format No. 4
[Rule 4(1)]

IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE/BENCH AT GWALIOR

OR

IN THE DISTRICT COURT ……..., MADHYA PRADESH
Arbitration Case/ Appeal No. ……/20……..

Cause Title

Applicant(s)		The name [Company/Institution/Firm/
Appellant(s)	:	Person (s)]. ……,
		Vs.
Non-Applicant (s)/		The name [Company/Institution/Firm/
Non-Appellant (s)	:	Person (s)]. ……,

AFFIDAVIT

I, …… (Name of the Person), father/husband's name .....…… age.....years, occupation …….. R/o…… (complete address), …… (Designation of the person) of ……. (the name of [Company/Institution/Firm]), do hereby solemnly affirm on oath and state as under :-

1. That, I am the Applicant /Appellant / Non-Applicant in the instant Application and well conversant with the facts and circumstances of the case.
2. That, the .....……..……
3. That, the ……..…….

DEPONENT

VERIFICATION

I, …….. (Name of the Person), the Deponent do hereby verify that the contents of affidavit from paragraph 1 to …….. are true to my personal knowledge and belief. Verified and signed on this …… (Date) day of ……. (Month), …… (Year) at …… (Name of the place).

DEPONENT

REGISTRAR GENERAL
High Court of Madhya Pradesh

.....

J/56

AMENDMENT IN THE COMMISSIONER OF OATHS (FOR THE HIGH COURT) RULES, 2008

[Published in Madhya Pradesh Gazette, Part 4 (Ga), dated 21 February 2020, page No. 269]

No. D-1223.- Amendment in the "Commissioner of oaths (For the High Court) Rules, 2008" in the Madhya Pradesh Gazette;

In exercise of powers conferred by Section 3(2)(a) of the Oaths Act, 1969, and Article 225 of the Constitution of India, the High Court of Madhya Pradesh, hereby, makes the following amendment in the Commissioner of Oaths (for the High Court) Rules, 2008, namely :-

1. Proviso to Rule 16 (1) shall be deleted.

RAJENDRA KUMAR VANI, Registrar General.

.....

Short Note

****(6)***

Before Mr. Justice G.S. Ahluwalia

Cr.A. No. 531/2013 (Gwalior) decided on 13 August, 2019

BALLU SAVITA …Appellant

Vs.

STATE OF M.P. …Respondent

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 21(a) and Criminal Procedure Code, 1973 (2 of 1974), Section 293 – FSL Report – Admissibility in Evidence* – Held – FSL report not marked as Exhibit by trial Court, but the same is admissible in evidence u/S 293 of the Code – Further, u/S 313 Cr.P.C., a question was put to appellant regarding FSL report and thus report can be read in evidence.**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 21(a) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 293 – न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन – साक्ष्य में ग्राह्यता – अभिनिर्धारित – विचारण न्यायालय द्वारा न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन को प्रदर्श के रूप में चिह्नांकित नहीं किया गया, परंतु उक्त प्रतिवेदन, संहिता की धारा 293 के अंतर्गत साक्ष्य में ग्राह्य है – इसके अतिरिक्त, दं.प्र.सं. की धारा 313 के अंतर्गत, न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन के संबंध में अपीलार्थी से एक प्रश्न किया गया था तथा इसलिए प्रतिवेदन को साक्ष्य में पढ़ा जा सकता है।

Case referred:

(2008) 5 SCC 161.

None, for the appellant.
Purshottam Rai, P.L. for the respondent/State.

Short Note

****(7)***

Before Mr. Justice G.S. Ahluwalia

W.P. No. 8448/2016 (Gwalior) decided on 9 August, 2019

DEEPAK GUPTA & anr. …Petitioners

Vs.

STATE OF M.P. & ors. …Respondents

***Public Trusts Act, M.P. (30 of 1951), Section 34-A – Delagation of Powers* – Held – Unless and until a separate notification u/S 34-A of the Act of 1951 is issued, powers of Registrar cannot be delegated to SDO by work distribution memo – In absence of such notification, SDO has no jurisdiction**

to perform duties of Registrar under the Act – Impugned order quashed – Petition disposed of.

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 34–A – शक्तियों का प्रत्यायोजन – अभिनिर्धारित – जब तक कि 1951 के अधिनियम की धारा 34–A के अंतर्गत एक पृथक अधिसूचना जारी नहीं होती है, कार्य वितरण के ज्ञापन द्वारा रजिस्ट्रार की शक्तियाँ उपखंड अधिकारी को प्रत्यायोजित नहीं की जा सकती – उक्त अधिसूचना के अभाव में, उपखंड अधिकारी को अधिनियम के अंतर्गत रजिस्ट्रार के कर्तव्यों का पालन करने की कोई अधिकारिता नहीं है – आक्षेपित आदेश अभिखंडित – याचिका निराकृत।

Case referred:

M.A. No. 4917/2009 decided on 15.02.2018.

Tripti Agrawal, for the petitioner.
Vijay Sundaram, P.L. for the respondent Nos. 1 & 2/State.
Sanjay Sharma, for the respondent Nos. 3 to 17.

Short Note
****(8)***
Before Mr. Justice G.S. Ahluwalia
W.P. No. 3761/2018 (Gwalior) decided on 27 June, 2019

TRIPTI CHOUDHARY (KU.) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

Service Law – Recruitment – Domicile Certificate **– Petitioner producing domicile certificate of father in which her name was mentioned as minor daughter – Held – After attaining majority, person is required to obtain domicile certificate in his/her name and the one issued during his/her minority would no more be in force – In absence of domicile certificate in favour of petitioner, no mistake committed by respondents in rejecting her candidature – Petition dismissed.**

सेवा विधि – भर्ती – मूल निवासी प्रमाणपत्र – याची ने अपने पिता का मूल निवासी प्रमाणपत्र प्रस्तुत किया जिसमें उसका नाम अवयस्क पुत्री के रूप में उल्लिखित था – अभिनिर्धारित – वयस्कता प्राप्त होने के पश्चात्, व्यक्ति द्वारा उसके नाम पर मूल निवासी प्रमाणपत्र प्राप्त करना अपेक्षित है तथा वह जो कि उसकी अवयस्कता के दौरान जारी किया गया था, प्रवृत्त नहीं रहेगा – मूल निवासी प्रमाणपत्र याची के पक्ष में होने के अभाव में, प्रत्यर्थीगण द्वारा उसकी अभ्यर्थिता नामंजूर करने में कोई भूल कारित नहीं की गई – याचिका खारिज।

T.C. Singhal, for the petitioner.
S.N. Seth, G.A. for the respondents/State.

I.L.R. [2020] M.P. 543 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice Navin Sinha & Ms. Justice Indira Banerjee
C.A. No. 1090/2008 decided on 1 October, 2019

BRIJESH KUMAR & anr. …Appellants

Vs.

SHARDABAI (DEAD) BY LRs. & ors. …Respondents

(Alongwith C.A. No. 1091/2008)

Adverse Possession – Burden of Proof **– Held – Respondent/plaintiff claiming the property on ground of adverse possession – Onus lay on plaintiff to establish when and how he came into possession, nature of his possession, factum of possession known and hostile to other parties, continuous possession over 12 years which was peaceful, open and hostile to the knowledge of true owner – Plaintiff failed to discharge the onus – Further, plaintiff claiming adverse possession from 1960-61 but the same was sold by owner on 11.10.1972 i.e. before expiry of 12 years thus claim of uninterrupted possession is unsustainable – Impugned judgment set aside – Suit dismissed.**
(Paras 10, 13 & 14)

प्रतिकूल कब्जा – सबूत का भार – अभिनिर्धारित – प्रत्यर्थी/वादी द्वारा प्रतिकूल कब्जे के आधार पर संपत्ति पर दावा किया जाना – यह स्थापित करने का भार वादी पर है कि वह कब और कैसे कब्जे पर आया, उसके कब्जे का स्वरूप, अन्य पक्षकारों को कब्जे के तथ्य की जानकारी होना तथा अन्य पक्षकारों के प्रतिकूल होना, निरंतर 12 वर्षों से कब्जे में होना जो कि शांतिपूर्ण, प्रत्यक्ष तथा वास्तविक स्वामी के ज्ञान के प्रतिकूल था – वादी भार का उन्मोचन करने में विफल रहा – इसके अतिरिक्त, वादी 1960–61 से प्रतिकूल कब्जे का दावा कर रहा है परंतु उक्त का विक्रय, स्वामी द्वारा 11.10.1972 को अर्थात् 12 वर्षों की समाप्ति के पूर्व किया गया था, अतः अविरत कब्जे का दावा कायम रखने योग्य नहीं – आक्षेपित निर्णय अपास्त – वाद खारिज।

Cases referred:

(2015) 17 SCC 1, AIR 1948 BOM 149, AIR 1954 SC 337, AIR 1966 SC 470, (2010) 14 SCC 316.

J U D G M E N T

The Judgment of the Court was delivered by :
NAVIN SINHA, J. :- The appellants are aggrieved by the order allowing the plaintiff's second appeal. The High Court reversed the order of the First Appellate Court and restored the order of the Trial Court decreeing the plaintiff's suit for adverse possession.

2. The suit lands comprise of 4 out of 6 Biswas of land situated in Survey No. 493 of Patwari Halka No.76 at Village-Purani Chhabani, Guna. The Original land owners were Mool Chand and Kashi Ram. The suit lands were sold to defendant no.9 Urmila Devi by registered sale deed dated 11.10.1972. By two separate registered sale deeds dated 22.08.1989 she sold an area of 3414.4 square feet each to the appellants in both the appeals. Possession was handed over and constructions raised by them. The plaintiff Matadin then filed Suit No. 45-A/1995 on 28.08.1990 claiming adverse possession over the suit lands relying on Khasra entries for 1960-1961. The plaintiff also sought a declaration of nullity against the sale deeds executed by the original land owners and subsequent thereto. The sole plaintiff Matadin expired on 26.05.1994. An amendment application was subsequently filed by his legal heirs on 21.04.1995 contending that Matadin had come in possession of the suit lands after the original land owners Moolchand and Kashi Ram had failed to return his bullocks and agricultural implements. The Civil Judge Class I, Guna decreed the suit holding that the plaintiff had perfected his title by continuous, hostile and uninterrupted possession for more than 12 years adverse to that of the original land owners, and that the sale deeds were a nullity. Regular Civil Appeal 19-A of 1996 preferred by the appellants was allowed holding that the Trial court had overlooked documentary evidence on record to arrive at an erroneous conclusion of adverse possession on basis of oral evidence only. The second appeal by the plaintiff was subsequently allowed by the impugned order holding that the conclusions of the first appellate court were erroneous, restoring the order decreeing the suit. Thus, the present appeal.

3. Shri Manoj Prasad, learned senior counsel appearing for the appellants, submitted that the findings of facts by the first appellate court are final. The High Court in a second appeal ought not to have reappraised the evidence to arrive at a different conclusion, without any finding of perversity. The plaintiff never acquired title by adverse possession as the original owner sold the lands to Urmila Devi before expiry of twelve years. The purchaser had come into possession, raised certain constructions, and resold part of the lands to the appellants who consequently came into possession also. The original owners had sought possession from the plaintiff in 1963-1964 also which was declined. The plaintiff never established the origin of his possession. The amendment of the plaint was an afterthought. The Khasra entries for 1969-1973 show Urmila Devi in possession of the lands. In 1974-1978, the Khasra entries again show Urmila Devi as the landlord. The Khasra entries for 1960-1961 and 1974-1978 showing possession of the plaintiff were interpolations in red color ink, while the entries in the name of Urmila Devi after purchase were made in blue color ink. Hitesh Kumar and Hemraj, the son and nephew respectively, of the plaintiff were clerks in the collectorate. They were suspended for making false entries, followed by departmental enquiry and criminal prosecution. The Court Commissioner had

also reported possession having been transferred pursuant to the sale deed. The plaintiff had filed an objection after which the Court Commissioner had again inspected the disputed land and filed further report in favour of the appellants. All these have not at all been considered by the High Court. Reliance was placed on *M. Venkatesh & Ors. vs. Bangalore Development Authority & Ors.,* (2015) 17 SCC 1, to contend that the adverse possession could be proved only when possession was peaceful, open, continuous and hostile.

4. Shri N.K. Jain, learned senior counsel, adopted the same arguments on behalf of the appellants in Civil Appeal No. 1091 of 2008.

5. Shri Puneet Jain, learned counsel for the respondents, submitted that the plea of adverse possession was taken in the original plaint. No new fact was sought to be introduced by way of amendment. Relying on Section 117 of the Madhya Pradesh Land Revenue Code (hereinafter referred to as the "Code"), it was submitted that there is a presumption with regard to the correctness of the Khasra entries regarding possession of the plaintiff. It therefore establishes the foundation of a claim for adverse possession. At no point of time, the original land owner filed any application for correction under Section 116 of the Code raising any dispute. The finding of the appellate court with regard to manipulations in the Khasra entries, no more survive after their exoneration in the departmental proceedings and acquittal in the criminal case. The plaintiff was in continuous uninterrupted possession, for over 12 years, hostile to the original land owner. The plaintiff was never dispossessed in 1972 after any sale. Mere execution of a sale deed does not tantamount to dispossession. The claim for possession stated to have been reiterated in 1963-1964 by the original land owner confirms the continuous uninterrupted hostile possession of the plaintiff. Reliance was placed on *Dagabai Fakirmahomed vs. Sakharam Gavaji & Ors.,* AIR 1948 BOM 149, *Wontakal Yalpi Chenabasavana Gowd vs. Rao Bahadur Y. Mahabaleshwarappa & Ors.,* AIR 1954 SC 337, *M.V.S. Manikayala Rao vs. M. Narasimhaswami & Ors.,* AIR 1966 SC 470, to submit that the onus lay on the defendants to establish that the possession of the plaintiff was interrupted at any point of time, to defeat the claim for adverse possession and which they failed to do.

6. We have considered the submissions on behalf of the parties. The plaintiff in a suit filed in 1990, asserted possession of the lands for past 30 years prior to the filing of the suit, relying on the Khasra entries for 1960-1961 as the foundation of the claim to adverse possession. The nature and origin of the claim for possession was absent in the pleadings. In his evidence the respondent deposed that since the original land owner had failed to return his bullocks and agricultural equipments borrowed in 1958-1959, he had taken possession of the lands in 1960-1961. The original plaintiff expired on 26.05.1994. The respondents, who are his legal heirs, then filed an application on 21.04.1995 to amend the pleadings to bring it in

accord with the evidence. If the plaintiffs possession itself originated in 1960-1961 it is difficult to appreciate how the Khasra entries in its name came to be made in the very same year. Section 115 of the Code provides that if the Tehsildar finds that a wrong or incorrect entry has been made in the land records prepared under Section 114 by an officer subordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned as he may deem fit after due notice. The plaintiff led no evidence whatsoever when the application for correction in the khasra entry was made and that the original land owner was heard before the corrections were made. The entries in the name of the purchaser pursuant to the sale deed dated 11.10.1972 are in blue ink. The corrections in the khasra entry, the sheet anchor of the respondents claim therefore remains unexplained and doubtful.

7. At this stage, it is crucial to notice the findings of the appellate court that the son and nephew of the Plaintiff-Matadin were working as clerks in the collectorate. They were proceeded against departmentally and in a criminal prosecution regarding the corrections made in red ink in the Khasra entries incorporating the name of the plaintiff as being forged and fictitious. The fact that they may have been acquitted in the criminal prosecution on a benefit of doubt, or that exoneration may have been ordered in the departmental proceeding based on procedural irregularity, are not considered relevant as findings in a civil suit are to be based on preponderance of probabilities considering the nature of evidence available.

8. After purchase of the lands by Urmila Devi, her name was entered in the Khasra as landlord during 1969-1973 along with possession as also during 1974-1978. Once it is concluded that the red ink entries regarding corrections in the Khasra showing possession of the plaintiff are suspicious, based on fraud and forgery, the recordings in the name of the plaintiff are irrelevant. The name of Urmila Devi has also been shown in the Khasra entries for 1984-89 in blue ink.

9. The conclusion of the first appellate court with regard to possession of the lands being with Urmila Devi after purchase considered along with the report of the court commissioner, and who subsequently sold it to the appellants on basis of a registered sale deed, in our opinion called for no interference. The finding that the appellants had admitted the possession of the plaintiff-respondent on account of the failure of the original land owners to return his bullocks and agricultural equipments is held to be perverse.

10. The plaintiff claimed adverse possession from 1960-1961. The lands were sold to Urmila Devi before the expiry of 12 years on 11.10.1972 and she was put in possession. The plaintiffs claim of uninterrupted possession for twelve years was therefore unsustainable as completely devoid of substance.

11. The High Court in second appeal arrived at a perverse finding on the same evidence that Urmila Devi never acquired possession and thus the plaintiff had established adverse possession after twelve years. The report of the court commissioner also finds no discussion by the High Court. It also failed to deal with the suspicious Khasra entries in red ink, claimed by the plaintiff in proof of possession. Likewise, it did not consider that the origin of the claim of the plaintiff itself never stood established in absence of necessary pleadings which was sought to be introduced after the plaintiffs evidence, as an afterthought.

12. At this juncture it is necessary to notice that in Civil Suit No. 97-A of 1992 filed by the appellants in Civil Appeal No.1091 of 2008, and who had purchased the lands adjacent to the suit lands from Urmila Devi, against Hemraj, the nephew of plaintiff-Matadin, alleging encroachment of the lands purchased by him, the suit was decreed, and the appeals preferred by Hemraj was dismissed up to this court. The conclusion of the High court that there was no evidence with regard to the dispossession of the respondent-plaintiff is clearly unsustainable as he never came into possession in view of the clear finding with regard to fraud and forgery in the Khasra entries.

13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in *M. Venkatesh* (supra). The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus. Reference may also be made to *Chatti Konati Rao & Ors. vs. Palle Venkata Subba Rao,* (2010) 14 SCC 316, on adverse possession observing as follows :

> "15. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards

statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law."

14. In view of our conclusions, the precedents cited by the respondents do not merit consideration. The order of the High Court is held to be unsustainable and is set aside. The order of the first appellate court dated 08.08.1997 is restored and the suit is dismissed.

15. The appeals are allowed.

Appeal allowed

I.L.R. [2020] M.P. 548 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Deepak Gupta & Mr. Justice Aniruddha Bose

Cr.A. No. 480/2009 decided on 24 October, 2019

IMRAT SINGH & ors. …Appellants

Vs.

STATE OF M.P. …Respondent

A. Penal Code (45 of 1860), Section 302/149 & 148 – Appreciation of Evidence – Statement of Witnesses – Contradictions & Omissions **– Held – Various material contradictions in statements of witnesses – Doubt has been cast that they are prepared witnesses, coming with a parrot like version, however when it comes to attending circumstances, their evidence falls apart and does not withstand the scrutiny of cross-examination – All witnesses have some criminal antecedents – There may be previous enmity – Witnesses cannot be relied – Benefit of doubt has to be given to accused – Conviction set aside – Appeal allowed. (Paras 5, 17 & 18)**

क. दण्ड संहिता (1860 का 45), धारा 302/149 व 148 – साक्ष्य का मूल्यांकन – साक्षीगण के कथन – विरोधाभास व लोप – अभिनिर्धारित – साक्षीगण के कथनों में अनेक तात्विक विरोधाभास – यह संदेह किया गया है कि वे तैयार किये गये साक्षीगण हैं, जो तोते की भांति संवाद कर रहे हैं, तथापि जब उपस्थित परिस्थितियों की बात आती है, उनके साक्ष्य बिखर जाते हैं तथा प्रतिपरीक्षण की जांच का सामना नहीं करते हैं – सभी साक्षीगण के कुछ आपराधिक पूर्ववृत्त हैं – पूर्व वैमनस्यता हो सकती है – साक्षीगण पर विश्वास नहीं किया जा सकता – अभियुक्त को संदेह का लाभ दिया जाना चाहिए – दोषसिद्धि अपास्त – अपील मंजूर।

B. Criminal Practice – Enmity **– Held – Enmity is a double edged sword – It can be the motive but it can also be a reason to falsely implicate the other side. (Para 17)**

ख. आपराधिक पद्धति – वैमनस्यता – अभिनिर्धारित – वैमनस्यता दुधारी तलवार है – यह हेतु हो सकता है लेकिन यह अन्य पक्ष को मिथ्या आलिप्त करने का एक कारण भी हो सकता है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 154 – FIR – **Held – FIR admittedly recorded after visiting the spot by police – There is a possibility that the story could have been concocted after seeing the site and conferring with all the villagers. (Para 17)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन पुलिस द्वारा घटनास्थल का दौरा करने के पश्चात् स्वीकृत रूप से दर्ज किया गया – घटनास्थल को देखने तथा सभी ग्रामीणों से बातचीत करने के पश्चात् यह संभावना है कि कहानी मनगढंत हो सकती थी।

(Supplied: Paragraph numbers)

J U D G M E N T

The Judgment of the Court was delivered by :

DEEPAK GUPTA, J.:- This appeal by the convicted accused is directed against the judgment dated 24.10.2008 passed by the Division Bench of the High Court of Madhya Pradesh, whereby the High Court upheld the judgment of the Sessions Judge, Datia dated 30.03.1995 convicting the appellants of having committing offences punishable under Sections 148 and 302 read with 149 of the Indian Penal Code. Appellants were sentenced to undergo life imprisonment for the offence of murder and two years rigorous imprisonment for the offence punishable under Section 148 IPC. They were also directed to pay fine of Rs.25,000/- and in default of payment of fine further three years rigorous imprisonment.

2. Shortly stated the prosecution case, as reflected in the FIR is that on 25.05.1994 at about 2 pm., Lakhan Singh (PW-10) and Ram Singh (PW-11), who were coming from village Baron Kalan to village Kotra, saw the accused persons beating Gajraj Singh with lathis at a place called Brar Khora. These two witnesses asked why the accused were beating Gajraj Singh and then they were threatened by the accused. Being scared, they ran away from the spot to save their own lives. Then they reached village Kotra and thereafter went to the police station at about 5 pm. to lodge the FIR. We may also add that though this is not part of the FIR, during the course of investigation it has transpired that Somati (PW-6) and Raghubir (PW-7) last saw Gajraj Singh with accused Imrat Singh. Both, the Trial Court and the High Court, have accepted the testimony of Lakhan Singh (PW-10) and Ram Singh (PW-11) to be true and accepting their evidence to be true and treating these two witnesses as eye-witnesses have convicted all the accused as aforesaid. Hence, the present appeal.

3. The main contention raised before us by Ms. June Chaudhary, learned senior counsel, as well as Mr. Shikhil Suri, whom we had asked to assist us as amicus, is that the testimonies of Lakhan Singh (PW-10) and Ram Singh (PW-11) are totally untrustworthy and cannot be relied upon. They submit that if the testimonies are read as a whole along with the other attending circumstances, to which we shall advert later, no reliance can be placed on these two witnesses and, therefore, the conviction is liable to be set aside. Even with regard to Somati (PW-6) and Raghubir (PW-7), it is submitted that their testimonies are contradictory and cannot be relied upon and at best the testimonies will go against Imrat Singh and not against any of the other accused.

4. We need not refer to the FIR in detail. We will straight away deal with the statement of the two star witnesses of the prosecution Lakhan Singh (PW-10) and Ram Singh (PW-11). They are both residents of Village Kotra. Their version is that they had gone to village Baron Kalan since they both had worked there and Lakhan Singh (PW-10) had to meet a potter Bhagwan Dass to get some work done. According to them, when they were returning from Baron Kalan and had reached near Brar Khora they saw all the five accused Imrat Singh, Hetam Singh, Raghubir Singh, Nirbhaya Singh and Ratan Singh beating Gajraj Singh with lathis. According to Lakhan Singh (PW-10), this occurrence took place in Brar Khora near the passage where they were walking. Whereas according to Ram Singh (PW-11), the distance was only 10 steps. Both of them stated that when they enquired from the accused as to why they were beating Gajraj Singh, they were also threatened and then they ran away. As far as this part of the story is concerned, there is complete identity between the versions of those two witnesses. It is almost a parrot like version. The question is whether these witnesses are telling the truth or not. If we were to rely only on this portion of the testimony there would be no difficulty in upholding the judgment of the High Court.

5. The subsequent portion of the statements of these witnesses is so much at variance with each other and there are so many material contradictions in the statements of these two witnesses that as far as other aspects are concerned, a doubt has been cast in our minds that these witnesses are prepared witnesses who have come out with a parrot like version as far as the incident itself is concerned but when it comes to the attending circumstances their evidence falls apart and does not withstand the scrutiny of cross-examination.

6. According to Lakhan Singh (PW-10), immediately after the incident, they reached village Kotra. Lakhan Singh (PW-10) states that on reaching village Kotra he narrated the entire incident to Vrish Bhan Singh, Man Singh, Rudra Singh and Kishori. None of these four have been examined. Thereafter, Har Bilas (PW-15), who happens to be the brother of the daughter-in-law of the deceased came to village Kotra and he was informed about the occurrence. If the occurrence

occurred at about 2 pm., the witnesses would have reached village Kotra in 10 minutes at the most. Mahender Singh (not examined) and Jabbar (not examined) also arrived in the village. According to Lakhan Singh (PW-11), one Raghubir, servant of Brij Mohan, came and told him that the dead body of Gajraj Singh was lying in the jungle at Khora. Here it is pertinent to mention that Raghubir (PW-7), who has been examined, is actually servant of Gajraj Singh and not of Brij Mohan, but we will, for the sake of this case, accept that Raghubir, who has been referred to in the statement of Lakhan Singh (PW-10), is the servant of Brij Mohan.

7. Thereafter, according to Lakhan Singh (PW-10) he went to the police station to report the matter and lodged the complaint vide report-Exhibit P-10, which was read over and explained to him. However, in cross-examination he gives a totally different version. According to him, he had reached the village Kotra between 2.30 and 3 pm. and thereafter he, Rudra Singh, Ajab Singh (not examined), Har Bilas and Ram Singh (PW-11) consulted with each other and then went to report the matter to the police. When they reached the police station the Head Constable, who was present in the police station, stated that he was calling the SDOP and the FIR would be lodged and further action will be taken only after the SDOP was called. Thereafter, the SDOP reached the police station at about 6 pm. and then Lakhan Singh reported the entire matter to the SDOP. It would be pertinent to mention here that neither the Head Constable nor the SDOP have been examined. Whereas in examination-in-chief this witness has stated that his report was lodged as soon as he reached the police station but when cross-examined he was forced to admit that the report was lodged only on the arrival of the SDOP who further advised that they will visit the place of occurrence first and then lodge the report, which means that an oral report was lodged with the SDOP, then some persons went to the spot and after coming back from the spot the formal FIR was lodged.

8. Interestingly, this witness states that many villagers, including Ram Singh, along with SDOP and other police officials had visited the place of occurrence but he did not go to the place of occurrence with the SDOP.

9. Coming to the statement of Ram Singh (PW-11), as we have mentioned above, as far as the main witnesses are concerned, statement is almost similar. He also states that he went to the police station and lodged the report. However, he states that when they reached the village they did not tell anybody about the incident after reaching the village. This conduct is not natural. He then states that Har Bilas, Mahender Singh and Raghubir then informed in the village that Gajraj Singh had expired. This is totally different from what has been stated by Lakhan Singh. This witness also states that site plan of the place of occurrence was not prepared by the police in his presence. He states that the site plan does not bear his

signatures. This witness has been confronted with the statement recorded under Section 161 Cr.P.C. (Ex.D-5) wherein the fact that he had seen the occurrence from a distance of 10 steps, has not been specifically stated. We do not find this a material contradiction because in a Section 161 statement a person may or may not state the exact distance. However, whereas in Court this witness states that when Gajraj Singh was being beaten up, the accused were asking Gajraj Singh why he had not voted for Meera, this fact was not recorded in the Section 161 statement which is a material contradiction because if this had actually happened, this would have been recorded in the statement under Section 161 Cr.P.C. and would have also been stated by Lakhan Singh (PW-10) who was along side Ram Singh (PW-11). This clearly shows that these witnesses have been improving their statements with the passage of time.

10. Another important aspect of the statement of this witness is that he says that when he and Lakhan Singh (PW-10) witnessed the incident, they rushed back to the village and went to the shop of Rudra Singh where Mahender Singh was also present. He states that none of them had made an effort to go back to the place of occurrence to save Gajraj Singh: According to him, Har Bilas came after half an hour and told them that Gajraj Singh had died. This is totally different from the statement of Lakhan Singh (PW-10). According to him, it was Raghubir, servant of Brij Mohan, who informed about the death of Gajraj. Therefore, there is contradiction in the statement of these two witnesses as to who informed the villagers that Gajraj Singh was dead.

11. The other major contradiction is that according to Ram Singh (PW-11) they reached the police station at 5 pm. at which time the Deputy Superintendent of Police had already reached the police station. This is totally different from the statement of Lakhan Singh (PW-10). According to this witness, Lakhan Singh (PW-10) narrated the whole incident to the Deputy Superintendent of Police and thereafter the Deputy Superintendent of Police said that they would first go to the place of occurrence and see the dead body and the complaint will be registered thereafter. It seems that his reference to the Deputy Superintendent of Police is to the same person referred to as the SDOP by Lakhan Singh (PW-10). The contradiction is that whereas Lakhan Singh (PW-10) stated that this person was not at the police station and came after about one hour, according to Ram Singh (PW-11) this person was already at the police station.

12. The first site plan (Ext.P-18) was prepared by Head Constable Sita Ram, who has not been examined, however, it is counter signed by one Jagdish, who has been examined as PW-14. Interestingly, the site plan is alleged to be signed by both Lakhan Singh (PW-10) and Ram Singh (PW-11) and the site plan indicates that it was prepared on the instructions given by Lakhan Singh but Lakhan Singh states that he never went to the place of occurrence with the police and Ram Singh

states that he never signed the site plan. We are not using the site plan to support the prosecution case or the case of the accused but the manner in which the site plan was prepared clearly indicates that the investigation was not a fair investigation.

13. We shall now deal with Somati (PW-6) and Raghubir (PW-7), the witnesses on whom the prosecution places reliance for the purpose of the last seen theory. However, before we deal with these two witnesses, it would be pertinent to mention that the prosecution had also examined one Smt. Puniya as PW-5, who has turned hostile. We are recording this fact because her name finds mention in the statement of both these witnesses.

14. According to Somati (PW-6) at about 12 noon when she was present at her well, Gajraj Singh, who was in his residence was called by accused Imrat Singh, who informed Gajraj Singh that they will consume liquor together and thereafter her father-in-law Gajraj Singh left with Imrat Singh. She also states that later Puniya (PW-5) told her that she (Puniya) had seen accused Imrat Singh and Hetam Singh beating Gajraj Singh. According to this witness, her brother Har Bilas and one Mahender Singh came to her house and she informed them that her father-in-law had been beaten. According to this witness, she was informed about the beating of her father-in-law by Puniya (PW-5) who has not supported her version. She herself had not seen her father-in-law being beaten by anybody. In fact, this witness in cross-examination states that it was not Puniya who told her about Imrat Singh and Hetam Singh beating Gajraj Singh but this fact was told to her by her brother Har Bilas. As far as Raghubir (PW-7) is concerned, he states that the accused Imrat Singh came at about 2 pm. and in his presence told Gajraj Singh to accompany him since they had prepared mutton. Interestingly, Somati (PW-6) had not stated that Raghubir (PW-7) was present when Imrat Singh came. Their version about the enticement given to Gajraj Singh is different. According to Somati it was liquor which was offered whereas according to Raghubir (PW-7) it was mutton which was offered to Gajraj Singh.

15. Raghubir (PW-7) also states that he was informed by Puniya that she had seen Imrat Singh and Hetam Singh beating Gajraj Singh. According to him, thereafter he along with Har Bilas and Mahender Singh went towards the jungle and saw Gajraj Singh lying dead. He further states that then he went to the village and told Lakhan Singh and Man Singh that the dead body of Gajraj Singh was lying in the jungle. He then stated that the dead body was lying in the river. According to him, Lakhan Singh and Man Singh told him that they had already seen the dead body of Gajraj Singh which is not the case of Lakhan Singh at all.

16. The only other important witness to whom the reference is being made is Har Bilas (PW-15). He states that he was informed by Somati that Gajraj Singh had been called by Imrat Singh and both had left together. According to him,

Puniya reached there and informed that Gajraj Singh had been taken by Imrat Singh and Hetam Singh and he was beaten by them. Thereafter, he along with Mahender Singh and Raghubir went in search of Gajraj Singh and saw the body of Gajraj Singh lying in the river. He states that he saw no injuries on the body of Gajraj Singh which is difficult to believe because the prosecution story is that Gajraj Singh was beaten to death by the five accused with lathis. The versions of Har Bilas and that of Lakhan Singh (PW-10) are totally different. According to Lakhan Singh (PW-10) when Har Bilas (PW-15) came to the village, he did not know anything and it was only Raghubir who came and informed that Gajraj Singh was dead. This casts a serious doubt on the prosecution story.

17. Another factor which we have taken into consideration is that a number of very important witnesses who should have been examined have not been examined. Neither Bhagwan Dass the potter who was supposed to meet Harnam Singh in Bharon Kalan nor any other person from Bharon Kalan have been examined to support the version of Lakhan Singh (PW-10) and Ram Singh (PW-11) that they actually went to Bharon Kalan.

The villagers who were first told about this incident by Lakhan Singh (PW-10) and Ram Singh (PW-11) have not been examined. The Head Constable who is alleged to have not recorded the FIR and said that he would wait for the SDOP has not been examined. The SDOP/Deputy Superintendent of Police has not been examined. The FIR has been recorded admittedly after visiting the spot by the police and, therefore, there is a possibility that the story could have been concocted after seeing the site and conferring with all the villagers. It has come on record that Gajraj Singh was not a very popular man. He had a lot of enemies. It has also come in evidence that almost all the witnesses have some criminal antecedents and some cases are pending against them. It may be true that there was enmity between the two sides. Enmity, as is often said is a double edged sword. It can be the motive but it can also be a reason to falsely implicate the other side. In the present case, keeping in view the various contradictions pointed out above and the fact that in view of the contradictions it is difficult to rely upon the statements of Lakhan Singh (PW-10) and Ram Singh (PW-11) as well as Somati (PW-6) and Raghubir (PW-7), we are of the view that a doubt has been cast and the benefit of doubt has to be given to the accused.

18. We are of the view that the High Court and the Trial Court did not take into consideration these contradictions of the witnesses and relied upon the witnesses especially Lakhan Singh (PW-10) and Ram Singh (PW-11) without referring to the attending circumstances to which we have referred to in detail hereinabove. In view of the above discussion, we allow the appeal, set aside the conviction of both the Courts below. Accused are acquitted accordingly. Accused are on bail. Their bail bonds are discharged.

Appeal allowed

I.L.R. [2020] M.P. 555 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Navin Sinha & Mr. Justice B.R. Gavai

Cr.A. No. 1677/2010 decided on 7 November, 2019

KALU alias LAXMINARAYAN …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Section 302 – Homicidal Death & Suicide – Circumstantial Evidence & Medical Evidence* – Held – Deceased was strangulated to death as it would not be possible for appellant alone to hang the deceased, body was also found lying on ground – Injuries also indicates struggle or resistance in last hour – Neck of deceased not found stretched/ elongated nor tongue was protruding – Theory of suicide is ruled out – Appellant did not inform anyone living nearby much less the parents of deceased – Prosecution established homicidal death inside the house where deceased resided with appellant alone – Appellant rightly convicted – Appeal dismissed. (Paras 8 to 11)**

क. दण्ड संहिता (1860 का 45), धारा 302 – मानव वध स्वरूप मृत्यु व आत्महत्या – परिस्थितिजन्य साक्ष्य व चिकित्सीय साक्ष्य – अभिनिर्धारित – मृतिका को गला घोंटकर मारा गया था क्योंकि अकेले अपीलार्थी के लिए मृतिका को लटकाना संभव नहीं होगा, शव भी जमीन पर पड़ा पाया गया था – चोटें भी अंतिम घंटे में संघर्ष या प्रतिरोध उपदर्शित करती है – मृतिका की गर्दन खिंची हुई / लंबी हुई नहीं पायी गई थी, न ही जीभ बाहर निकली हुई थी – आत्महत्या की कल्पना अस्वीकार की गई – अपीलार्थी ने किसी निकटवर्ती निवासी को सूचना नहीं दी यहां तक कि मृतिका के माता–पिता को भी नहीं – अभियोजन ने मकान के भीतर मानव वध स्वरूप मृत्यु स्थापित की जहां मृतिका, अपीलार्थी के साथ अकेले निवासरत थी – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज।

***B. Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974) – Plea of Alibi – Burden of Proof* – Held – Once prosecution established a *prima facie* case, onus shifted on appellant to explain circumstances and manner in which deceased met homicidal death in matrimonial home as it was a fact specifically and exclusive to his knowledge – It is not a case of appellant that there had been an intruder in house at night – Appellant failed to furnish explanation u/S 313 Cr.P.C. therefore leaves no doubt for conclusion of his being the assailant of deceased. (Para 12 & 15)**

ख. दण्ड संहिता (1860 का 45), धारा 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – अन्यत्र उपस्थित होने का अभिवाक् – सबूत का भार – अभिनिर्धारित – एक बार जब अभियोजन प्रथम दृष्ट्या प्रकरण स्थापित करता है, तब उन परिस्थितियों एवं जिस ढंग से दाम्पत्य निवास में मृतिका की मानव वध स्वरूप मृत्यु हुई, को स्पष्ट करने का भार

अपीलार्थी पर परिवर्तित होता है क्योंकि वह एक ऐसा तथ्य था जो विनिर्दिष्ट रूप से एवं अनन्य रूप से उसके ज्ञान में था – यह अपीलार्थी का प्रकरण नहीं है कि रात को मकान में कोई अतिक्रमी था – अपीलार्थी, धारा 313 दं.प्र.सं. के अंतर्गत स्पष्टीकरण प्रस्तुत करने में विफल रहा इसलिए उसके मृतिका का हमलावर होने के निष्कर्ष हेतु कोई संदेह नहीं बचता।

Cases referred:

1956 SCR 199, (1974) 4 SCC 193, (2016) 10 SCC 519, AIR 1952 SC 343, (2012) 10 SCC 373, 2006 (10) SCC 681.

J U D G M E N T

The Judgment of the Court was delivered by :
NAVIN SINHA, J.:- The appellant, husband of the deceased, is aggrieved by his conviction under Section 302 of the Indian Penal Code (in short, 'IPC') affirmed by the High Court. There is no eye witness and the case rests only on circumstantial evidence.

2. The deceased was married to the appellant approximately six to seven years back. Both of them were living alone in the house with their minor child. On 14.10.1994, late in the evening, the family members of the deceased, who resided about 35-40 kms. away, received a telephone call that their daughter had died. They came the next morning at 06.00 AM and found the body of the deceased in the middle room of the house, lying on the ground covered with a white sheet. The first information report was lodged at about 07.00 AM, the inquest report was prepared same day as also the post mortem was done in the afternoon. The police after completing investigation submitted charge sheet under Section 306 and 498A, IPC. During the course of the trial, considering the nature of evidence that emerged, the Sessions Judge also added Section 302, IPC in the charges. The Sessions Judge held the charge under Section 302 to be established as the deceased had been strangulated to death. The High Court in appeal opined that the deceased had been hanged to death. Both the courts have unanimously held that the deceased did not commit suicide but that it was a homicidal death.

3. Learned senior counsel Shri Vinay Navare, appearing for the appellant, submitted that the deceased had committed suicide. The conviction of the appellant under Section 302 IPC was not justified. The appellant has been acquitted of the charge under Section 498A. It was impossible for the appellant to have alone forcibly hanged the deceased from a height of 11 feet. The fact that the body was found lying on the ground in the house, does not detract from the appellant's defence that she was brought down from the noose after she committed suicide and the body laid on the ground. If the appellant had strangulated the deceased, nothing prevented him from concealing the dead body or cremating her in the night itself. His conduct is not conducive of his guilt. The mere fact that the

deceased died in unnatural circumstances inside the matrimonial home cannot by itself be sufficient to shift the onus on the appellant under Section 106 of the Indian Evidence Act, 1872 (hereinafter called as "the Act"). The onus first lies on the prosecution to establish a prima facie case of a homicidal death ruling out all possibilities of a suicide. Reliance was placed on *Shambu Nath Mehra vs. The State of Ajmer*, 1956 SCR 199; *Sawal Das vs. State of Bihar,* (1974) 4 SCC 193 and *Jose vs. The Sub-Inspector of Police, Koyilandy and Ors.,* (2016) 10 SCC 519.

4. Shri Sunil Fernandes, learned Addl. Advocate General appearing on behalf of the respondent State, submitted that all the circumstances in the case inevitably point towards the guilt of the appellant. Death was homicidal in nature. The nature of oral, physical and medical evidence completely rules out the defence of a suicide by the deceased.

5. We have considered the submissions on behalf of the parties and have also gone through the evidence and other materials on record. The deceased lived alone with the appellant and their minor child. The evidence of the relatives of the deceased, PW 2, PW 4 and her parents PWs.6 and 8 reveal that all was not well between the appellant and the deceased. Because of the strained relations between them, the deceased had stayed at her parents' home for nearly 10 months prior to the occurrence and had returned barely a month before the fateful day after her father-in-law had come to take her back. We find no reason to disbelieve this part of evidence of PWs. 6 and 8.

6. PW 5 had deposed that he had seen cow dung on the hands of the deceased indicating that she was working when the homicidal assault had been made on her. He deposed having said so in his statement under Section 161, Cr.P.C. When the omission was pointed out to him in cross examination, he reiterated the same. This omission in his police statement was put to PW 17, the Investigating Officer, under Section 145, Cr.P.C. The witness replied that he did not remember the statement made to him and not that PW 5 had not made such a statement. The question was specifically put to the appellant under Section 313, Cr.P.C. also, to which he only gave a stock denial. The only defence taken by the appellant under Section 313 Cr.P.C. was that he had been falsely implicated. The prosecution has therefore sufficiently established that there was cow dung on the hands of the deceased indicating that she was engaged in house hold chores when the assault was made.

7. The inquest report of the deceased noticed that her hair was open and scattered, both eyes were closed and froth was coming out of the nose and mouth, the tongue was inside and the teeth visible. The right hand was on the stomach and the left hand was on the floor with the fist half open. There was a ligature mark at the back. On turning over the body, there was blackening on the back and in the

loin area. The post mortem report estimated the age of the deceased as 22 years and noticed the following:

> a) Froth marks blood is seen at the mouth and nostrils. The saliva is seen running out from left side of mouth and neck is tilted to left side. Ante mortem injuries were present. Abrasions varying in left from ¼″ to ½" and varying in width from 1/8" to 1/4" situated on dorsum of fingers of right hand are present.
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> b) Abrasions on right forearm, upper dorsum signs ½" x ½".
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> c) On dissection of the subcutaneous at the ligature mark, it is dry, and the M.M. of troches is red and congested and contain forth tinged with blood. The right chamber of heart contained blood and left chamber empty. The tongue caught between teeth.
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> d) There is well defined ligature mark, situated above the thyroid cartilage between larynx and chin 1" width and ½" deep directed obliquely upwards following the line mandible and reaching the mastoid process. The mark is interrupted at the back. The base of the mark is pale and hard and the margins are red and congested. The wound with crust and scan on left knee which appears to 7 to 12 days old.
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> All the injuries were ante mortem in nature opining that the deceased had died of asphyxia following hanging.

8. The injuries on the person of the deceased, as noticed in the inquest report as also in the post mortem report, are clearly indicative of a struggle or resistance put up by the deceased in the last hour. It is unusual that if the deceased had committed suicide by hanging herself, her right hand would be lying on the stomach and the left hand would be on the ground with both fists half open. This is more of a probability if the deceased was strangulated when life ebbed out of her slowly. The fact that the neck of the deceased was not found stretched and elongated, considering that the body was still fresh, rules out any possibility of suicide by the deceased. The tongue was not protruding. Scratches and abrasions would not be present in case of a suicide. There is no fracture or dislocation of the bones in the neck area. The saliva was not running down the face or chest of the deceased but had flowed out at the left of the mouth.

9. The High Court opined that the deceased had been hanged to death. Suicide was ruled out as the wooden log in the room used for storing grains from which a piece of a rope was found hanging was 11 ft. 2 inches in height from the floor. The deceased was of 5'4" and assuming that she would stretch out another one foot six inches it would still leave gap of 4 feet between her and the log, therefore suicide was an impossibility. We find no reason to differ with the reasoning. The conclusion of the High Court, to our mind, also does not help the

appellant in the defence of a suicide. The views taken by the Trial Court and the High Court nonetheless both point towards a homicidal death clearly. We would rather be inclined to accept the view of the Sessions Court that the deceased was strangulated to death as it would not also be possible for the appellant to hang the deceased alone. The body has also been found lying on the ground.

10. The aforesaid factors leave us satisfied that the prosecution has been able to successfully establish a case for a homicidal death inside the house where the deceased resided with the appellant alone. The conduct of the appellant, in the aforesaid background, now becomes important. If the deceased had committed suicide, we find it strange that the appellant laid her body on the floor after bringing her down but did not bother to inform anyone living near him much less the parents of the deceased. There is no evidence that the information was conveyed to the family members of the deceased by the appellant or at the behest of the appellant. The appellant was also not found to be at home when her family members came the next morning. The appellant offered no defence whatsoever with regard to his absence the whole night and on the contrary PW 3 attempted to build up a case of alibi on behalf of the appellant, when he himself had taken no such defence under Section 313, Cr.P.C.

11. The occurrence had taken place in the rural environment in the middle of the month of October when it gets dark early. Normally in a rural environment people return home after dusk and life begins early with dawn. It is strange that the appellant did not return home the whole night and was taken into custody on 21.10.1994.

12. In the circumstances, the onus clearly shifted on the appellant to explain the circumstances and the manner in which the deceased met a homicidal death in the matrimonial home as it was a fact specifically and exclusive to his knowledge. It is not the case of the appellant that there had been an intruder in the house at night. In *Hanumant and Ors. vs. State of Madhya Pradesh,* AIR 1952 SC 343, it was observed

> "10. ....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...."

13. In *Tulshiram Sahadu Suryawanshi and Ors. vs. State of Maharashtra,* (2012) 10 SCC 373, this Court observed:

> "23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in *State of W.B.* v. *Mir Mohammad Omar*
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> > *"38.* Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambhu Nath Mehra* v. *State of Ajmer* the learned Judge has stated the legal principle thus:
> >
> > *'11*. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.
>
> The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

14. In *Trimukh Maroti Kirkan vs. State of Maharashtra,* 2006 (10) SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case:

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecutions* — quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh).* The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration *(b)* appended to this section throws some light on the content and scope of this provision and it reads:

> *"(b) A* is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong

circumstance which indicates that he is responsible for commission of the crime."

15. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

16. We find no merit in the appeal. It is dismissed. The appellant is stated to be on bail. His bail bonds are cancelled and he is directed to surrender within two weeks for serving out his remaining period of sentence.

Appeal dismissed

I.L.R. [2020] M.P. 562 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Ranjan Gogoi, Chief Justice of India, Mr. Justice Deepak Gupta & Mr. Justice Aniruddha Bose

C.A. No. 364/2005 decided on 8 November, 2019

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION …Appellant

Vs.

SHRI PRINCE SHIVAJI MARATHA BOARDING HOUSE'S COLLEGE OF ARCHITECTURE & ors. …Respondents

(Alongwith C.A. Nos. 8506/2019, 8507/2019, 8511/2019, 8509 / 2019, 8508/2019 & 8510/2019)

***A. Architects Act (20 of 1972), Sections 3, 17, 18, 19, 44 & 45 and All India Council for Technical Education Act (52 of 1987), Sections 3, 22 & 23 – Council of Architecture (COA) & All India Council of Technical Education (AICTE) – Architecture Education – Recognition of Degrees & Diplomas – Applicability* – Held – So far as recognition of degrees and diplomas of architecture education is concerned, Act of 1972 shall prevail and AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in subject of architecture – Norms and Regulations set by COA and other specified authorities under the Act of 1972 would have to be followed by an institution imparting education for degrees and diplomas in architecture – Appeal dismissed. (Para 64 & 65)**

क. वास्तुविद् अधिनियम (1972 का 20), धाराएँ 3, 17, 18, 19, 44 व 45 एवं अखिल भारतीय तकनीकी शिक्षा परिषद अधिनियम (1987 का 52), धाराएँ 3, 22 व 23 – स्थापत्यकला परिषद् (सी.ओ.ए.) व अखिल भारतीय तकनीकी शिक्षा परिषद् (ए.आई.सी.टी.ई.) – स्थापत्यकला शिक्षा – डिग्री एवं डिप्लोमा की मान्यता – प्रयोज्यता – अभिनिर्धारित – जहां तक स्थापत्यकला शिक्षा की डिग्री एवं डिप्लोमा की मान्यता का संबंध है, 1972 का अधिनियम अभिभावी होगा तथा ए.आई.सी.टी.ई. स्थापत्यकला के विषय में डिग्री तथा डिप्लोमा के संबंध में कोई विनियामक उपाय अधिरोपित नहीं कर सकता – स्थापत्यकला परिषद् एवं अन्य विनिर्दिष्ट प्राधिकारीगण द्वारा 1972 के अधिनियम के अंतर्गत तय किये गये मानकों और विनियमों का पालन स्थापत्यकला में डिग्री एवं डिप्लोमा के लिए शिक्षा प्रदान करने वाली एक संस्था को करना होगा – अपील खारिज।

***B. All India Council for Technical Education Act (52 of 1987), Section 2(g) and Architects Act (20 of 1972), Section 3 – Implied Repeal* – Held – Principle of implied repeal cannot apply so far as provisions relating to architecture education is concerned just on the basis of the 1987 Act having become operational – Act of 1972 cannot be held to be repealed by implication for the sole reason of inclusion of word "architecture" in the definition of technical education. (Para 63)**

ख. अखिल भारतीय तकनीकी शिक्षा परिषद अधिनियम (1987 का 52), धारा 2(g) एवं वास्तुविद् अधिनियम (1972 का 20), धारा 3 – विवक्षित निरसन – अभिनिर्धारित – जहाँ तक स्थापत्यकला शिक्षा का संबंध है केवल 1987 के अधिनियम के प्रवर्तनीय होने के आधार पर विवक्षित निरसन का सिद्धांत लागू नहीं हो सकता – तकनीकी शिक्षा की परिभाषा में शब्द ''स्थापत्यकला'' के समावेश के एकमात्र कारण के लिए, 1972 के अधिनियम का विवक्षित तौर पर निरसित होना अभिनिर्धारित नहीं किया जा सकता।

***C. All India Council for Technical Education Act (52 of 1987), Section 2(g) & 10 – Technical Education* – Held – Definition of technical education would have to be given such a construction and the word "architecture" should be treated to have been inapplicable in cases where AICTE imports its regulatory framework for institutions undertaking technical education – Act of 1987 is primarily concerned with setting-up and running of a technical institution and not with regulating the professions of individuals qualifying from such institutions. (Para 58 & 63)**

ग. अखिल भारतीय तकनीकी शिक्षा परिषद अधिनियम (1987 का 52), धारा 2(g) व 10 – तकनीकी शिक्षा – अभिनिर्धारित – तकनीकी शिक्षा की परिभाषा का एक ऐसा अर्थ लगाना होगा तथा शब्द ''स्थापत्यकला'' को उन प्रकरणों में अप्रयोज्य माना जाना चाहिए जहां ए.आई.सी.टी.ई. तकनीकी शिक्षा देने वाले संस्थानों के लिए अपने विनियामक ढांचे का आयात करता है – 1987 का अधिनियम प्राथमिक रूप से एक तकनीकी संस्थान को स्थापित करने और चलाने से संबंधित है तथा न कि उक्त संस्थान से अर्हता प्राप्त करने वाले व्यक्तियों के व्यवसायों को विनियमित करने से संबंधित है।

Cases referred:

(2001) 8 SCC 676, 2012 (4) AIR BOM R 371, (1984) 3 SCC 127, (1995) 4 SCC 104, (2018) 1 SCC 468, (2013) 3 SCC 385, (2014) 16 SCC 330, 1962 Supp (1) SCR 913, 1962 Supp (2) SCR 741, (2005) 1 SCC 679, (1998) 8 SCC 1, (1997) 2 SCC 53, (1994) 2 SCC 434, (1990) 2 SCC 134, (1964) 2 SCR 87, (1956) 1 SCR 393, (1992) 1 SCC 335, (1981) 1 SCC 315, (1978) 4 SCC 16, (1961) 3 SCR 185, (2013) 8 SCC 271.

J U D G M E N T

The Judgment of the Court was delivered by : **ANIRUDDHA BOSE, J. :-** Delay condoned in SLP(C)No.17005 of 2016 and SLP(C)No.17006 of 2016. Leave is granted in all the six petitions for special leave to appeal.

2. This set of appeals mainly involves the question as to whether the mandate of the Council of Architecture (CoA) or that of the All India Council for Technical Education (AICTE) would prevail on the question of granting approval and related matters to an institution for conducting architectural education course, if there is any contradiction in the opinions of these two bodies. Both of them are regulatory bodies constituted by Parliamentary legislations having power to approve or recognize and thereafter monitor working of such an institution.

3. The CoA owes its origin to the provisions of Section 3 of the Architects Act, 1972 (the 1972 Act). AICTE has also been constituted under the provisions of Section 3 of the All India Council of Technical Education Act, 1987 (the 1987 Act). As the preambles of these two statutes suggest, the former has been enacted to provide for registration of Architects and for matters connected therewith. The object of the latter statute is to provide for a Council with a view to proper planning and coordinated development of the technical education system throughout the country, promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Section 2(g) of the 1987 Act stipulates:-

> "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the central government may, in consultation with the Council, by notification in the official Gazette, declare;"

4. Though the preamble of the 1972 Act projects the aim of the legislation to provide for registration of architects, this statute also deals with educational aspects of a course in architecture. Duties of CoA under the 1972 Act includes undertaking steps for recognizing qualifications for the purposes of the said Act.

Such recognition, as, contemplated by the Act, is at two levels. There is a schedule to the Act which lists diplomas and degrees awarded by named Indian and foreign institutes or bodies. Section 14 of the 1972 Act describes them as authorities. These degrees and diplomas are recognized qualifications under the said statute. There is also provision for amendment of the schedule, so as to incorporate therein architectural qualification granted by any authority in India. The CoA under the said Act however has not been conferred with the power to directly recognise the architectural qualification. The Central government is the authority to undertake that exercise. CoA under the 1972 statute is a consulting body. The effect of recognition by the Central Government is that such recognised qualification shall be sufficient for enrollment in the register of architects maintained under the said Act. After such registration, a person can claim to be an architect under the law. Section 25 of the 1972 Act prescribes three modes for entry into the register, the main one being holding a recognised qualification. Sub-clause (b) of the said provision preserves the right of practising architects at the time of initial preparation of the register. The said sub-clause is not relevant so far the subject-controversy is involved. Section 25 (c) prescribes as a condition for entering one's name in the register, possession of such other qualifications as may be prescribed by the Rules. But no such Rule providing for any additional qualification has been brought to our notice by the learned counsel appearing for the parties.

5. On the question of qualification of architects, Section 2 (d) of the 1972 Act defines "recognised qualification" to mean any qualification in architecture for the time being included in the Schedule or notified under Section 15 thereof. The lis in this set of appeals does not relate to the provisions of Section 15 of the 1972 Act, which is in respect of qualification from a foreign educational body.

6. The expression "approval", however, is not employed in the 1972 Act. This Act deals with recognition of qualification in architecture. Section 14 of the 1972 Act stipulates: -

> **"14. Recognition of qualifications granted by authorities in India.**— (1) The qualifications included in the Schedule or notified under Section 15 shall be recognised qualifications for the purposes of this Act.
>
> (2) Any authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that

it shall be a recognised qualification only when granted after a specified date:

Provided that until the first Council is constituted, the Central Government shall, before issuing any notification as aforesaid, consult an Expert Committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette."

7. The power to amend the schedule is vested with the Central Government under Section 16 of the 1972 Act. This provision reads:-

"16. Power of Central Government to amend Schedule.— Notwithstanding anything contained in sub-section (2) of Section 14, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Schedule by directing that an entry be made therein in respect of any architectural qualification."

8. So far as the 1987 Act is concerned, Section 10 thereof, inter-alia, specifies: -

"POWERS AND FUNCTIONS OF THE COUNCIL

10. It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may:-

xxx xxx xxx

xxx xxx xxx

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

xxx xxx xxx

(m) lay down norms for granting autonomy to technical institutions;

xxx xxx xxx

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;"

9. In this judgment, altogether seven appeals shall be dealt with, all of which involve the dispute outlined in the first paragraph. The main appeal which has been argued before us in detail is Civil Appeal No.364 of 2005. The appellant in this proceeding is **AICTE** and its appeal is against the judgment of a Division Bench of the Bombay High Court delivered on 8th September 2004 in Writ Petition No.5942 of 2004. Dispute in this matter pertains to intake capacity of an institution by the name of **Shri Prince Shivaji Maratha Boarding House's College of Architecture**. The CoA, on carrying out inspection of the college in the year 2004 chose to restore the intake capacity of 40 students per year which was reduced to 30 students for two earlier academic years, 2003-2004 and 2004-2005. Such reduced intake capacity was based on a joint inspection undertaken by CoA and AICTE on 25th April 2003. The CoA had decided to restore the intake capacity to 40 students by a communication on 18th May 2004 upon being satisfied with a compliance report filed by the institution followed by inspection. For the Academic Year 2004-05 the Director of Technical Education, however, fixed the intake capacity of 30 students in respect of same institution on the basis of norms and standards fixed by the AICTE. Questioning legality of such action, the institution and the trust which ran the latter, brought an action under Article 226 of the Constitution of India before the High Court. The Bench of the High Court framed the question for adjudication in the following terms:

"3.....whether the All India Council of Technical Education Act, 1987 (for short, 'AICTE Act') overrides the provisions of the Architects Act, 1972 in the matter of prescribing and regulating norms and standards of architectural institutions. In other words, whether the AICTE Act which is a later Act has impliedly repealed the provisions of the Architects Act...."

10. The Bench of the Bombay High Court found, on examination of the scheme of both the statutes that the 1972 Act was specially designed to deal with the architects and maintenance of the standards of architectural education and profession with recognized qualifications. The scope of the AICTE Act, in the opinion of the Bench, covered various programmes of education, research and training in wide range of subjects including architecture. The Bench held that the 1972 Act was not impliedly repealed by the 1987 Act and quashed the order of the AICTE authorities reducing the intake capacity. Relying, inter alia, on a decision

of a two-Judge Bench of this Court in the case of *Bharathidasan University and Another vs. All India Council for Technical Education & Others,*[1] the High Court upheld the power of regulatory body under the 1972 Act as the final authority for the purpose of fixing the norms and standards of institutions running course on architecture. In the judgment appealed against, it was observed, after referring to different authorities: -

> "20..... It is obvious that the legislature never intended to confer on the AICTE a super power undermining the status, authority and autonomous functioning of the existing statutory bodies in areas and spheres assigned to them under the respective legislations. There is nothing in the AICTE Act to suggest a legislative intention to belittle and destroy the authority or autonomy of Council of Architecture which is having its own assigned role to perform. The role of the AICTE vis-a-vis the Council of Architects is advisory and recommendatory and as a guiding factor and thereby subserving the cause of maintaining appropriate standards and qualitative norms. It is impossible to conceive that the Parliament intended to abrogate the provisions of the Architects Act embodying a complete code for architectural education, including qualifications of the architects by enacting a general provision like section 10 of the AICTE Act. It is clear that the Parliament did have before it the Architects Act when it passed AICTE Act and Parliament never meant that the provisions of the Architects Act stand pro tanto repealed by section 10 of the AICTE Act. We, therefore, hold that the provisions of the Architects Act are not impliedly repealed by the enactment of AICTE Act because in so far as the Architecture Institutions are concerned, the final authority for the purposes of fixing the norms and standards would be the Council of Architecture. Accordingly, we quash and set aside the order of the Deputy Director reducing the intake capacity of the petitioner college of architecture from 40 to 30. Rule is accordingly made absolute in terms of prayer clauses (a) and (b) with no order as to costs."

11. SLP(C) No.5400 of 2011 also originates from a similar controversy and the appellant in this proceeding is **Rajiv Gandhi Proudyogiki Vishwavidayalaya.** This appeal arises out of a judgment delivered by a Division Bench of the Madhya

[1] (2001) 8 SCC 676

Pradesh High Court in a Writ Petition brought by a Society **(Bhartiya Vidya Mandir Shiksha Samiti)** running a college of Architecture. The said writ petition was registered as W.P. No.315 of 2011 and the judgment was delivered on 2nd February, 2011. In this case, the institution had been granted permission by the AICTE to conduct B. Arch Degree course with intake of 80 students for the academic sessions 2010-2011 and it was seeking affiliation from the said University. The Directorate of Technical Education had allotted 16 students to the institute upon conducting online counselling. The CoA, however, had mandated that the said institution ought to have a separate building, independent school or college of architecture and it should have separate infrastructure facilities for the aforesaid purpose. The appellant University (respondent No.2 in the Writ Petition) informed the institution that it could grant affiliation to them after approval of the programme B. Arch. by the CoA. This was contained in clause 2 of a communication issued by the University, dated 6th September 2010. In course of hearing before the High Court, as recorded in the judgment under appeal, it was submitted on behalf of the institution that it would construct their own building for the purpose of B. Arch. Degree course within a period of one year. The Bench of Madhya Pradesh High Court directed the appellant University to consider the matter with regard to grant of temporary affiliation to the institution without insisting upon compliance of condition No.2 in the letter dated 6th September 2010. The Bench, however, directed compliance of aforesaid condition of the CoA within a period of one year for conducting the said course and if no such compliance was made, and the institution could not get approval from AICTE (respondent No.3 in that proceeding) within the stipulated period, admission of students for B. Arch. course in future was made impermissible. In this decision, co-existence of power of both the regulatory bodies was in substance accepted. One of the questions on which the University wants decision of this Court in this appeal is whether the various regulations framed in pursuance of the 1972 Act could be overlooked by the Bench of the High Court in issuing such directions.

12. SLP(Civil) No. 8443 of 2011 is an appeal by the institution concerned, being **Bhartiya Vidya Mandir Shiksha Samiti**, assailing the same judgment of the Madhya Pradesh High Court, delivered in Writ Petition No. 315 of 2011 on 2 nd February 2011. In this appeal also, the question of conflict of powers in deciding admission norms between CoA and AICTE has been raised. The power of the CoA to direct construction of a separate building is specifically questioned in this appeal.

13. The same judgment has also been assailed by the CoA in SLP(Civil) No. 20460 of 2011. One of the grievances of the CoA in this appeal is that it was not made a party in the Writ Petition in which the High Court had directed granting of temporary affiliation to the institution without insisting on approval of Council of Architecture. On 18th July 2011, a Bench comprising of two Judges of this Court

granted permission to CoA to file this SLP. The direction of the High Court in the judgment under appeal was conditional in that the respondent-institution was required to construct and create separate building and infrastructure within a period of one year. That was the specific requirement of CoA so far as Bhartiya Vidya Mandir Shiksha Samiti is concerned.

14. SLP(Civil) No.17006 of 2016 has been instituted by AICTE challenging the legality of a common judgment and order passed by a Division Bench of the Karnataka High Court in Writ Appeal No.110 of 2013 and Writ Appeal No.112 of 2013. The dispute in these two appeals, inter-alia, was over contradictory directives issued by the CoA and AICTE in relation to admission of two students for the academic session 2011-2012 beyond the intake capacity by an institution operated by one BMS Educational Trust. The intake capacity so far as course of architecture was concerned for the applicable academic session was 80 students. The appellate committee of the AICTE had recommended that excess admission fee, five times that of total fee collected per student, ought to have been levied in each case of admission beyond the intake capacity. On the other hand, CoA had given its approval for intake of additional two students during the academic year 2011-2012 on condition that the institution would admit two students less than that of its intake capacity of 80 for the next academic session i.e. 2012-2013. In the writ petition, the learned Single Judge, referring to a decision of the Bombay High Court in the case of *Khayti Girish Purnima Kulkarni Vs. College of Architecture & Ors.*[2], had held that approval of CoA was sufficient and it was not necessary that the petitioners (the aforesaid Trust) had to seek approval from the AICTE. In the appeal preferred by the AICTE before an Appellate Bench of the same Court, it was held in substance by the Division Bench that the decision of the learned Single Judge would be ultimately subject to outcome of the pending appeal before this Court on the same point. That appeal, we are apprised, is the first case in this batch of appeals. In the case of *Khayti Girish Purnima Kulkarni* (supra), the judgment of the Division Bench of the Bombay High Court in *Shri Prince Shivaji Maratha Boarding House's Council of Architecture, Kolhapur Vs. State of Maharashtra and Ors.* was referred to and followed.

15. SLP(Civil) No.17005 of 2016 is also against same judgment by the Division Bench of the Karnataka High Court by which two writ appeals stood disposed of. AICTE is the appellant in this appeal. The origin of this appeal lies in the writ petition instituted by BMS School of Architecture. Legality of a circular issued by the Visvesvaraya University dated 19th September, 2011 mandating all institutions teaching architecture to secure approval of the AICTE was questioned in that writ petition. Also assailed in the writ petition was an order issued by the State Government on 21st September, 2011 in substance directing compliance of

[2] 2012 (4) AIR BOM R 371

the same requirement. The main point involved in this appeal is if AICTE norms can be made applicable in respect of architecture course or not.

16. SLP(Civil) No.28121 of 2018 (*Muslim Educational Association Vs. The University of Calicut & Ors.)* arises out of a decision of a Division Bench of the High Court of Kerala. In this decision, it has been held that approval of AICTE is necessary for starting a new college of architecture. The petitioner in that case before the High Court was the said Association, which had obtained approval of the CoA for starting the college. The affiliating university - the University of Calicut had declined approval. One of the reasons for that was that the Association had not obtained approval from AICTE. The Association approached the High Court invoking its writ jurisdiction questioning legality of the decision of the university declining its affiliation. In the judgment delivered on 29th August 2018 (in W.P.(Civil) No. 25412 of 2018) the High Court primarily addressed the question as to whether approval of AICTE was necessary in addition to the recognition or approval granted by the CoA. Following an earlier decision of the same Court in the case of *Thejus College of Architecutre Vs. State of Kerala & Ors.* in W.P.(C) No.23858 of 2018, decided on 6th August 2018, the Bench dismissed the Writ Petition, inter-alia, on the reasoning that it did not have approval of the AICTE.

17. In some of the cases involved in these proceedings appeal, the CoA has been prescribing certain measures for individual institutions to undertake to bring them at par with CoA norms. The specific provision of the 1972 Act or the regulations framed thereunder does not specifically provide for prescribing such corrective measures. Such directives, however, in our opinion, are incidental to the regulatory powers conferred upon the CoA.

18. There are specific provisions in the 1972 Act dealing with setting standards and norms for institutions dealing with the education of architecture. Some of these provisions have been referred to earlier in this judgment. There are also provisions for monitoring quality of education being imparted by the respective institutions. The CoA has also the power to make representation to the Central government in the event there are breaches of norms or standards prescribed by the regulations, which may ultimately result in withdrawal of such recognition. The decision making hierarchy within the CoA for making representations to the Central Government has also been statutorily prescribed, running up from inspectors to Executive Committee and ultimately the Council.

19. Both the regulatory authorities under the respective statutes have power to frame regulations for giving effect to the provisions of the respective Acts. Power to make rules in respect of certain areas covered by the statutes have been vested in the Central Government both under the 1972 Act and the 1987 Act. So far as

CoA is concerned, their power to make regulations is derived from Section 45 of the 1972 Act. The said provision stipulates: -

"45. Power of Council to make regulations.

(1) The Council may, with the approval of the Central Government, [by notification in the Official Gazette] make regulations not inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*)the management of the property of the Council;

(*b*)the powers and duties of the President and the Vice-President of the Council;

(*c*) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under Section 10, the times and places at which such meetings shall be held, the conduct of business thereat and the number of persons necessary to constitute a quorum;

(*d*) the functions of the Executive Committee or of any other committee constituted under Section 10;

(*e*) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;

(*f*) the appointment, powers and duties of inspector;

(*g*) the standards of staff, equipment, accommodation, training and other facilities for architectural education;

(*h*) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(*i*) the standards of professional conduct and etiquette and code of ethics to be observed by architects; and

(j) any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made."

(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days

which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation." **(emphasis supplied).**

20. The power to frame regulations by the AICTE originates from Section 23 of the 1987 Act. This section stipulates:-

"23. **Power to make regulations.**—(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council;

(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such Committee."

21. Under the 1987 Act, the power of Central Government to make rules is derived from Section 22 of the Act. The said provision stipulates:-

"22. Power to make rules.—

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure to be followed by the members in the discharge of their functions;

(b) the inspection of technical institutions and Universities;

(c) the form and manner in which the budget and reports are to be prepared by the Council;

(d) the manner in which the accounts of the Council are to be maintained; and

(e) any other matter which has to be, or may be, prescribed"

22. Similar power on the Central Government has been conferred under Section 44 of the 1972 Act, which lays down:-

"44. Power of Central Government to make rules.-
(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(*a*) the manner in which elections under Chapter II shall be conducted, the terms and conditions of service of the members of the Tribunal appointed under sub-section (2) of Section 5 and the procedure to be followed by the Tribunal;

(*b*) the procedure to be followed by the expert committee constituted under the proviso to sub-section (2) of Section 14 in the transaction of its business and the powers and duties of the expert committee and the travelling and daily allowances payable to the members thereof;

(*c*) the particulars to be included in the register of architects under sub-section (3) of Section 23;

(*d*) the form in which a certificate of registration is to be issued under sub-section (7) of Section 24, sub-section (4) of Section 26 and Section 33;

(*e*) the fee to be paid under Sections 24, 25, 26, 27, 28, 32 and 33;

(*f*) the conditions on which a name may be restored to the register under the proviso to sub-section (2) of Section 27;

(*g*) the manner of endorsement under sub-section (3) of Section 27;

(*h*) the manner in which the Council shall hold an enquiry under Section 30;

> *(i)* the fee for supplying printed copies of the register under Section 34; and
>
> *(j)* any other matter which is to be or may be provided by rules under this Act.
>
> (3) Every rule made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

23. In course of hearing before us, on behalf of AICTE three Regulations have been brought to our notice by Mr. Pandey, learned counsel representing this body. The first one carries the title "All India Council for Technical Education (Grant of approval for starting new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994." This Regulation has been framed by the AICTE in exercise of power under Section 23(1) of the 1987 Act and became effective on 31st October, 1994. Another Regulation, framed also in exercise of power under Section 23(1) read with Sections 10 and 11 of the 1987 Act of the year 2016 in supersession of earlier regulations has also been referred to. But so far as the present appeals are concerned, the respective causes of action predates this regulation of 2016 except in the case of the Muslim Educational Association, i.e. S.L.P.(Civil) No.28121 of 2018. The other Regulation is titled "All India Council for Technical Education (Norms and Guidelines for Fees and guidelines for admission in Professional Colleges) Regulations, 1994, framed in exercise of powers conferred under Section 23(1) and Sections 10 (j) and (o), 1987 Act. This one is dated 20th May, 1994. No other regulation or rule has been brought to our notice in course of hearing on behalf of AICTE.

24. Dr. Rajeev Dhavan, learned senior counsel representing the CoA has referred to Minimum Standard of Architectural Education Regulations, 1983, framed by CoA in exercise of powers conferred by clauses (e), (g), (h) and (j) of sub-section (2) of Section 45 read with Section 21 of the 1972 Act. Another document which was produced before us by Dr. Dhavan is the annual report of CoA for the year 2017-2018. So far as this document is concerned, its relevance for adjudication of these appeals would be the content recorded under following two sub-heads therein:-

"14.0 APPROVAL OF NEW INSTITUTIONS IN THE ACADEMIC SESSION 2017-18:-

During the year under the report 22 new institutions were granted approval to impart Bachelor of Architecture Courses and 6 existing institutions were granted approval for imparting PG Courses.

With this, the total number of institutions imparting recognized courses in architecture in the year 2017-18 with the approval of Council are 468.

The annual intake of students sanctioned by the Council at Undergraduate level is approximately 24741, Post-graduate level is 1640.

15.0 EXTENSION OF APPROVAL FOR THE ACADEMIC SESSION 2017-18 ONWARDS:

The Council granted extension of approval or otherwise for UG and PG Courses for the academic session 2017-18 as under:-

i) Institutions granted extension of approval for B.Arch. Course: 408

ii) Institutions granted extension of approval for M. Arch. Course: 64

iii) Institutions put on 'No Admission' : 12

iv) Institution put on 'withdrawal of approval' : NIL

The Council also initiated the process of inspection for the academic session 2018-2019 which were due for inspections."

Reporting on these subjects demonstrate CoA's continued engagement in the process of recognition of "authorities" granting architectural qualification.

25. We find that both the statutes have provisions for approval and monitoring of architecture courses run by institutions. So far as the 1972 Act is concerned, the expression employed is recognition of qualification and the ultimate authority for granting or withdrawing recognition to degree or diploma courses in architectural education by different academic institutions is the Central Government. The CoA under the statutory scheme however has significant role in such decision making process. AICTE has also been empowered under the 1987 Act to lay down standards and norms for courses on architecture along with other subjects coming within the term "technical education". We have extracted relevant parts of Section 10 of the 1987 Act earlier in this judgment. Both the Councils also appear to have had proceeded with this understanding. In the decision of the Bombay High Court delivered in the case of *Shri Prince Shivaji Maratha Boarding House's Council of Architecture,* (supra), it is recorded in the judgment under appeal that joint inspection was held in respect of the institution involved in that proceeding by AICTE and CoA. Moreover, under Section 3(3)(b), of the 1972 Act, the CoA is required to have two persons nominated by the AICTE. On the other hand, Section

3 (4) (m) of the 1987 Act stipulates that AICTE is to consist of representatives of various bodies, including a member to be appointed by the Central Government to represent the CoA. Section 10(k) of the 1987 Act requires AICTE to grant approval in consultation with the agencies concerned.

26. Though both the enactments deal with several aspects of the main subject matter of the respective legislations, on the aspect of setting norms for architectural education and for monitoring the institutions engaged in imparting architectural education, there are overlapping powers of these two Councils. Section 14 of the 1972 Act has been reproduced earlier in this judgment. On the aspect of recognising any architectural qualification, Sections 18 and 19 thereof stipulate:

> **"18. Power to require information as to courses of study and examinations.-** Every authority in India which grants a recognised qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.
>
> **19. Inspection of examinations.-**
>
> 1. The Executive Committee shall, subject to regulations, if any, made by the Council, appoint such number of inspectors as it may deem requisite to inspect any college or institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that college or institution.
>
> 2. The inspectors shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff, equipment, accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend.
>
> 3. The Executive Committee shall forward a copy of such report to the college or institution and shall also forward copies with remarks, if any, of the college or institution thereon, to the Central Government."

27. Section 20 of the 1972 Act deals with withdrawal of recognition of an authority listed in the Schedule to the Act. The process involves a report by the Executive Committee of the CoA. On the basis of such report, if it appears to the Council that the courses of study and examination held in any college or institution or the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution do not conform to the standards prescribed by the regulations then the CoA is empowered to make a representation for withdrawal of recognition to the appropriate Government. Section 21 of the 1972 Act also empowers the Council to prescribe minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India.

28. From the nature of the dispute giving rise to these seven appeals, it is apparent that the shortcomings pointed out by the two regulatory bodies relate primarily to infrastructural facilities of the respective institutions. The power of the CoA to examine such infrastructural facilities at the time of considering the application for recognition or monitoring the quality of an institution recognized by the Council stems from Sections 18, 19, 20 and 21 of the 1972 Act.

29. A Regulation has been framed by the CoA with the approval of the Central Government titled as the Council of Architecture Regulations, 1982. Part VIII of the 1982 Regulations deals with inspection of educational institutions of Architecture. Clauses 29 and 30 thereof stipulate:

> **"29. Inspection of educational institutions and their examinations.-** The inspection of architectural institutions and the attendance at the time of training and examination under section 19 shall be carried out in accordance with the following manner, namely : -
>
> (1) each institution imparting instruction in architecture shall be inspected by the inspectors once in five years:
>
> (2) the Registrar shall fix the date of inspection in consultation with the inspector or inspectors and the institution;
>
> (3) the Executive Committee shall appoint such number of inspectors as may be deemed necessary to inspect an institution or to attend any examinations and to report thereon:
>
> Provided that the minimum number of inspectors for such inspection shall be two.
>
> (4) (a) every inspector shall receive from the Chairman, Executive Committee, a formal commission in writing under the seal of the Council;

(b) the instructions of the Chairman shall specify the institution or institutions, courses of studies and scheme of examination or examinations or training programme or educational standards including staff, equipments, accommodation, training and other facilities which are required to be inspected or attended;

(c) the Chairman shall inform the inspector that he is to report to the Executive Committee who shall submit their final report with recommendations to the Council in accordance with these regulations;

(d) the Registrar shall provide the inspector with a copy of the documents and of the recommendations of the Council in regard to recognition of the qualifications or educational standards and improvements to be made thereon and of the resolutions with regard to architectural education."

"30. Powers and duties of Inspectors.-

(1) It shall be the duty of the inspector: -

(a) to make himself acquainted with such previous reports, if any, on the institution or institutions which he is appointed to inspect as the Executive Committee may direct and with the observations of the University or examining body and the report of the Council thereon;

(b) to attend personally institution or examination or training which he is required to inspect but not to interfere with the conduct thereof;

(c) to inspect the institution which provides a recognized course of study or has applied for the recognition of its course of study and scheme of examination and to see that the course is in conformity with the regulations relating to education and the standards laid down by the Council;

(d) to report to the Executive Committee his opinion as to the sufficiency or insufficiency of standards of education or examination or institution inspected by him;

(e) to set forth in his report, in order, all the necessary particulars as to the question proposed in the written, oral or practical parts of each examination attended by

him, the sessional and class work submitted by the candidates at the time of practical or *viva-voce* examination, the arrangements made for invigilation, the method and scales of making, the standard of knowledge shown by the successful candidates and generally all such details as may be required for adjudicating on the scope and character of the examination;

(f) to set forth in his report necessary particulars in respect of institutions so as to enable the Executive Committee to assess the existing facilities for teaching as well as the extent to which the recommendations of the Council regarding professional education have been given effect to;

(g) to compare, on receipt from the Registrar, proof copy of any of his reports, the proof with the original and correct, sign and return it to the Registrar for preservation in the records of the Council as the authentic copy of such report.

(2) Every report of the inspector or inspectors shall be signed and submitted to the Executive Committee.

(3) The reports of inspectors shall be deemed confidential, unless in any particular case the Executive Committee otherwise directs.

(4) Copies of the report by inspectors marked confidential shall be forwarded to the University or the examining body concerned as well as the institution with a request that the authority should furnish to the Executive Committee within six months from the date of dispatch, such observations thereon as they may think necessary.

(5) A confidential copy of report of an inspector or inspectors, with the observations of the University or the examining body or the institution thereon, shall be supplied to each member of the Council and shall be considered together with comments of the Executive Committee by the Council along with the observations thereon of the Executive Committee for consideration by the Council at their next meeting.

(6) A copy of every report by the inspector or inspectors, with the observations of the University or the examining body and the institution concerned and the opinion of the Executive Committee thereon, shall, after approval by the

Council, be forwarded to the Central Government and State Government concerned."

30. The Minimum Standards of Architectural Education Regulations 1983 in particular, deals with the academic and infrastructural features of architecture courses. Clause (5) of the said Regulations provides:-

"5 Intake and Migration:-

(1) The sanctioned intake of candidates at the first year level shall not exceed a maximum of 40 in a class. If more than 40 candidates are admitted, separate classes shall be organized.

(2) The institutions may permit, at their discretion, migration of students from one institution to another subject to the maximum number of students not exceeding the permitted maximum intake in a class."

Clause 8 of the 1983 Regulations further provides:-

"8. Standards of staff, equipment, accommodation, training and other facilities for technical education

(1) The institutions shall maintain a teacher/student ratio of 1:8.

(2) The institutions shall have a minimum number of 12 faculty members for a student strength of 100.

(3) The institution with the maximum intake of 40 in a class may have the faculty pattern as prescribed in Appendix-B.

(4) The institutions shall encourage the faculty members to involve in professional practice including research.

(5) The institutions shall provide facilities as indicated in Appendix-C.

(6) The institutions shall encourage exchange of faculty members for academic programmes.

Notwithstanding anything contained in these regulations, the institutions may prescribe minimum standards of Architectural Education provided such standards does not, in the opinion of the Council, fall below the minimum standards prescribed from time to time by the Council to meet the requirements of the profession and education thereof."

31. Appendix B to these Regulations deal with designation, pay-scale and qualification required to be prescribed for faculty positions. The content thereof is

not being reproduced in this judgment as for the purpose of determining the issues involved in these appeals, the stipulations barring those contained in Appendix C are not of much significance. Appendix C thereof reads: -

"APPENDIX-C

Physical Facilities

The Institution of Architecture should be located in a building to have a floor area of about 15 sq.m.m. per student. The building should include class rooms and at least 5 studios, adequate space for faculty members, library, workshop, materials museum, laboratories, exhibition/ conference room, office accommodation and common area for students and staff. The space requirements per student for architectural education whether in the Institution or in the Hostel are apt to be more than for most other types of professional courses like engineering and medicine because of the large space required for preparation of drawings. This factor should be borne in mind in the design of Hostels and Studios.

Facilities may also be provided for extra-curricular activities and sports.

The equipment in the workshop/laboratories has also to be provided to meet with the special requirement for architectural education. It is desirable to provide locker facilities in the studios for students.

The Library, Workshops, Laboratories and Photography unit should be managed by professionally qualified staff with adequate supporting staff to assist the students and faculty members in their academic programmes. There should also be administrative supporting staff to run the Architectural Institutions.

It is desirable to provide hostel accommodation and residential accommodation for staff and students in close proximity of the institution."

32. So far as the two Regulations of 1994 under the 1987 Act produced before us on behalf of AICTE, the Regulations dated 20th May, 1994 contemplates fixing approval norms and intake capacity to professional colleges. Clause 2 of this Regulation however exempts universities, university departments or colleges, government colleges, aided colleges and certain other institutions from its application. The next one has been made applicable to all new technical institutions including universities and subsisting technical institutions and lays

down a detailed approval process through multi-tier decision making structure. The AICTE appears to have made subsequent Regulations time to time superseding the earlier ones in respect of the approval process, but barring the Regulations made in 2016, no other regulations has been produced before us. None of the Regulations produced before us however specify the actual norms but refer to standards and norms to be laid down for approval of technical institutions, which include institutions imparting architectural education.

33. Clause 6 of the 1994 regulations dated 31st October, 1994 deals with conditions for grant of approval, which stipulates:

> **"6. Conditions for grant of approval.-** Every application under sub-regulation (1) of regulation 4 shall be considered subject to the fulfilment of the following conditions, namely:-
>
> (i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructure and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting annual recurring expenditure:
>
> (ii) The courses or programmes shall be conducted as per the assessed technical manpower demands;
>
> (iii) The admissions shall be made according to the regulations and directions of the Council for such admissions in the respective technical institution or university;
>
> (iv) The tuition and other fees shall be charged with the overall criteria as may be laid down by the Council;
>
> (v) The staff shall be recruited as per the norms and standards specified by the Council from time to time;
>
> (vi) the governing Body in case of private technical institutions shall be as per the norms as specified by the council;

34. Appearing on behalf of AICTE in Civil Appeal No.364 of 2005, the fact that there are overlapping provisions on the question of grant of approval and subsequent monitoring of architectural education under both these Acts, has not been seriously disputed by Mr. Pandey. His main submission is that the 1987 Act being a later statute, covering common field, the provisions of the 1972 Act, to the extent the same deals with architectural education, shall be deemed to have been repealed by implication. The judgment of this Court relied upon on this point is

the case of *Ajoy Kumar Banerjee and Others Vs. Union of India and Others*[3] His further submission is that the power of AICTE under the 1987 Act has already been upheld by this Court in the case of *State of Tamil Nadu and Others Vs. Adhiyaman Educational Research Institute and Others*[4] On the same point, another judgment of this Court in the case of *Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and Others*,[5] has also been relied upon by him. The other authority he has cited in support of his submission that the Rules and Regulations framed by the AICTE has the force of law and binding is the case of *Parshvnath Charitable Trust and Others Vs. All India Council for Technical Education and Others*[6] In the case of *Varun Saini & Ors. Vs. Guru Govind Singh Indraprastha University*[7] also, the necessity on the part of the technical institutions for taking prior approval of AICTE has been highlighted.

35. Primacy of AICTE on the question of giving approval to a technical institution and subsequent monitoring thereof have been discussed in the cases of *Orissa Lift Irrigation Corporation Limited* (supra) and *Parshvanath Charitable Trust and Others* (supra). But in these two cases, the question of inter-se primacy between the rival regulatory bodies covering the same subject did not arise. In the case of *Parshvanath Charitable Trust* (supra), the dispute was on the question as to whether shifting of location of college running courses on technical education could be effected without obtaining a 'No Objection Certificate' (NOC) from the AICTE. The Handbook of Approval Process, 2008 provides for obtaining NOCs from the State Government, UT administration and affiliating bodies concerned with the AICTE as per laid down procedure subject to the fulfilment of norms and standards of AICTE. The college concerned had changed location without adhering to the aforesaid procedure and it was held by this Court in that decision that withdrawal of approval by the AICTE was valid, there being no compliance with the legal requirements and binding conditions of recognition, inter-alia, by the AICTE. The lis in the case of *Orissa Lift Irrigation Corporation Limited* (supra) arose out of a dispute pertaining to service conditions of engineers including junior engineers of the said Corporation. In that case, a diploma holder in electrical engineering had joined the Corporation as junior engineer (electrical) and while in service he acquired B.Tech. (Civil) degree from a deemed university. The said deemed university did not have approval of the AICTE. That University had started its distance education programme without taking approval from any of the regulatory authorities including University Grants Commission (UGC) and AICTE. In this decision also, judgment in the case of *Bharathidasan University* (supra) was taken note of. It was however held that deemed universities, whose

[3] (1984) 3 SCC 127
[4] (1995) 4 SCC 104
[5] (2018) 1 SCC 468
[6] (2013) 3 SCC 385
[7] (2014) 16 SCC 330

courses were subject of dispute in the aforesaid cases were required to abide by the provisions of the AICTE Regulations and could not introduce courses leading to award of degrees in engineering without the approval of AICTE.

36. In the case of *State of Tamil Nadu and Another Vs. Adhiyaman Educational and Research Institute and Others*[8], the controversy arose out of certain overlapping provisions between the 1987 Act and Madras University Act, 1923. The disputes were mainly on the aspects of prescribing terms and conditions for affiliation of different institutions including engineering colleges. It was held that in respect of the subjects specified under Section 10 of the 1987 Act in respect of institutions imparting technical education, it would not be the University Act but the Central Act and the Council created under it would have the jurisdiction to that extent. It was held that after coming into operation of the Central Act, the provisions of the University Act would be deemed to have become unenforceable. In case of technical colleges like engineering colleges, this view was taken by this Court, having regard to the fact that the Central statue had been enacted by the Parliament under Entry 66 of List I as well as Entry 25 of List III. It was also held in that judgment that the provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University was to remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.

37. Learned counsel representing the AICTE has referred to a communication emanating from the Ministry of Human Resource Development, Government of India, bearing No.F.17 11/2003 TS.IV. This communication specifically deals with this conflict and specifies:

> "The mandate given to the AICTE is to coordinate the development of technical education in the country at all levels. Grants of approval for starting new technical educational institutions and for introduction of new courses or Programmes in consultations with the agencies concerned. Although, the Council of Architecture deals with mainly architect profession and the Architect Act may be taken as a Special Act dealing with profession of architecture, the overall planning and coordination of technical education falls within the ambit of AICTE. For starting new courses, increase in intake, setting up of new technical institutions, the power is vested with AICTE

[8] (1995) 4 SCC 104

> under Section 10(k) of the AICTE Act. In that process AICTE has to inspect institutions, look into their infrastructure, set up norms and standards as per the power provided in the AICTE Act. The Architect Act does not have any power to set up any institute or grant approval to new courses or increase in intake. For the benefit of the profession, the Architect Act provides the council the authority to prescribe minimum standards of architectural education for the colleges or institutions in India. Regulations framed under Architect Act, 1972, also provides for inspection of institution once in five year and make recommendation to the central government. The ministry therefore feels that there is no overlapping of power between the two statutory bodies in so far as inspections of institutions are concerned. The architecture education is to be governed under AICTE Act and CoA should maintain register for recognition of architects who have completed full time Programmes/courses as approved by the AICTE or qualifications mentioned in the schedule of CoA Act.
>
> The matter regarding implementation of various provisions, under the Architect Act, 1972 and the AICTE Act, 1987 has been considered in the ministry and after careful examination the ministry is of the view that all aspect of architectural education shall be concern of the AICTE and CoA would look into the architect profession and ethics for maintaining its professionalism in the field of Architecture."

38. It is brought to our notice by Mr. Pandey, referring to Section 25 of the 1987 Act, that it is the Central Government which is the ultimate authority deciding on issues in giving effect to the provisions of the 1987 Act and hence the aforesaid memorandum ought to be given effect to while construing the conflict arising from these two statutes. Section 25 of the 1987 Act stipulates:-

> "**25. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
>
> Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

> (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

39. Similar provision is there under Section 43 of the 1972 Act. But no case has been made out that the memorandum to which reference has been made, has been published in the official gazette. This memorandum does not meet the requirement of valid exercise of power under the aforesaid two provisions by the Central Government so as to make it binding. This memorandum, at best, can be treated to be an advisory of the Ministry not having enforceable effect. Moreover, the aforesaid memorandum has been issued beyond the timeframe laid down under the provisions of the statutes reproduced in the said two sections of the respective Acts. The memorandum also cannot be treated to be an executive order under Article 77 of the Constitution of India.

40. Main submission of Dr. Dhavan has been that since the 1972 statute specifically deals with architectural education along with certain other areas pertaining to regulating the profession of architects, the provisions of the said Act ought to prevail over the provisions of the 1987 Act. This statute, according to him is "architect" and "architectural education" specific. On the point of implied repeal, his submission is that as a proposition of law, implied repeal of an earlier statute under the normal circumstances ought not to be presumed merely because a subsequent legislation having common subjects of legislation comes into operation unless there is express provision to that effect. The decisions relied upon in support of this proposition is the case of *M/s. Mathra Parshad and Sons Vs. State of Punjab and Others*[9]. This judgment is an authority for the proposition that in absence of express provision no repeal can be implied unless the two statutes cannot stand together. He also referred to another authority i.e. *A.B. Abdulkadir Vs. State of Kerala*[10]. Relying on the latter authority, he has argued that in the event the later Act deals with substantially the same subject as that of a former Act, then the principle of repeal could be applied. In the case *A.B. Abdulkadir* (supra), however, the subsequent statute, being Finance Act, a Central legislation had specific provision for repeal of the corresponding laws.

41. He has also referred to several authorities to contend that the definition clause has to be construed with caution and a particular definition given in such clause may have to be reversed, if the statutory context otherwise requires. According to him, the context can be external and can relate to another existing legislation. CoA's case on this point is that though architecture is included in the definition of "technical education" in the 1987 Act, coverage of the said subject in terms of the regulatory framework created thereunder cannot be automatically inferred. The rationale behind this submission of CoA is that the 1972 Act covers

[9] 1962 Supp. (1) SCR 913.
[10] 1962 Supp. (2) SCR 741

architecture education specifically in all its aspects. The authorities cited for this proposition are:-

Assn. of Registration Plates v. Union of India[11]; Whirlpool Corpn. v. Registrar of Trade Marks[12]; K.V. Muthu v. Angamuthu Ammal[13]; Printers (Mysore) Ltd. V. Asstt. CTO; [14]Pushpa Devi v. Milkhi Ram.[15]

42. The distinction or difference between Technical institutions and Technical education as contained in the 1987 statute has been dealt with by the two Judge Benches of this Court in the cases of *Bharathidasan University* (supra) and *Association of Management of Private Colleges* (supra). On the same point, two other authorities have been cited on behalf of CoA dealing with the repugnancy between a State Act and a Central Act under Article 254 of the Constitution of India. These are *Municipal Council Palai Vs. T.J. Joseph*[16] *and Tika Ramji Vs. State of U.P.*[17] He has further argued that under ordinary circumstances, special law ought to override the general law. According to him, the 1972 Act is a special law, dealing with, *inter alia,* recognition of institutions conducting architectural education. The 1987 Act, in his submission is a general law dealing with technical education as a whole. It is his case that technical education may include degree or diploma in architecture. In these appeals, there is specific legislation dealing with architectural education. In the event there is conflict between the norms and standards set under the general law, which, according to him is the 1987 Act and law specifically dealing with architectural education being 1972 Act, he has argued that proper course would be to proceed on the basis that the intention of the legislature was to keep out the provisions relating to standards and norms pertaining to architectural education from the 1987 Act and Regulations framed thereunder and mandate following the norms and standards stipulated in the 1972 Act and connected Regulations. Other authorities relied on for this proposition are: *R.S. Raghunath Vs. State of Karnataka*[18]; *LIC Vs. D.J. Bahadur*[19] ; *U.P. State Electricity Board Vs. Hari Shankar Jain*[20]; and *J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. State of U.P.* [21] These are all authorities in support of the proposition of law that a general provision should yield to the special provision, if two statutes are in direct conflict.

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[11] (2005) 1 SCC 679
[12] (1998) 8 SCC 1
[13] (1997) 2 SCC 53
[14] (1994) 2 SCC 434;
[15] (1990) 2 SCC 134
[16] (1964) 2 SCR 87
[17] (1956) 1 SCR 393
[18] (1992) 1 SCC 335
[19] (1981) 1 SCC 315
[20] (1978) 4 SCC 16
[21] (1961) 3 SCC 185

43. His main reliance is on the case of *Bharathidasan University* (supra), in support of his argument that so far as education in Architecture is concerned, the 1972 Act ought to survive and not eclipsed by the 1987 legislation. In the case of *Bharathidasan University*, the main point involved was as to whether a university in order to start a course on technical education was required to obtain prior approval of the AICTE or not. The University in question in that case was constituted under Bharathidasan University Act 1981 with its specified area of operation over three districts in the State of Tamil Nadu. The university commenced courses in technology related subjects such as Information Technology, Management, Bioengineering and Technology, Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology etc. The AICTE had objected to running of such courses without their prior approval. It filed a writ petition before the Madras High Court to prevent the University authorities from running/conducting any course or programme in technical education. The University took a plea that it would not fall within the definition of technical institution contained in Section 2 (h) of the 1987 Act and thus was outside the purview of Section 10 (k) thereof. Section 2 (h) of the 1987 Act stipulates:-

> "(h) "Technical institution" means an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions."

It was held in this judgment :-

> "15. To put it in a nutshell, a reading of Section 10 of the AICTE Act will make it clear that whenever the Act omits to cover a "university", the same has been specifically provided in the provisions of the Act. For example, while under clause (k) of Section 10 only "technical institutions" are referred to, clause (o) of Section 10 provides for the guidelines for admission of students to "technical institutions" and "universities" imparting technical education. If we look at the definition of a "technical institution" under Section 2(h) of the Act, it is clear that a "technical institution" cannot include a "university". The clear intention of the legislature is not that all institutions whether university or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the legislature to

have merely provided a definition of "technical institution" by not excluding "university" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and university in several provisions in the Act. The definition of "technical institution" excludes from its purview a "university". When by definition a "university" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "university" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a "university" but only a "technical institution". If Section 10(k) does not cover a "university" but only a "technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply to universities when the Act maintains a complete dichotomy between a "university" and a "technical institution". Thus, we have to focus our attention mainly to the Act in question on the language adopted in that enactment. In that view of the matter, it is, therefore, not even necessary to examine the scope of other enactments or whether the Act prevails over the University Act or effect of competing entries falling under Entries 63 to 65 of List I vis-a-vis Entry 25 of List III of the Seventh Schedule to the Constitution.

16. The fact that initially the Syndicate of the appellant University passed a resolution to seek for approval from AICTE and did not pursue the matter on those lines thereafter or that other similar entities were adopting such a course of obtaining the same and that the Andhra Pradesh High Court in *M. Sambasiva Rao case* [(1997) 1 An LT 629 (FB)] had taken a particular view of the matter are not reasons which can be countenanced in law to non-suit the appellant. Nor such reasons could be relevant or justifying factors to draw any adverse finding against and deny relief by rejecting the claims of the appellant University. We also place on record the statement of the learned Senior Counsel for the appellant, which, in our view, even otherwise is the correct position of law, that the challenge of the

> appellant with reference to the Regulation in question and claim of AICTE that the appellant University should seek and obtain prior approval of AICTE to start a department or commence a new course or programme in technical education does not mean that they have no obligation or duty to conform to the standards and norms laid down by AICTE for the purpose of ensuring coordinated and integrated development of technical education and maintenance of standards."

44. In the case of *Association of Management of Private Colleges Vs. All India Council of Technical Education and Others*[22], the dispute was between private colleges, including certain colleges affiliated to Bharathidasan University on one side and AICTE on the other, broadly on the same question which engaged this Court in the case of *Bhartidasan University*. In this decision, referring to certain portions of the judgment of this Court in the case of *Parshvanath Charitable Trust* (supra), it was held:-

> **"52.** The italicised portions from the said decision in *Parshvanath Charitable Trust case [Parshvanath Charitable Trust* v. *All India Council for Technical Education,* (2013) 3 SCC 385] referred to supra would make it clear that the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies which they are assigned to perform. Further, the AICTE Act does not intend to be an authority either superior or to supervise or control the universities and thereby superimpose itself upon the said universities merely for the reason that it is laying down certain teaching standards in technical education or programmes formulated in any of the department or units. It is evident that while enacting the AICTE Act, Parliament was fully alive to the existence of the provisions of the UGC Act, 1956 particularly, the said provisions extracted above. Therefore, the definition of "technical institution" in Section 2(h) of the AICTE Act which authorises AICTE to do certain things, special care has consciously and deliberately been taken to make specific mention of university, wherever and whenever AICTE alone was expected to interact with a university and its departments as well as constituent institutions and units. It was held after analysing the provision of Sections 10, 11 and 12 of the AICTE Act that the role of

[22] (2013) 8 SCC 271

the inspection conferred upon AICTE vis-a-vis universities is limited to the purpose of ensuring proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it with no further or direct control over such universities or scope for any direct action except bringing it to the notice of UGC. In that background, this Court in *Bharathidasan University case [Bharathidasan University* v. *All India Council for Technical Education,* (2001) 8 SCC 676] made it very clear by making the observation that it has examined the scope of the enactment as to whether the AICTE Act prevails over the UGC Act or the fact of competent entries fall in List I Entry 66 vis-a-vis List III Entry 25 of Schedule VII of the Constitution.

53. A cumulative reading of the aforesaid paragraphs of *Bharathidasan University case [Bharathidasan University* v. *All India Council for Technical Education,* (2001) 8 SCC 676] which are extracted above makes it very clear that this Court has exempted universities, its colleges, constituent institutions and units from seeking prior approval from AICTE. Also, from the reading of paras 19 and 20 of *Parshvanath Charitable Trust case [Parshvanath Charitable Trust* v. *All India Council for Technical Education,* (2013) 3 SCC 385] it is made clear after careful scanning of the provisions of the AICTE Act and the University Grants Commission Act, 1956 that the role of AICTE vis a-vis universities is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself.

54. It is rightly pointed out from the affidavit filed by UGC as directed by this Court in these cases on the question of affiliated colleges to the university, that the affidavit is very mechanical and it has simply and gratuitously without foundation, added as technical institutions including affiliated colleges without any legal foundation. Paras 13, 14, 15 and 19 of the affidavit filed by UGC and the assertion made in Para 23 is without any factual foundation, which reads as under:

> "That it is further submitted that affiliated colleges are distinct and different than the constituent colleges. Thus, it cannot be said that

> constituent colleges also include affiliated colleges."
>
> Further, the assertion of UGC as rightly pointed out by Dr Dhavan in the written submission filed on behalf of the appellant in CA No. 1145 of 2004 that the claim that UGC does not have any provision to grant approval of technical institution, is facile as it has already been laid down by this Court that the AICTE norms can be applied to the affiliated colleges through UGC. It can only advise UGC for formulating the standards of education and other aspects to UGC. In view of the law laid down in *Bharathidasan University [Bharathidasan University* v. *All India Council for Technical Education,* (2001) 8 SCC 676] and *Parshvanath Charitable Trust* [*Parshvanath Charitable Trust* v. *All India Council for Technical Education,* (2013) 3 SCC 385] cases, the learned Senior Counsel Dr Dhavan has rightly submitted for rejection of the affidavit of UGC, which we have to accept as the same is without any factual foundation and also contrary to the intent and object of the Act."

45. Learned counsel appearing for different institutions in this set of appeals have broadly supported the arguments advanced on behalf of CoA. Learned counsel for the **Muslim Educational Association** [the appellant in SLP(C) No.28121 of 2018] has assailed the decision of the Calicut University refusing to give affiliation to the said institution. Reference has been made to regulation 15(3) of the Minimum Standards of Architectural Education Regulation, 2015, which gives 3 years to provide the building for different infrastructural facilities for a college coming within the ambit of the said Act. In fact, it has been argued on behalf of the said institution that the University could not demand AICTE approval and within the State of Kerala, there were many institutions imparting architectural education solely on the basis of recognition granted under the 1972 Act.

46. In the case of *Bharathidasan University* (supra), this Court found that in the 1987 Act, there is a distinction made by the legislature between a technical institution per se and certain other kinds of institutions over which some other kind of monitoring or supervision is there by properly constituted universities. That would be apparent from the definition of technical institution under the 1987 Act. Sections 10 (k) and (m) of the 1987 Act also specifically deal with technical institution. Thus the 1987 Act recognises the distinguishing feature of a technical institution not being a university. The Council constituted under it has supervisory and monitoring power over technical institutions not being a university imparting

courses in technical education. This was one of the main reasoning as to why it was found by this Court in the case of *Bharathidasan University* (supra) that the said university would remain out of the regulatory ambit of the AICTE. Broadly the same logic was followed in the other authority, *Association of Management of Private Colleges* (supra). The case of *Adhiyaman Educational and Research Institute and Others* (supra), was distinguished in this decision and the relevant paragraphs in that regard have been referred to earlier in this judgment. None of the authorities cited on behalf of the AICTE, however, deals with a situation where there is a pre-existing Central legislation dealing with overlapping power on the same subject coming within the definition of "technical education".

47. CoA in these appeals wants to establish its pre-dominance on the ground that the 1972 Act is a special Act and AICTE's stand on the other hand is that the 1987 Act having come to the statue book on a later date, the provisions thereof ought to prevail when the same are in conflict with an earlier statute. As a proposition of law, we accept AICTE's stand that there need not be complete identity in the subject-matters of the two rival statutes being tested in the yardstick of point of time of their commencement of operation. Again, as a proposition of law, the principle of law canvassed by the rival bodies are accepted tools of construction. But they require application having regard to the specific circumstances of a given case. It is not an absolute proposition of law that a later Act would always prevail over the former in the event there are clashing provisions even if there is no express provision of repeal. In the case of *Ajoy Kumar Banerjee* (supra), it was held, referring to Maxwell on the Interpretation of Statutes, Twelfth Edition:-

> **"39.** From the text and the decisions, four tests are deducible and these are: (i) the Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law."

48. We shall examine now as to whether the 1972 Act fits the description of a special legislation so as to prevail over a subsequent enactment covering its field or area of operation. A special law implies a statute covering a particular subject specifically. The subject of conflict in the present proceedings is architectural education. The 1972 Act however does not solely deal with architectural education. The Act intends to control or regulate the profession of architects. It

has two main features, one part dealing with regulating the profession of architect and the other part regulating architectural education. Significant portion of the statute deals with formation of the CoA but the function of that body is essentially to regulate and monitor the other two areas of this statue. So far as effect of recognition is concerned, Section 17 of the 1972 Act stipulates:-

> "17. Effect of recognition.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognised qualification shall be a sufficient qualification for enrolment in the register."

49. The 1987 Act deals with technical education and in particular the methodology for approval technical institutions and their monitoring. The dispute has arisen in these proceedings as architecture has been included with other subjects in the definition of "technical education" [Section 2 (g)]. Dr. Dhavan wants us, in effect, to exclude the subject of architecture from the said definition clause while construing the applicability of the Regulations for approval of a technical institution and its subsequent monitoring. He has referred to the opening sentence of Section 2 of the 1987 Act, which contains the definitions and reads:-

> "In this Act, unless the context otherwise requires.."

Such context, according to him can be external, outside the specific statute and includes other subsisting legislations. Before we deal with this submission, we shall refer to certain other key features of the two enactments.

50. The provisions of 1987 Act have not been immunised by a non-obstante clause like the one employed in Section 17 of the 1972 Act. Having regard to the scheme and provisions of these two statutes, ex-facie it is difficult to label either of them as special law or general law. The 1987 Act has certain features of a special law being devoted to setting up, supervision and monitoring of institutions imparting technical education. But the said statute does not cover technical education imparted by all types of institutions. The exceptions have been clearly mentioned in Section 2(h) of the act and explained in the cases of *Bharathidasan University* (supra) and *Association of Management of private colleges* (supra). So far as the 1972 Act is concerned, its application is not confined to architecture education alone. This enactment contemplates establishing the Council of Architecture, recognizing degrees and diplomas in architecture and regulating the profession of architects. But there is inter-link between architecture education and registration of architects, on which aspect we shall dilate later in this judgment.

51. Under both the statutes there are overlapping areas under which the respective Councils could make Regulations. Though these Acts, by themselves, do not come into direct conflict the inconsistencies have surfaced in implementing the power given to the Councils constituted under the respective

enactments. AICTE contends that the later statute ought to prevail and as a corollary the regulations framed under the later statute should prevail. CoA wants its power to eclipse AICTE's dominant role as a regulator in relation to architectural education on the strength of the 1972 Act being a special Act. The three regulations under the 1987 Act which have been brought to our notice do not directly lay down any specific norm or standard which ought to be followed. Such norms appear to have been set by the AICTE in pursuance of the aforesaid regulations. The two Regulations of 1994 do not lay down specifically such norms. The 2016 regulations has provision for Approval Process Hand Book which may be published from time to time laying down the manner in which approval shall be given.

52. In the case of *State of Tamil Nadu and Another* (supra), conflict was between State Legislations, being Tamil Nadu Private Colleges (Regulation) Act, 1976 and Madras University Act 1923 and the provisions of 1987 Act. In this judgment it was, inter-alia, held :-

> **"30.** A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out

> earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

53. The case of *Orissa Lift Irrigation Corporation Limited* (supra) also gives primacy to the AICTE on the question of necessity for an engineering college to obtain approval from the AICTE. In this case, question arose on the point as to whether engineering degree courses operated by colleges could be conducted by open universities through distance learning mode in absence of approval by the AICTE. This case and the case of *Parshvnath Charitable Trust and Others* (supra) have been discussed in the preceding paragraphs. These authorities cited on behalf of the AICTE however do not deal with conflict arising from two Regulations framed under two Central statutes, both conferring regulatory powers over a particular subject in the field of technical education on two different statutory bodies. The ratio of the decision in the case of *Bharathidasan University* (supra), expanded by the two Judge Bench judgment in the case of *Association of Management of Private Colleges* (supra) have been cited in support of CoA's contention that the 1972 Act should be treated as a special statute and Regulations framed thereunder should override those framed under the 1987 Act.

54. For the sole reason of there being overlapping subjects, Courts straightaway may not get into an exercise to find out if one statute intends to eclipse the other. But in the present set of appeals, intention of the legislature to override one by the other can be examined by analyzing the provisions of the two statutes. The duty of the regulatory bodies in a situation of this nature would be to come out with a unified regime, which this Court expected in the case of *Municipal Council, Palia* (supra). The two regulatory bodies in the field of architectural education however have not taken this approach and on the other hand have engaged themselves in a dispute over turf-control. In such a situation, under normal circumstances attempt should be made first at reconciliation of the competing statutory instruments. If that exercise fails, then the aim would be to find out what is the dominant purpose or principal subject-matter of a particular statute and then construe the conflicting provisions of the respective Regulations to match the dominant statutory purpose. In the case of *L.I.C. Vs. D.J. Bahadur* (supra), it has been observed by a three Judge Bench of this Court: -

> " 52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes-so too in life."

55. On the subject of implied repeal, the course to be followed by the Court has been explained in the well-known text "Principles of Statutory Interpretation", by Justice G.P. Singh (14th Edition). We give below the following quotation from page 737 of this text:-

> "There is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the *principle expressio unius est exclusio alterius.* Further, the presumption will be comparatively strong in case of virtually contemporaneous Acts. The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act 'that the two cannot stand together'. But, if the two may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred."

56. Having regard to the disputes involved in each of these appeals, proper course for us would be to find out the decision of which of these two regulatory bodies ought to prevail. For this purpose, it is necessary to ascertain the dominant purpose of the two legislations covering the field of architectural education. Section 10 of the 1987 Act mandates the AICTE to undertake the duties on the subjects specified therein. But it has already been held by two Benches of this Court comprising of two Judges each in the cases of *Bharathidasan University* (supra) and *Association of Management of Private Colleges* (supra) that a

university or its affiliate colleges could run courses in technical education without approval of the AICTE.

57. The process of recognition and effect thereof are more expansive under the 1972 Act. All "authorities" require recognition by the Central Government to conduct any degree or diploma course in architecture education to qualify for being recognised qualification. The CoA under the said Act plays a key role in the process of recognition. There is no exclusion or exemption of any institution from undergoing such recognition process except the subsisting ones at the time the Act became operational. The CoA has also wide monitoring power under Section 18 and 19 of the Act of every authority which grants recognized qualification under the said Act.

58. Moreover, Section 17 of the said Act is armed with a non-obstante clause. The implication of the said clause in Section 17 of the 1972 Act is that to be on the register of architects in India, recognized qualification would be sufficient. There is no provision under the 1972 Act or in any Rule thereunder which would entitle a person trained from an AICTE approved technical institution in architecture to describe himself as an architect or get himself registered as such without recognised qualification under the 1972 Act. This would be apparent from the provisions of Section 35 of the Act, which stipulates:-

> **"35. Effect of registration.—**(1) Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act.
>
> (2) After the expiry of two years from the date appointed under sub-section (2) of Section 24, a person who is registered in the register shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any recognised by the Central or State Government."

Sub-section (2) of the said provision is not of much relevance for adjudication of the subject dispute. The scheme of the Act thus demonstrates that lack of recognized qualification under the 1972 Act would in substance disentitle a person from being registered as an architect. He would not be able to legally represent himself as an architect in India. This being the statutory mandate, CoA's role in the process of recognition of qualification of an architect cannot be said to have been obliterated by the 1987 Act. It is a fact that 1987 Act is primarily concerned with setting-up and running of a technical institution and not with regulating the professions of individuals qualifying from such institutions. But under the 1972 Act, conducting a course on architectural education and regulating the profession of architect are statutorily interwoven. Recognition of degrees or

diplomas in architecture cannot be amputated from the said Act and held to have been replaced by the 1987 Act. That would render the 1972 enactment unworkable.

59. The third distinguishing element of the 1972 Act is that the CoA is not the ultimate decision-making authority but it is the Central Government in relation to process of recognition of degree or diploma in architectural education or withdrawal thereof. Such decision is required to be taken after consultation with the CoA. But since CoA has been conferred with power to make regulations in relation to, inter-alia, recognition norms and monitoring of institutions imparting architectural education, CoA's role in such process is critical. The approval power of AICTE is direct. But in the event AICTE's norms come into conflict with that of CoA, any report or representation the CoA may make to the Central Government would be dependent upon the decision of the Central Government. The Central Government's decision, taken under the provisions of the 1972 Act in such a case would obviously prevail, the latter being an authority superior to both the Councils constituted under the two statutes.

60. AICTE is exercising its power to regulate institutions imparting architectural education on the strength of definition of technical education, which has been defined to mean programmes of education, research and training in architecture. The duty of the AICTE to regulate "technical education" is derived from the provisions of Section 10 of the 1987 Act. It has been contended on behalf of the CoA, referring to the provisions of Section 2 of the 1987 Act, that the context of regulating architecture education requires exclusion of the expression "architecture" from the definition of technical education. In the case of *Pushpa Devi and others* (supra), it has been held that it is permissible for the Court to refer to "internal and external context" while giving meaning to a definition contained in the interpretation clause of a statue. In this decision, it was observed that a word exhaustively expressed in the definition can have different meanings in different parts of a statute. Broadly, the same principle of construction has been adopted in the cases of *Printers (Mysore) Ltd. and Another* (supra) and *Whirlpool Corporation* (supra).

In the case of *K.V. Muthu* (supra), it has been held:-

> "12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires," the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."

61. So far as these appeals are concerned, to altogether exclude architecture from the purview of AICTE, that expression, i.e. architecture would have to be

dropped from the definition of technical education. In our opinion, if the issue is examined in the external context, which in this case would be the provisions of 1972 Act, such a course would be inevitable. In the event AICTE's stand is to be accepted and CoA's role is eliminated from the recognition process of architectural qualification, then a person having a degree or diploma from an AICTE approved institution only would in effect not be entitled to enrollment in the register of architects and would not be able to represent himself as an architect. Secondly, in view of the decisions of this Court in the cases of *Bharatidasan University* (supra) and *Association of Management of Private Colleges* (supra), there would be two parallel authorities regulating architectural education. CoA would regulate universities and affiliated colleges imparting such education while AICTE would supervise rest of the institutions. Moreover, the authority of Central Government to recognize qualifications in architecture education would stand obliterated by a body, AICTE and that too in respect of certain categories of technical institutions only.

62. The authorities we have referred to are for the proposition that a meaning different to what is ascribed in the definition clause can be given to a word in different parts of a statute if the context so demands. The subject-dispute involved in these appeals requires omission of the word architecture from the definition of technical education. Such a course, in our opinion, is also a permissible tool of construction to prevent absurd or unworkable results flowing from a statute. Here we reproduce the following passage from "Bennion on Statutory Interpretation" by F A R Bennion, Fifth Edition published by Lexis Nexis (at page 972).

> " *Strained construction* We have the authority of Lord Reid for the statement that, to avoid an unworkable result, a strained construction may be justified even where the enactment is not grammatically ambiguous. Lord Reid said that cases where it has properly been held that one word can be struck out of a statute and another substituted include the case where without such substitution the provision would be unworkable."

63. We are of the opinion that in respect of the provisions of Section 2 (g) of the 1987 Act, the definition of "technical education" would have to be given such a construction and the word "architecture" should be treated to have been inapplicable in cases where the AICTE imports its regulatory framework for institutions undertaking technical education. There would however be no substitution because the context would not demand it. This construction of the definition clause is necessary as the external context requires it to prevent an unworkable outcome in implementation of the 1987 Act. The principle of implied repeal cannot apply so far as the provisions relating to architecture education is concerned, on the basis of the 1987 Act having become operational. One of the

dominant purposes of the 1972 Act is recognition of qualifications on architecture. The registration of an architect is dependent upon acquisition of such recognised qualification. The said Act cannot be held to have been repealed by implication for the sole reason of inclusion of the word "architecture" in the definition of technical education. AICTE has failed to discharge its onus to establish the said provisions of the 1972 Act was repealed by implication.

64. We accordingly hold that so far as recognition of degrees and diplomas of architecture education is concerned, the 1972 Act shall prevail. AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in the subject of architecture. Norms and Regulations set by CoA and other specified authorities under the 1972 Act would have to be followed by an institution imparting education for degrees and diplomas in architecture.

65. Now we shall turn to the individual appeals -

(a) We sustain the judgment of the Bombay High Court forming subject-matter of Appeal No.364 of 2005. The appeal of the All India Council of Technical Education is dismissed.

(b) Three appeals arose from the judgment of the High Court of Madhya Pradesh, Gwalior Bench delivered on 2nd February, 2011 in W.P. No. 315 of 2011. These are Civil Appeal No...../2019 (arising out of SLP(C) No.5400/2011), Civil Appeal No...../2019 (arising out of SLP(C) No.8443/2011) and Civil Appeal No...../2019 (arising out of SLP(C) No.20460/2011). Rajeev Gandhi Proudyogiki Vishwavidyalyalay is the appellant in the Civil Appeal arising out of SLP(C) No. 5400/2011. It wants compliance of the CoA norms and invalidation of the directive requiring it to grant temporary affiliation by the High Court without CoA's approval. The appellant in the second Civil Appeal (arising out of SLP(C)No.8443/2011) is the institution, Bharatiya Vidya Mandir Shiksha Samiti. It has questioned the necessity of obtaining CoA's approval or the requirement of compliance with the conditions set by them. It wants compliance of AICTE norms to be treated as adequate. For the reasons explained earlier in this judgment, we dismiss the appeal of Bharatiya Vidya Mandir Shiksha Samiti. The High Court has directed in the judgment under appeal compliance of the conditions communicated by the CoA. The academic session involved is 2010-2011. This Court at the notice stage in the university's appeal [SLP(C)No.5400 of 2011] granted interim stay of the order of the High Court. Subsequently, there were admissions from time to time with interim directions of this Court. We accordingly dispose of this appeal of the Rajeev Gandhi Proudyogiki Vishwavidyalaya with direction that the process of recognition contained in the 1972 Act ought to be implemented in respect of the subject institution before any further admission takes place. But so far as

admissions already undertaken in terms of interim orders of this Court, we direct that such admissions ought not be disturbed. We direct so, as we find the High Court itself had directed compliance of CoA norms in the judgment under appeal and compliance of building requirements set by CoA was to be effected within one year. Thus, in our opinion, CoA norms were substantially directed to be complied with. We also make it clear that the AICTE would not have any regulatory control over the concerned institution so far as architecture education is concerned. We are of the opinion that in the appeal arising out of SLP(C) No.20460 of 2011 that CoA ought to have been impleaded as a party respondent in the said writ petition. We are also of the opinion that decision of the High Court to issue the directions contained in the judgment under appeal in absence of CoA being added in the array of respondents was erroneous. But we do not issue any independent direction as these appeals were heard together as batch matters and the grievances of the CoA have been addressed to in our judgment. Having held that the 1972 Act shall prevail on the question of recognition of degrees and diplomas in architecture education, we dispose of this appeal of the CoA in the above terms.

(c) The Civil Appeals arising out of SLP(C) No. 17005 of 2016 and SLP(C)No.17006 of 2016 have been instituted by the AICTE against a common judgment of the Karnataka High Court in Writ Appeal No.110 of 2013 and Writ Appeal No. 112 of 2013. The dispute in these matters relate to the question of obtaining mandatory approval from the AICTE for running course on architecture. The former appeal arose out of contradictory directives issued by AICTE and CoA over admission of two students beyond the intake capacity. The observation of the Karnataka High Court in a common judgment has been that the controversies would be subject to the outcome of the appeal arising out of the Bench decision of the Bombay High Court. That is the first appeal we have dealt with in this judgment. We accordingly dispose of these two appeals in terms of our decision contained in the preceding sub-paragraph (a). AICTE would not have any power to impose its regulatory measures on the concerned institution so far as architecture education is concerned.

(d) The decision of the Kerala High Court in the Civil Appeal arising out of SLP(C)No. 28121 of 2018 is set aside. The appeal is allowed. The institution involved in this appeal shall be entitled to operate with recognition obtained under the 1972 Act.

66. All interim orders passed in these appeals shall stand dissolved. All connected applications shall stand disposed of. There shall be no order as to costs.

Order accordingly

I.L.R. [2020] M.P. 604 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice A.M. Khanwilkar & Mr. Justice Dinesh Maheshwari

Cr.A. No. 1689/2019 decided on 15 November, 2019

RAKESH @ TATTU …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***A. Forest Act (16 of 1927), Sections 26(1)(g), 41, 52 & 68 – Seized Vehicle – Confiscation & Compounding* – Held – Admission of appellant regarding commission of offence and use of vehicle in it, by itself cannot be a basis to deny option of compounding predicated in Section 68 – Authority has not exercised its discretion in judicious manner – Impugned order quashed – Prayer of compounding allowed – Appeal allowed. (Paras 6, 9 & 10)**

क. वन अधिनियम (1927 का 16), धाराएँ 26(1)(g), 41, 52 व 68 – जब्तशुदा वाहन – अधिहरण व शमन किया जाना – अभिनिर्धारित – अपराध कारित करने तथा उसमें वाहन का प्रयोग किये जाने के संबंध में अपीलार्थी की स्वीकृति, अपने आप में धारा 68 में प्रतिपादित किये गये शमन करने के विकल्प को अस्वीकार करने का एक आधार नहीं हो सकता – प्राधिकारी ने न्यायसम्मत रीति में अपने विवेकाधिकार का प्रयोग नहीं किया – आक्षेपित आदेश अभिखंडित – शमन करने की प्रार्थना मंजूर – अपील मंजूर।

***B. Forest Act (16 of 1927), Section 68 – Compounding of Offence* – Held – When accused takes recourse to remedy of compounding of offence, it presupposes that he has admitted the commission of offence or use of vehicle in it – Authority is to consider the tangible factors such as gravity of offence and use of vehicle in commission of specified offence in the past etc. (Para 8)**

ख. वन अधिनियम (1927 का 16), धारा 68 – अपराध का शमन किया जाना – अभिनिर्धारित – जब अभियुक्त अपराध के शमन किये जाने के उपचार का अवलंब लेता है, यह पूर्व कल्पना की जाती है कि उसने अपराध कारित करना अथवा उसमें वाहन का उपयोग करना स्वीकार किया है – प्राधिकारी को मूर्त कारकों जैसे कि अपराध की गंभीरता तथा पूर्व में विनिर्दिष्ट अपराध कारित करने में वाहन का प्रयोग इत्यादि, पर विचार करना है।

Case referred:

(2005) 10 SCC 437.

O R D E R

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 28th September, 2018 passed by the High Court of Madhya Pradesh at Jabalpur in MCRC NO. 5482 of 2018.

3. The short question involved in this appeal is whether the offer made by the appellant of compounding the offence in respect of violation of Sections 26(1) (g) and 41 of the Indian Forest Act, 1927 (for short, 'the Act') has been justly declined by the competent authority.

4. Indeed, Section 52 of the Act enables the competent authority to confiscate the seized vehicle-Tractor used in connection with the stated offence. Even so, when the owner of the Tractor admits the use of the Tractor, the provisions of Section 68 of the Act, as applicable at the relevant time in the State of Madhya Pradesh, enabled the State Government to authorize the Forest Officer to accept the offer of compounding the offence and release the seized property. The Section reads thus:

> "68. Power to compound offences.
>
> (1) The State Government may, by notification in the Official Gazette, empower a Forest officer—
>
> (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
>
> (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer."

5. Indisputably, the present case does not fall under excepted category, as the offences are under Sections 26(1)(g) and 41 of the Act. The competent authority in its order dated 23.02.2016, while dealing with the request made by the appellant for compounding of the offence, observed thus:

> "Forest offence committed by using vehicle has been admitted and he seeks settlement with the department and whatever penalty that may be imposed by the department he is ready to pay the same. Vide office letter No.S.D.C./27580 dated 09.11.2015 was sent to Range Assistant of Bansa to furnish document regarding valuation sheet of forest produce seized in the case. However, the said document has not been submitted till date by the Range Assistant of Bansa before this court. Therefore, the entire prosecution evidence and admission of forest offence by accused Rakesh alias Tattu Pathak R/o Bansa Tarkhera as per his written reply itself proves involvement of seized vehicle Escort Tractor Trolley No.M.P. 15F.1223 in forest offence which is violation of Section 26(1) of Indian Forest Act, 1927.
>
> Accused himself agreeing for settlement also admits the incident as deposed by the witnesses during the entire proceeding which proves that

on the date of incident accused persons after illegal excavation of 1 trolley of Kathal stone from Forest Compartment R.F.118 have committed the offence of illegal transportation of the same in tractor torelly No. M.P.15 F.1223, which amounts to violation of Section 26(1)(g) and 41 of Indian Forest Act 1927. On finding vehicle seized in the case being liable to be confiscated under Section 52(3) of the Indian Forest Act, 1927, it is ordered that:

XXX XXX XXX"

6. On a fair reading of the aforesaid observation of the competent authority, it appears to us that the sole consideration weighed with the authority was that the appellant had admitted the. commission of offence in question. That by itself cannot be the basis to deny the option of compounding predicated in Section 68 of the Act, reproduced above.

7 . Counsel for the respondent placed reliance on a decision of this Court in *"State of Jharkhand and Another vs. Govind Singh"*, reported in (2005) 10 SCC 437 and placed emphasis on paragraph 26 thereof. The same reads thus:

"2 6. xxx xxx xxx

The power to act in terms of Section 68 of the Act is limited to offences other than those specified in clauses (c) and (d) to Section 26, clauses (c) and (d) to Section 33 or Section 62 or Section 63. Sub-section (1)(b) of Section 68 is also relevant. It provides that where any property has been seized as liable for confiscation, an officer empowered by the State Government has power to release the same on payment of the value thereof as estimated by such officer. The officer has to be empowered in the official gazette by the State Government. To act in terms of the position the value of the property seized or as liable for confiscation has to be estimated. Therefore, on a combined reading of Section 52 and Section 68 of the Act as amended by the Bihar Act, the vehicle as liable for confiscation may be released on payment of the value of the vehicle and not otherwise. This is certainly a discretionary power, exercise of which would depend upon the gravity of the offence. The officer is empowered to release the vehicle on the payment of the value thereof as compensation. This discretion has to be judicially exercised. Section 68 of the Act deals with power to compound offences. It goes without saying that when the discretionary power is conferred, the same has to be exercised in a judicial manner after recording of reasons by the concerned officer as to why the compounding was necessary to be done. In the instant case, learned Single Judge did not refer to the power available under Section 68 of the Act and on the contrary, introduced the concept of reading into Section 52 of the Act, a power to levy fine in lieu of confiscation which is impermissible. In the impugned judgment nowhere the value of the truck which was liable for confiscation was

indicated. It appears that the first appellate Court and the revisional authority did not consider it to be a fit case where the vehicle was to be released and were of the considered view that confiscation was warranted. They took specific note of the fact that fake and fabricated documents were produced to justify possession of the seized articles. In any event the respondent had not made any prayer for compounding in terms of Section 68 of the Act.

XXX XXX XXX"

8. In our opinion, the competent authority in the present case has not considered the matter in proper perspective. It has failed to give full effect to the provisions of Section 68 of the Act. In that, the Authority proceeds merely on the basis that the appellant has admitted his guilt and the use of subject vehicle in the commission of offence. As aforesaid, that by itself is not enough. As a matter of fact, ordinarily, when the accused takes recourse to the remedy of compounding the offence, it presupposes that he has admitted the commission of stated offence or about the use of seized vehicle in the commission of the offence. Only then he would apply for compounding the offence Counsel for the appellant justly submits that the exercise of power, though discretionary, has to be judicially exercised. While doing so, the competent authority is obliged to reckon tangible factors such as gravity of offence as expounded in *Govind Singh* (supra) or that the vehicle has been used for commission of specified offence even in the past etc. In the present case, however, the only factor weighed with the authority is that the appellant has admitted the commission of offence. In other words, the authority has not exercised its discretion in judicious manner.

9. In our opinion, therefore, the impugned judgment and order deserves to be quashed and set aside. We order accordingly.

10. Instead, we allow the prayer of the appellant to compound the stated offences and to take follow up steps in that regard by releasing the subject vehicle upon payment of requisite amount, as may be determined by the authorities as per the applicable rules and regulations and complying with other formalities including filing of undertaking, if any. That be so done within four weeks from today.

11. The appeal is accordingly allowed.

Appeal allowed

I.L.R. [2020] M.P. 608 (FB)
FULL BENCH

Before Mr. Justice Ajay Kumar Mittal, Chief Justice, Mr. Justice Sujoy Paul & Mr. Justice Vijay Kumar Shukla

W.A. No. 202/2012 (Jabalpur) decided on 28 February, 2020

VANDEY MATRAM GITTI NIRMAN (M/S) …Appellant

Vs.

M.P. POORV KSHETRA VIDYUT VITRAN CO. LTD. & ors. …Respondents

(Alongwith W.A. Nos. 237/2012, 247/2012, 249/2012, 250/2012, 252/2012, 257/2012, 258/2012, 259/2012, 260/2012, 261/2012, 278/2012, 313/2012, 321/2012, 344/2012, 345/2012, 346/2012, 347/2012, 348/2012, 349/2012, 477/2012, 587/2012, 832/2012, 260/2013, 261/2013, 262/2013, 79/2016 & W.P. No. 51/2014)

***A. Electricity Duty Act, M.P. (10 of 1949), Section 3(1), Part B, Entry 3 and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity* – Held – Rate of duty u/S 3(1) Entry 3 of Part B (Table) as applicable to mines, cannot be applied/enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine and are not involved in the mining activity. (Para 28)**

क. विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 3(1) भाग B, प्रविष्टि 3 एवं खान अधिनियम (1952 का 35), धारा 2(1)(j) – स्टोन क्रशिंग इकाईयाँ – विद्युत की दर – अभिनिर्धारित – खानों पर लागू धारा 3(1) भाग–B (तालिका) की प्रविष्टि 3 के अंतर्गत शुल्क की दर को उन क्रशिंग इकाईयों पर लागू/प्रवर्तित नहीं किया जा सकता जो कि केवल स्टोन क्रशिंग का कार्य कर रही हैं चाहे वह खान में या उसके समीपवर्ती स्थित हों अथवा नहीं तथा खनन गतिविधि में शामिल न हों।

***B. Electricity Duty Act, M.P. (10 of 1949), Section 3(1), Part B, Entry 3 and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity* – Held – If appellant has a mining licence and carrying out mining activity, being covered under the Act of 1952 and his stone crusing unit is situated in or adjacent to mine, he will be liable to pay the rate of electricity duty as provided in Section 3(1), Entry 3 of Part B (Table) of Act of 1949. (Para 28)**

ख. विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 3(1), भाग B, प्रविष्टि 3 एवं खान अधिनियम (1952 का 35), धारा 2(1)(j) – स्टोन क्रशिंग इकाईयाँ – विद्युत की दर – अभिनिर्धारित – यदि अपीलार्थी के पास खनन का लाइसेंस है तथा वह खनन का कार्य कर रहा है, 1952 के अधिनियम के अंतर्गत आच्छादित होने के कारण तथा उसकी

स्टोन क्रशिंग ईकाई खान में या उसके समीपवर्ती स्थित होने के कारण, वह 1949 के अधिनियम की धारा 3(1), भाग–B (तालिका) की प्रविष्टि 3 में उपबंधित अनुसार विद्युत शुल्क की दर का भुगतान करने हेतु दायी होगा।

***C. Mines Act (35 of 1952), Section 2(1)(j) & 2(1)(jj) – Mining Activity* – Held – If a person carrying on business of stone crushing, is purchasing mineral from other source and is not directly obtaining mineral through mining, digging and quarrying etc which is used in stone crusher for converting into Gitti, then he cannot be said to be involved in mining activity. (Para 18 & 19)**

ग. खान अधिनियम (1952 का 35), धारा 2(1)(j) व 2(1)(jj) – खनन गतिविधि – अभिनिर्धारित – यदि स्टोन क्रशिंग का व्यवसाय करने वाला एक व्यक्ति, अन्य स्त्रोत से खनिज क्रय कर रहा है तथा खनन, खुदाई तथा खदान क्रिया इत्यादि के माध्यम से प्रत्यक्ष रूप से खनिज प्राप्त नहीं कर रहा है जिसका गिट्टी में परिवर्तित करने हेतु स्टोन क्रशर में प्रयोग किया जाता है, तो उसे खनन गतिविधि में शामिल नहीं कहा जा सकता।

***D. Electricity Duty Act, M.P. (10 of 1949), Section 3(1), Part B, Entry 3 and Vidyut Shulk Adhiniyam, M.P. (17 of 2012), Section 3(1), Part A, Entry 6 – Applicability* – Held – Act of 2012 came into force w.e.f. 25.04.2012 and same is not applicable with retrospective effect. (Para 25)**

घ. विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 3(1), भाग B, प्रविष्टि 3 एवं विद्युत शुल्क अधिनियम, म.प्र. (2012 का 17), धारा 3(1), भाग A प्रविष्टि 6 – प्रयोज्यता – अभिनिर्धारित – 2012 का अधिनियम 25.04.2012 से प्रभावी रूप से प्रवर्तन में आया तथा उक्त भूतलक्षी रूप से लागू नहीं है।

***E. Mines Act, (35 of 1952), Section 2(1)(j) & 2(1)(jj) – Mines – Definition & Scope* – Discussed & explained. (Paras 16 to 18)**

ङ. खान अधिनियम (1952 का 35), धारा 2(1)(j) व 2(1)(jj) – खान – परिभाषा व विस्तार – विवेचित व स्पष्ट की गई।

Cases referred:

W.A. No. 140/2011 decided on 15.12.2016, LPA No. 247/1998 decided on 01.06.2004, (1997) 5 SCC 482, (2009) 17 SCC 266, (2017) 1 SCC 81, 1904 AC 773, AIR 1961 SC 1170, (1992) 4 SCC 711, (2005) 2 SCC 271, 2012 SCC Online P & H 24518: (2013) 289 ELT 293, AIR 2012 MP 49, SLP (C) No. 6524/1995 order passed on 06.03.1995, W.P. No. 166/1996 order passed on 11.02.1998, W.P. No. 3153/2004 decided on 29.08.2008, W.P. No. 846/2005 decided on 24.06.2009, 2016 (1) MPLJ 159.

Sanjay Agrawal, Ashok Agrawal and *Anuj Agrawal*, for the appellants.
Shekhar Sharma, Addl. A.G. for the respondents/State.
Mukesh Kumar Agrawal and *A.P. Shroti*, for the respondents-Company.

O R D E R

The Order of the Court was passed by:

AJAY KUMAR MITTAL, C. J.:-These intra-court appeals have been preferred under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 against an order dated 09.01.2012 passed by a learned single Bench in W.P. No.736/2011 (*M/s Vandey Matram Gitti Nirman vs. M.P. Poorva Kshetra Vidyut Vitran Co.Ltd. And others*) whereby bunch of writ petitions, main case being W.P. No.5070/2011 (*M/s Jai Hanuman Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. And others*), involving identical question: as to whether the stone crusher units, not operated by the mine owners and not located in the premises or adjacent to mine, can be charged the electricity duty under Entry 3 of Part B of Table appended to sub-section (1) of Section 3 of the Madhya Pradesh Electricity Duty Act, 1949 (hereinafter referred to as "the 1949 Act") and whether the arrears of duty could be recovered from a retrospective date, were dismissed vide common order. The Bench observed as under:-

> **"26.** The Division Bench was thus very much alive of the issue and the expanse of applicability of the definition 'mines' contained in Explanation (b) of Section 3 of 1949 Act. It appears that the Division Bench in M/s Vastu (supra) overlooked the above facts while observing that "the point projected as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in M.P. No.673/1993.
>
> **27.** The issue as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine being covered by decisions in the Crusher Owners Association and others (supra) and Hindustan Copper Limited (supra) i.e., the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by the definition of 'mine' as contained in Explanation (b) to Section 3 of 1949 Act are liable to pay electricity duty as applicable to the "mines (other than captive mines of a cement industry)".
>
> *** *** ***
>
> **32.** Thus, once the validity of the expression 'mines' as per Explanation 3(b) of 1949 Act having been upheld in the Stone Crusher Owners Association and others (supra) decided on 17.10.1994, the contention that the petitioners are charged from a retrospective date on the basis of the explanation tendered by the Secretary, Department of Energy, State of Madhya Pradesh, does not stand to reason. The petitioners' unit having been held to be covered by the definition of mine, the petitioners ought to have volunteered to pay the duty."

2. A Division Bench of this Court while hearing the matters on 12.09.2019, found conflicting observations made by two Division Bench judgments of Indore Bench of this Court rendered in W.A. No.140/2011 *(State of Madhya Pradesh vs. M/s Stuti and others*) decided on 15.12.2016 (in short **"M/s Stuti-1"**) and LPA No.247/1998 (*M/s Vastu vs. M.P. Electricity Board & others*) decided on 01.06.2004 (for brevity **"M/s Vastu-1**) and further noticed that there is lack of detailed discussion in respect of applicability of the entry relating to units that are not situated in or adjacent to a Mine. Accordingly, these *intra*-court appeals have been placed before the Full Bench in pursuance to an order dated 12.09.2019 passed by the Division Bench framing the following questions for the opinion of the Larger Bench:-

> "(i) Whether the rate of electricity duty, applicable to mines, can be applied and enforced upon stone crushing units that are not situated in and adjacent to a mine?"
>
> (ii) Whether the electricity duty applicable to mines can be imposed upon only those stone crushing units that are also indulging in mining activities?
>
> (iii) Whether the observations made by the Division Bench of this Court in the case of L.P.A. No.247/1998 (*M/s Vastu Vs. M.P. Electricity Board and others*) or the decision rendered in the case of *State of Madhya Pradesh Vs. M/s Stuti and others*, (W.A. No.140/2011) lays down the correct law?
>
> (iv) Any other issue arising out of the dispute relating to determination of the rate of electricity duty to be imposed upon the stone crushing units?"

3. As the identical questions are involved, the facts *sans* unnecessary detail are extracted from Writ Appeal No.202/2012 (*M/s Vandey Matram Gitti Nirman vs. M.P. Poorva Kshetra Vidyut Vitran Co.Ltd. And others*) for the sake of convenience.

4. Brief facts, leading to above referred questions, are that the appellant -M/s Vandey Matram Gitti Nirman engages in the business of stone crushing along with its trading, which is established on the land owned by him. The petitioner-appellant Unit has been granted permanent registration as small scale industry by the Small Scale Department for stone crushing. The appellant has obtained due permission from the Collector, Tikamgarh vide order dated 07.09.2006 (Annexure P-1) for establishing a stone crusher and converting the big blocks of stones into *Gitty*. Upon perusal of the order dated 07.09.2006, the renewal of quarry lease for stone crusher of mining stone (*Khanij Patthar*) at Khasra No.259/1 area 4.000 Hectare situate at village Pratappura has been granted in favour of the appellant in accordance with Rule 6(3) of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as "the 1996 Rules") for a period of 10 years

from the date of its sanction i.e. 06.11.2006 on the terms and conditions envisaged therein. For the purposes of smooth running of the stone crusher, the appellant has obtained high tension electricity connection for supply of electricity and was paying the electricity bill charged by the respondents as per the provisions of the 1949 Act but on 23.09.2010 (Annexure P-3) a demand notice bearing Consumer Code No.130026 was issued to the appellant for recovery of Rs.16,80,016/- towards difference of electricity duty and thereafter for non-payment of outstanding bills, another notice was issued on 24.12.2010 for discontinuance of supply connection and further demand was made for payment of Rs.17,01,016/- i.e. Rs.16,80,016/- towards arrears plus current bill amount of Rs.21,000/-. According to the appellant, the said demand notices have been issued on the basis of a circular dated 30.03.2010 (Annexure P-2) issued by the office of the Chief Engineer (Electrical Safety) and the Chief Electrical Inspector, State of Madhya Pradesh regarding levy of electricity duty in terms of the definition of "mine" provided under Section 2(1)(j)(x) and (xi) of the Mines Act, 1952 (in short "the 1952 Act") read with Explanation (b) of Part-B of Section 3(1) of the 1949 Act. The circular mentions that in the stone crushing work where the mining material is used for crushing; processing; treating or transporting the mineral, be it in or any area outside the mines, the electricity duty shall be payable at the rate of 40 percent.

5. In W.P. No.736/2011 out of which W.A. No.202/2012 has arisen, the appellant has filed an order dated 07.09.2006 (Annexure P-1) pertaining to renewal of quarry lease for stone crusher of mining stone which has been granted in his favour in accordance with Rule 6(3) of the 1996 Rules on the terms and conditions stated therein. In other cases, nothing has been stated with regard to grant of permission or licence etc. for running of stone crushers. However, in W.P. No.9283/2011 which has given rise to filing of W.A. No.278/2012 (*M/s Eastern Minerals vs. MPPKVVC Ltd. and others*), the appellant has filed the documents with regard to its registration as a Small Scale Industrial Unit (Annexure P-1) and Licence to Work a Factory (under Rule 5 of M.P. Factories Rule, 1962). The order for renewal of quarry lease dated 07.09.2006 (Annexure P-1) reads as under:-

कार्यालय कलेक्टर (खनिज शाखा) जिला टीकमगढ़ म0प्र0

क्रमांक / 11 / खनिज / तीन–6 / 2006 / 94 / टीकमगढ़, दिनांक : 07.09.2006

आदेश

श्री देवेन्द्र सिंह तनय श्री लाखन सिंह निवासी प्रतापपुरा तहसील निवाड़ी जिला टीकमगढ़ (म.प्र.) के द्वारा ग्राम प्रतापपुरा तहसील निवाड़ी के अंतर्गत भूमि खसरा क्रमांक 259 / 1 क्षेत्रफल 4.000 हैक्टेयर क्षेत्र में खनिज पत्थर (स्टोन क्रेशर उद्योग) हेतु उत्खनि पट्टा आवेदन पत्र नवीनीकरण हेतु गौण खनिज नियमावली 1996 के प्रारूप एक नियम – 9 के अंतर्गत निर्धारित प्रपत्र पर दिनांक 03.10.2005 को निर्धारित शुल्क सहित प्रस्तुत किया गया ।

पट्टाधारी द्वारा प्रस्तुत आवेदन पत्र की जांच पट्टाधारी को स्वीकृत क्षेत्र का स्थल निरीक्षण खनिज निरीक्षक से कराया गया एवं ग्राम पंचायत से भी प्रतिवेदन प्राप्त किया गया। खनिज निरीक्षक द्वारा अपने प्रतिवेदन दिनांक 01.05.2006 द्वारा प्रतिवेदित किया गया कि खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर में उत्खनन हेतु क्षेत्र उपलब्ध है, ग्राम पंचायत प्रतापपुरा द्वारा भी पट्टा नवीनीकरण किये जाने की अनुशंसा की है । वनमण्डलाधिकरी टीकमगढ़ के प्रतिवेदन अनुसार आवंटित क्षेत्र ग्राम प्रतापपुरा की भूमि खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर वनक्षेत्र के अंतर्गत नही आता है।

अतः उपराक्त आवेदन एवं जांच प्रतिवेदन में परीक्षण कर–निर्णय लिया गया कि प्रकरण नवीनीकरण का है, इसलिए म.प्र. गौण खनिज नियमावली 1996 के नियम 6(3) के अनुसार नीचे दर्शाई गई शर्तों का समावेश करते हुए पट्टाधारी श्री देवेन्द्र सिंह तनय श्री लाखन सिंह निवासी प्रतापपुरा तहसील निवाड़ी जिला टीकमगढ़ (म.प्र.) के पक्ष में ग्राम प्रतापपुरा के खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर खनिज पत्थर स्टोन क्रेशर हेतु स्वीकृत अवधि दिनांक 06.11.2006 से उत्खनि पट्टा 10 वर्ष के लिए नवीनीकरण किया जाता है।

शर्तें

*** *** ***

सही/–
संयुक्त कलेक्टर
एवं प्रभारी अधिकारी खनिज
हेतु कलेक्टर टीकमगढ़ (म.प्र.)'

6. In the backdrop of the aforesaid fact situation of the present case, Shri Sanjay Agrawal, learned counsel for the appellant *inter alia* submitted that by the circular dated 30.03.2010, the definition of "mines" as given in the 1952 Act has been enlarged by the respondent whereby the stone crushing unit is being declared as a mining activity and therefore, the electricity duty is being charged at the rate of 40 percent by treating their stone crushing unit as mines under Entry No.3 of Part B of the Table appended to Sub-section (1) of Section 3 of the 1949 Act. In the business of stone crushing, big boulders/blocks or stones are bought from the mine owners and crushed in small pieces called as "Gitti" which is sold in the open market. The appellants do not possess any mining licence nor are they involved in the activities of extracting minerals. The stone crushing unit or the machinery of the appellant is also not situated in and adjacent to any mine and it is not used for crushing, processing, treating or transporting the mineral. According to the learned counsel, the said proposition has not been disputed by the respondents and even the learned single Judge in its order found that it is an admitted and undisputed fact that the appellants are not holding mining lease nor are they indulged in any mining activity and further their crushing units are not situated in or adjacent to a mine and therefore, the circular dated 30.03.2010 cannot, in any manner, be said to be applicable to the appellants and accordingly, the higher rate of electricity duty should not be enforced upon the stone crusher units which are not situated in or adjacent to a mine and are not involved in mining activity.

7. Reference was also made to the Madhya Pradesh Electricity Duty (Amendment) Act, 2011, which came into existence vide Notification dated 10.08.2011. In the light of the said Notification, it is submitted that the stone crushers are different than the mines and therefore, they cannot be equated with the miners and charged the electricity duty as applicable to the mines and the miners who are engaged in the mining activity.

8. It was urged by the learned counsel that by virtue of Section 15 of the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 (M.P. Act 17 of 2012) (for short "the 2012 Act") which came into force w.e.f. 25.04.2012, the 1949 Act stands repealed. Entry 6 in Part-A of the Schedule of 2012 Act provides electricity duty of 9% of tariff per unit of electricity per month on stone crushers upto 150 HP. In 2012 Act also the extended definition of "mine" still exists in the same terms as per explanation (b) of the Schedule appended thereto as also Entry No.3 in respect of mines providing levy of electricity duty at the rate of 40 percent. The insertion of separate Entry 6 in respect of stone crusher which provides 9% electricity duty is declaratory/clarificatory and leaves no doubt as to the meaning of definition of "mine" given in Explanation (b) of Part-B of Section 3 of the 1949 Act. It is submitted that if the stone crushers whether situated in or adjacent to a mine were covered by the extended definition of mine, separate entry would not have been provided for the same. To bolster the argument, learned counsel has referred to the Supreme Court judgment in *Commissioner of Income Tax, Bombay and others vs. Podar Cement Pvt. Ltd. and others*, (1997) 5 SCC 482. On these premises, it has been vehemently contended that the circular dated 31.10.2010 is *de hors* the 1952 Act and 1949 Act and is *void ab initio*. Lastly, it was argued that the stone crushers of the appellant not situated in or adjacent to a mine, still if they have to pay higher rate of duty it would render the words "and includes the premises or machinery in or adjacent to a mine" or "machinery in or adjacent to a mine" devoid of any meaning or application.

9. On the other hand, learned counsel appearing for the respondents-State submitted that the issue raised by the appellants in these cases is no more *res integra* and already stands answered in view of the law laid down by this Court in the decisions rendered in M.P. No.673/1993 (*Stone Crusher Owners Association & others vs. Madhya Pradesh Electricity Board & others*), *M/s Stuti-1's* case (supra) and the decision of the Supreme Court in (2009) 17 SCC 266 (*Hindustan Copper Limited vs. State of Madhya Pradesh and others*) (hereinafter referred to as **"Hindustan Copper Limited-1")**. Learned counsel for the respondents further contended that though the 1949 Act has been repealed by the 2012 Act but as the 2012 Act came into force w.e.f. 25.04.2012 and the present dispute is in respect of the rate of duty for the period 2010 to 2012, therefore, the same is of no help to the appellants.

10. Learned counsel for the respondents-Company adopted the arguments of the State and additionally, vehemently argued in support of the impugned circular. It was contended that the circular was issued in pursuance to the directions issued in the order dated 06.07.2009 passed in W.P. No.1640/2007 (*M/s Ashish Enterprises vs. State of M.P. and others*) and coupled with the fact that such decision was required to be taken to remove the anomaly in the rate of electricity duty charged upon the stone crushers in different areas. This anomaly had crept in due to wrong interpretation of the definition of mine whereas a conjoint reading of Explanation (b) of Part-B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act makes it very clear that since the stone crushers are used for crushing or processing the minerals, therefore, even if a person is not a mine owner but is having a stone crusher, would attract the aforesaid extended definition of mine.

11. Learned counsel for the parties fairly conceded that since the year 2012 the appellants are paying duty @9%, pursuant to an interim order passed by this Court as well as in view of Entry No.6 of the Schedule appended to the 2012 Act.

12. We have heard learned counsel for the parties at length.

13. The questions No.(i) and (ii) noticed hereinabove, being interlinked are taken up together.

14. Before appreciating the contentions of the learned counsel for the parties with regard to the aforesaid two questions, it would be apt to refer to the relevant statutory provisions of the 1949 Act, 1952 Act and the 2012 Act, which read as under:-

'The Madhya Pradesh Electricity Duty Act, 1949
(M.P. Act 10 of 1949)

3. Levy of duty on sale or consumption of electrical energy. - (1) Subject to the exceptions specified in section 3-A, every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month:-

TABLE

RATES OF DUTY

Part-A

*** *** ***

PART-B

{Subs. By M.P. 15 of 1995 [1-4-1995]}

Electrical energy sold, supplied or consumed for the purposes as shown below:-

S.No.	Purpose	Rate of duty as
1.	***	***
2.	***	***
3.	Mines (other than captive mines of cement industry).	40
	***	***
5.	For other industries not covered under above categories, -	
	(a) Industries receiving electricity at low tension tariff:	
	(i) Upto 25 HP	3
	(ii) In excess of 25 HP upto 75 HP	4
	(iii) In excess of 75 HP upto 100 HP	3.5
	(iv) In excess of 100 HP upto 150 HP	3
	(b) Other industries	80
***	***	***

Explanation. - For the purposes of this section. -

(b) "mine" means a mine to which the Mines Act, 1952 (No.35 of 1952) applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral.

"emphasis supplied"

The Mines Act, 1952

(Cent. Act 35 of 1952)

2. **Definitions.-**(1) In this Act, unless the context otherwise requires:

(a) to (i) *** *** ***

"(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes:-

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all opencast workings;

(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on;"

(emphasis supplied)

(jj) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying, or by any other operation and includes mineral oils (which in turn include natural gas and petroleum):

*** *** ***

M.P. Vidyut Shulk Adhiniyam, 2012

(M.P. Act 17 of 2012)

15. Repeal and saving. - (1) Save as otherwise provided in this Act, the

Madhya Pradesh Electricity Duty Act, 1949 (No.10 of 1949) is hereby repealed.

(2) Notwithstanding such repeal -

(a) any thing done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any licence, permission or exemption granted or any direction given under the repealed Act shall, in so for as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) rules made under the repealed Act shall have effect until the rules under Section 13 are made;

(c) all directives issued before the commencement of this Act by the State Government under the repealed Act shall continue to apply until directions are issued under this Act.

SCHEDULE

[See Section 3 (1)]

PART-A

Electricity sold/supplied for the purposes as shown below

S. No	Consumer Category	Consumed Electricity	Rate of duty in (in unit) percentage of tariff per unit of electricity per month
(1)	(2)	(3)	(4)
	*** ***		***
6.	Stone Crusher upto 150 HP		9 percent
	*** ***		***

Provided that if electricity sold or supplied for consumption for any one purpose is used either wholly or partially, without the consent of Distribution Licensee or Franchisee, as the case may be, for consumption or any other purpose for which a higher rate of duty is chargeable the entire electricity sold or supplied shall be charged at the highest rate applicable.

*** *** ***

Explanation. - For the purposes of this Schedule-

(b) *"mine"* means a mine to which the Mines Act, 1952 (No. 35 of 1952) applies and includes the premises or machinery situated in or adjacent to

a mine and used for crushing, processing, treating or transporting the mineral;"

15. Before we consider the question No.(i) posed before this Bench, it would be condign to consider the question No.(ii) first. To answer the same, it will have to be seen whether the stone crushing units fall within the meaning of word "mine" as defined under Section 2(1)(j) of the 1952 Act.

16. For the purposes of definition of "mine" as envisaged under Section 2(1)(j) of the 1952 Act, the "mine" means any excavation where any operation for the purposes of searching for or obtaining minerals has been or is being carried on and includes the items provided from sub-clause (i) to (xi) of Section 2(1)(j) of the said Act, as reproduced above. The words "in or adjacent to a mine" or "in or adjacent to and belonging to a mine" have also been used in sub-clauses (ii), (vi), (vii) and (xi) of Section 2(1)(j) of the 1952 Act. Sub-clause (viii) has used the words "all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management". Similarly, sub-clause (x) of Section 2(1)(j) of the Act has used the words "being premises exclusively occupied by the owner of the mine". The intent of the Legislature being that rate of duty payable in terms of Entry 3 of Part-B of the Table appended to Section 3(1) of the 1949 Act in respect of mines (other than captive mines of cement industry) would include the mine itself, the premises or machinery situated in or adjacent to a mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. If the intent of the Legislature had been to include all the mining operations or mining activities involving crushing, processing, treating or transporting the mineral, it would not have put the words "premises or machinery situated in or adjacent to a mine" in the definition of "mine" envisaged under explanation (b) of Part B of Section 3(1) of the 1949 Act. Obviously, for the purposes of "mine" under explanation (b) of Part B of Section 3(1) of the 1949 Act, the intent of the Legislature was not to include the mining activities which are not in or adjacent to a mine. The definition contained in explanation (b) of Part B of Section 3(1) of the 1949 Act is, thus, clear and unambiguous.

17. The first part of the definition of "mine" as contained in explanation (b) of Part B of Section 3(1) of the 1949 Act reads that "'mine' means a mine to which the Mines Act, 1952 applies". Although a perusal of the definition of "mine" as contained in Explanation (b) shows that it cannot be understood in its narrow sense but it has a wider connotation since it includes the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act but the later part of the provision contained in Explanation (b) reads that "and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral". It is a trite law that the provision has to be read as a whole and not in isolation. The words "includes the premises or machinery

situated in or adjacent to a mine" make the legislative intent very clear that for the purposes of 1949 Act, though the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act shall apply but it shall also include the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral.

18. The mining license to carry out mining activity is issued under the Mines Act, 1952 and then only the person is allowed to carry out the mining business. Where the person has purchased the boulders from mine owners and converts the same into Gitti through the stone crusher, he cannot be said to be directly involved in the mining activity. Though the definition of "mine" as provided under explanation (b) of Part B of Section 3(1) of the 1949 Act includes the premises or machinery situated in or adjacent to a mine and used for "crushing" the mineral but it also says that the "mine" to which the 1952 Act applies whereas definition of "mine" provided under Section 2(1)(j) of the 1952 Act leads to an inference that the "mine" would mean only the excavation and where any operation for the purpose of searching for or obtaining or winning the mineral has been or is being carried out and includes all other activities provided from sub-clause (i) to (xi) of Section 2(1)(j) of the 1952 Act. Nowhere the stone crusher unit or stone crushing activity is included in the said provision to mean a "mine". If at all the stone crushing unit or its premises or machinery or such activity could be related to mining activity, still the exception is carved out from perusal of sub-clauses (x) and (xi) of Section 2(1)(j) of the 1952 Act to mean that only those premises which are exclusively occupied by the owner of the mine or any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on.

19. Apart from the aforesaid, a perusal of definition of "minerals" provided under Section 2(1)(jj) of the 1952 Act shows that the mineral means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum). If a person running a stone crusher unit whether in or adjacent to mine or outside the mining area, is not obtaining the said mineral for crushing through the process defined under Section 2(1)(jj) of the 1952 Act i.e. by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation then such stone crusher unit also cannot be said to be directly involved in mining activity. In these circumstances, if a person carrying on the business of stone crushing, is purchasing the said mineral from other source and is not directly obtaining the mineral through mining, digging and quarrying etc. which is used in the stone crusher for converting into Gitti then he cannot be said to be involved in the mining activity.

20. The Supreme Court in *Manganese Ore India Limited vs. State of Madhya Pradesh and others,* (2017) 1 SCC 81 considered the terms "crushing" and "processing" as used in definition of "mines" in relation to 1949 Act and 1952 Act. The Supreme Court though found that the mining would comprehend every activity by which the mineral is extracted or obtained from earth irrespective of whether such activity is carried on at the surface or in the bowel, but, it must be an activity for winning a mineral. However, for the purposes of Item 3 "mine" to which electrical energy is sold, supplied or consumed it would include machinery or premises situated adjacent to the mine, provided the electricity is used for crushing, processing, treating or transporting the minerals. The word "mineral" used in the explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported. It was held that the words "crushing", "treating" and "transporting" are words of narrower significance and the word "processing" used between these words should not be given a very wide meaning, for the legislative intent, according to us, is narrower. Ultimately, the Supreme Court rejected the argument of the State that ferromanganese plant is being "used for crushing, processing, treating or transporting" the mineral, that is, manganese ore, therefore, the plant of the said appellant was within the meaning of "mine" and held that the appellant was neither crushing or processing or treating or transporting manganese ore but rather using the same as one of the raw materials and consuming the same while manufacturing ferromanganese alloy which is different substance physically as well as chemically. It was held that paying electricity duty at 40% cannot be applied in the ferromanganese plant as it cannot be taken to be within the meaning of "mine".

21. Now the question would arise as to what the word "adjacent" means in the context of the present controversy. The word "adjacent" is defined in Black's Law Dictionary Tenth Edition to mean "lying near or close to, but not necessarily touching". In Oxford Dictionary, the word "adjacent" is defined as "situated next to or close to something". Thus, the word "adjacent" would also include the nearby place or the place in the same area or the neighboring area. The word "adjacent" cannot be restricted to mean "adjoining" or "abutting" alone. The Privy Council in *Mayor of the City of Wellington Vs. Mayor of the Borough of Lower Hutt* (1904 AC 773) observed that 'adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage. It was held that the word 'adjacent' is not confined to places adjoining, and it includes places close to, or near and what degree of proximity would justify the application of the word is entirely a question of circumstances.

22. For the purposes of applicability of the rate of duty to mines (other than captive mines of cement industry), the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the

mineral have been included including the mine to which 1952 Act applies. The Legislature included only those premises or machinery which are situated in or adjacent to a mine. The question with regard to Legislative intent in inserting a provision was considered by the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of Uttar Pradesh and others,* AIR 1961 SC 1170. A three Judge Bench of the Supreme Court held as under:-

> "7. To remove this incongruity, says the learned Attorney- General, apply the rule of harmonious construction and hold that cl. 23 of the order has no application when an order is made on an application under cl. 6(a). On the assumption that under cl. 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly this disharmony as pointed out above between two provisions viz., cl. 5(a) and cl. 23; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule however we have to remember that to harmonise is not to destroy. In the interpretation of statutes the court, always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also.
>
> On the construction suggested by the learned Attorney-General it is obvious that by merely making an application under cl. (5) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the requirements of cl. 23 and if for one reason or other every employer when proposing a dismissal prefers to proceed under cl. 5(a) instead of making an application under cl. 23, cl. 23 will be a dead letter. A construction like this which defeats the intention of the rule making authority in cl. 23 must, if possible, be avoided."
>
> (emphasis supplied)

23. In *Nelson Motis vs. Union of India and another,* (1992) 4 SCC 711, while considering the constitutionality of Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Supreme Court held that if the words of a statute are clear and free from any vagueness and are reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences.

24. The Constitution Bench of the Supreme Court in *Nathi Devi vs. Radha Devi Gupta,* (2005) 2 SCC 271 held as under:-

> "13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the

consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. and others vs. Vijay Anand Maharaj : AIR 1963 SC 946 ; Rananjaya Singh vs. Baijnath Singh and others : AIR 1954 SC 749 ; Kanai Lal Sur vs. Paramnidhi Sadhukhan : AIR 1957 SC 907; Nyadar Singh vs. Union of India and others : AIR 1988 SC 1979 ; J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P. : AIR 1961 S.C. 1170 and Ghanshyam Das vs. Regional Assistant Commissioner, Sales Tax : AIR 1964 S.C. 766).

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity."

25. Apart from the above, it is noted that after coming into force of 2012 Act w.e.f. 25.04.2012, the 1949 Act has been repealed and at Entry 6 of Part-A of the Schedule appended to Section 3(1) of the 2012 Act, the rate of electricity duty @9% has been specifically provided for stone crushers upto 150 HP whereas Entry 3 thereof remains the same as existed in Part B of Table appended to Section 3(1) of the 1949 Act i.e. Mines (other than captive mines of cement industries) and Explanation (b) appended to the said Schedule provides for the same definition of "mine" as was existing in explanation (b) of Section 3(1) of the 1949 Act. However, the 2012 Act which came into force w.e.f. 25.04.2012 and the same is not applicable with retrospective effect.

26. In view of the reading of the relevant provisions of the 2012 Act, insertion of separate Entry 6 in respect of stone crusher which provides 9% electricity duty leaves no doubt as to the correct interpretation of "mine" given in Explanation (b) of Section 3(1) of the 1949 Act and it excludes the stone crushing units which are

not exclusively occupied by the owner of the mine and not belonging to a mine and which are not situated in or adjacent to mine where the stone crushing activity is going on. Thus, the view expressed by us supra is further strengthened by promulgation of 2012 Act. The reliance can be profitably had to the judgment of the Supreme Court in *Podar Cement Pvt. Ltd.'s* case (supra), the relevant extract of which reads thus:-

> "44. The view expressed supra by us is strengthened/supported by a subsequent amendment to Section 27 of the Act. The said amendment was introduced to Section 27 of the Act by the Finance Act, 1987 by substituting Clauses (iii), (iiia) and (iiib) in the place of old clause (iii) w.e.f. 1.4.88.
>
> 45. In our view, the circumstances under which the amendment was brought into existence and the consequences of the amendments will have a greater bearing in deciding the issue placed before us. In other words, if after discussion we come to a conclusion that the amendment was clarificatory/declaratory in nature and, therefore, it will have retrospective effect then it will set at rest the controversy finally.
>
> 46. We have seen that the High Courts are sharply divided on this issue, one set of High Courts taking the view that the promoters / contractors after parting with possession on receipt of full consideration thereby enabling the 'purchasers' to enjoy the fruits of the property, even though no registered document as required under Section 54 of the Transfer of Property Act was executed, can be 'owners' for the purpose of Section 22 of the Act. The other set of the High Courts had taken a contrary view holding unless a registered sale document transferring the ownership as required under the Transfer of Property Act the so- called purchasers cannot become owners for the purpose of Section 22 of the Act. As a matter of fact, the judgment of the Delhi High Court in I.T.R. No. 84/77 reported in Sushil Ansal v. CIT, Delhi-III, 160 ITR 308, the appeal against which is C.A. No. 4549/95 (supra) the learned Judge has made the following observation:
>
> > "Before we conclude, we may mention that, during the course of the hearing, we suggested to the standing counsel for the Department that the Central Board should consider various practical aspects of this problem and formulate guidelines which would be equitable to the various classes of persons concerned. Perhaps, as suggested by this Court in CIT v. Hans Raj Gupta, (1981) 137 ITR 195, the time has even come for legislative amendment, if necessary, possibly with retrospective effect. Serious consideration at the highest administrative level was warranted in view of the recurrent nature of the problem, its magnitude and the conflict of judicial decisions. However, after taking

> sufficiently long adjournments, counsel informed us that no decision could be taken by the Board and requested that we should decide the reference. We have, therefore, proceeded to do so."
>
> 47. May be this is one of the reasons for the Parliament to bring in the amendment referred to above to Section 27 of the Act. At any rate the admitted position when the amendment was brought in, was that there was divergence of opinion between the High Courts on the issue at hand."

27. Similar view was expressed by a Division Bench of Punjab & Haryana High Court in *Bharat Heavy Electricals Ltd. vs. Collector of C. Ex., Chandigarh* [2012 SCC Online P&H 24518: (2013) 289 ELT 293] wherein the Division Bench observed as under:-

> "8. It is not in dispute that the contract for fabrication of power project has been awarded by the petitioner-company to M/s Amaranth Aggarwal Construction (Pvt.) Limited, Panchkula. The petitioner-company had provided steel, trusses, angles, channels and other raw material. The contractor has carried out the fabrication job on job charge basis. The fabrication was carried out by the contractor at site under the supervision of Site Manager (Erection) of the petitioner-company. The job work undertaken by the contractor does not fit in the term "manufacture" which is normally associated with movables, i.e. articles and goods and is never connected with the fabrication of the structure embedded in earth. There has, thus, not been any manufacture or production at the site except fabrication carried out by the contractor. In other words, the petitioner-company is not manufacturing any item and is not covered under Section 2(f) of 1944 Act which defines 'manufacture'. Therefore, no excise duty is leviable under Section 3 of the 1944 Act. The aforesaid interpretation has the legislative approval as the respondent had issued notification, Annexure P.7 accepting the above interpretation. It reads thus:-
>
> > "Exemption to goods fabricated at site out of duty paid on iron and steel. In exercise of the powers conferred by sub section (1) of section 5A of the Central Excise and Salt Act 1944 (1 of 1944) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling under heading 73.08 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) fabricated at the site of construction work for use in such construction work from the whole of duty of excise leviable thereon which is specified in the said schedule:
> >
> > Provided that the said goods are manufactured out of iron or steel products on which the appropriate duty of excise leviable thereon under the said schedule or the additional duty leviable

thereon under section 3 of the Customs Tariff Act, 1975 (51 of 1975) as the case may be, has already been paid."

(emphasis supplied)

28. In view of the careful analysis of aforesaid provisions of the 1949 Act and 1952 Act, we find that if a stone crusher unit is not exclusively occupied by the owner of the mine and is not belonging to a mine, then such stone crusher unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table appended to Section 3 of the 1949 Act. In this view of the matter, the following conclusions are drawn in respect of question Nos.(i) and (ii):-

(i) Question No. (i) is answered in the negative by holding that rate of duty provided under Entry 3 of Part-B of the Table under Section 3(1) of the 1949 Act as applicable to mines, cannot be applied and enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine. To put it differently, if a stone crushing unit is not exclusively occupied by the owner of the mine and it is not belonging to a mine, then such stone crushing unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table under Section 3(1) of the 1949 Act;

(ii) Question No.(ii) is answered in the affirmative and it is held that if the appellant has a mining license and carrying out the mining activity being covered under the provisions of the 1952 Act and his stone crushing unit is situated in or adjacent to the mine, he will be liable to pay the rate of electricity duty as applicable to mines as envisaged in Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. However, whether such stone crushing unit is situated in or adjacent to a mine, shall depend upon the facts of each case.

29. We now proceed to examine the effect of various judicial pronouncements to answer the question No.(iii) noted above.

30. In the cases of *Hindustan Copper Limited vs. State of M.P.,* AIR 2012 MP 49 (for short **"Hindustan Copper Limited-2")** and *Stone Crusher Owners Association's* case (supra), the Bench held that a crushing unit, which is situated outside the mining area and not indulging in mining activities, is yet to pay the electricity duty under the entry relating to mines. In *M/s Stuti-1's* case (supra) also the Division Bench has recorded a similar finding and held that all the stone crushers would fall within the definition of "mines" irrespective of the fact that

they are not indulging in any mining activity and that their crushing units are not situated in and adjacent to a mine. The judgment rendered by a Division Bench of this Court in *Hindustan Copper Limited-2's* case (supra) has been overruled by the Supreme Court in the case of *Manganese Ore India's* case (supra) but the Division Bench decision of this Court in *Stone Crusher Owners Association's* case (supra) wherein the validity of Section 3(1) of the 1949 Act was upheld, has been affirmed by the Supreme Court in *Manganese Ore India's* case (supra). However, the Division Bench in *M/s Vastu-1's* case (supra) made an observation that the aforesaid question i.e. whether a crushing unit situated outside the mining area or not situated in or adjacent to a mine will also be covered by the said definition of mine, was not in issue nor decided in *Stone Crusher Owners Association's* case (supra). In this background, the questions which have been referred to this Bench have emerged for the opinion.

31. The constitutional validity of Section 3(1) of the 1949 Act was initially challenged by the Stone Crushers in *Stone Crusher Owners Association's* case (supra) wherein a Division Bench of Indore Bench of this Court while affirming the charging of the electricity duty on the stone crushers (not the mine but in the same area) at the rate applicable on mines, held that the State is allowed wide choice in selection of objects and person. Such an exercise has never been said to be arbitrary or without any legislative competence. The Legislature, therefore, cannot be said to have erred in defining "mine" under Explanation (b) of Part-B of Section 3(1) of the 1949 Act for the purposes of imposition of electricity duty. The Bench while holding so, observed as under:-

> "7. Section 3 of the Mines Act provides that the provisions of the Act, except those contained in Sections 7, 8, 9, 40, 45 and 46, shall not apply to any mine engaged in the extraction of kankar, murrum laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, [slate], road metal, earthy fullers earth, marl chalk and lime stone. It is also submitted that excavation for digging out boulders which are subsequently crushed by a crusher is an activity which comes under the definition of 'mine' as reproduced above and as such the rate is applicable with 75 paise.
>
> 8. The validity of the Act is challenged on the grounds indicated earlier. The main submission made is that the definition of the word 'mine' as provided in Section 3(3) under the Act cannot be extended beyond the definition which has been given in Section 2(j) of the Mines. It is also submitted that "quarrying" is not "mining".
>
> 9. The petitioners have not been able to demonstrate that the legislature could not give any extended definition to the said activity for the purpose of taxation. The State is allowed wide choice in selection of

objects and persons. Such an exercise has never been said to be arbitrary or without any legislative competence. The legislature therefore cannot be said to have erred in defining "mine" under Section 3 of the Act for the purpose of imposition of electricity duty.

10. Another submission raised by the petitioner was based on the assumption that the State legislature could not enact such a law as the subject is covered by List I of VIIth Schedule, the subject being mine. The Argument is quite unacceptable in view of specific Entry 53 of List II of Schedule Seven. Entry 53 reads thus :-

> "53. Taxes on the consumption or sale of electricity - 'Consumption' - The word, not being limited in any way, authorises the imposition of a duty on the consumption of electricity by the producer himself. Such a duty cannot be regarded as a duty of excise within the meaning of Entry 84 of the List I."

The power exercised by the State in enacting the law and power of imposition of electricity duty with regard to activity which falls within the meaning of word 'mine' under the Act cannot be said to be without legislative competence. No attempt has been made to show as to why the classification made is unreasonable and has no nexus to the purpose and object of which the said provision has been made.

11. In the taxation field, the State has vide jurisdiction :-

> "Electricity (Supply) (Karnataka Amendment) Act, 1981 (33 of 1981) - S. 2 - Inserting sub-ss. (5), (6) and (7) of S. 49 of Electricity (Supply) Act, 1948 - Power tarrif increased under, uniformly for all power intensive industries including aluminium industry - Aluminium smelter plant set-up by appellant company claimed to be a special class of its own in which power itself being an important raw material, treating it equally with other power intensive industries for the purpose of imposition of enhanced tariff alleged to be violative of Art.14 - Held contention untenable - Broad classification of power intensive industries proper and its microscopic analysis separating the aluminium industries therefrom not warranted - Hence Art.14 not violated - Constitution of India, Art. 14 - Under classification, plea of" (See (1992) 3 SCC 580).

12. Yet another submission putforth was that the State has not charged the same rate in respect of other persons, the details of which have been given in the petition. It is alleged that State is discriminating between the same class. The averments made in this regard in para (r) of the petition have not been controverted by the State or the Electricity

> Board. It is a wrong exercise of power by the authorities which does not make the law invalid. The respondents shall look into the matter and correct the bills issued in respect of persons mentioned in the petition.
>
> 13. The petitioners have failed to demonstrate that the provisions of law in any way suffer from any constitutional-vice or from any statutory invalidity. The petition is dismissed. However, there shall be no order as to costs."
>
> (emphasis supplied)

The judgment passed by the Division Bench in *Stone Crusher Owners Association* (supra) was affirmed by the Supreme Court in SLP (C) No.6524/1995 (*Stone Crusher Owners Association vs. M.P. Electricity Board and others*), which was dismissed vide order dated 06.03.1995.

32. It is, thereafter, that amendment to Part-B of the Table pertaining to rates of duty provided under Sub-section (1) of Section 3 of the 1949 Act has been brought into effect by M.P. Act 15 of 1995 and at Entry No.3 for the "Mines (other than captive mines of cement industry)" the rate of duty has been prescribed as 40% of the electricity tariff per unit.

33. The issue with regard to higher rate of electricity duty in terms of the extended definition of mine in explanation (b) of Part B of Section 3(1) of the 1949 Act was initially raised in M.P. No.2821/1988 (*Hindustan Copper Limited vs. The State of M.P. and others*) (for short **"Hindustan Copper Limited-3").** The petition, however, came up for hearing after the Division Bench decision in *Stone Crusher Owners Association's* case (supra). In the facts of that case, the petitioner therein was a Government Company engaged in extraction of copper ore by open cast mining process and that after drilling and blasting the ore in the open pit mine, the ore in the form of boulders was transported to the primary crusher which was situated away from mine where it was crushed into pebbles/pieces. Thereafter, such crushed ore was carried on a conveyor to a secondary crusher for further crushing into smaller pebbles and then it was transported to concentrator plant, all crushing units were situated away from mine. Challenge was made on the ground that levy of higher rate of electricity duty treating it to be mine resulted in dissimilar treatment to similar (processing) activity by prescribing different rates for different factories and the definition has the effect of categorising the factories registered under the Factory Act, and carrying on the same activity of processing, treating and transporting the minerals, into two categories, namely, one those which are adjacent to mine and others which are not adjacent. The Division Bench dismissed the petition (Hindustan Copper Limited-3) vide order dated 09.02.2005 and held as under:-

> "18. The petitioner relies on the dictionary meaning of the word 'adjacent' which is 'lying near or close', 'adjoining', 'bordering' to contend

that unless the premises/plant and machinery is situated immediately abutting or adjoining the mine so as to be an integral part of mine, electricity used therein cannot be subjected to duty at a rate prescribed for 'mines' but should be subjected to the rate of duty prescribed for other industries. Petitioner contends that as its processing plant/machinery are all at a distance of about 2.5 km to 6 km, they cannot be said to be 'adjacent' to the mine.

19. The word 'adjacent' has a wider scope than the words 'abutting' or 'touching' or 'adjoining' or 'contiguous', which normally contemplates some 'contact' at some point or line. But the term 'adjacent', not only refers to something which is next or contiguous, but also to something nearby or neighbouring or something in the same area.

19.1 The term 'adjacent' came up for consideration before the Privy Council in **Mayor of the City of Wellington Vs. Mayor of the Borough of Lower Hutt** (1904 AC 773). The Privy Council observed that 'adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage. The privy council held that the **word 'adjacent' is not confined to places adjoining, and it includes places close to, or near and what degree of proximity would justify the application of the word is entirely a question of circumstances.** In that case, the Privy Council considered the meaning of the word 'adjacent borough' used in Section 219 of the Municipal Corporation Act, 1900 which provided 'in any case where the council of any borough desires to construct .....a bridge.....in any position that will, in its opinion, be of advantage and benefit to the whole or any considerable portion of the inhabitants of an adjacent borough or country or any other district, and where it is, in the opinion of such council, reasonable that the local authority of such adjacent district should contribute to the cost, the council may in proper manner apply to the Governor, who may by warrant authorize the work to be done....., In that case the Borough of Lower Hutt proposed to construct a bridge over the Hutt river, at a point within its own boundaries, and give notice to the City of Wellington of its intention to apply to the Governor for power to construct the bridge, and to recover 20% of the cost from the City of Wellington. That was opposed by the City of Wellington on the ground that it was not an adjacent borough. The map showed that the city of Wellington did not immediately adjoin the Borough of Lower Hutt and the distance was six miles between their boundaries and that three other local boundaries intervened. The Court of Appeal held that Wellington City was adjacent to Lower Hutt Borough within the meaning of the section. The appeal against the said decision was dismissed by the Privy Council. The Privy Council explaining the meaning of the 'adjacent' as aforesaid, affirmed the view of the Court of Appeal."

19.2 In Hukma Vs. State of Rajasthan (AIR 1965 SC 479), the Supreme Court had occasion to interpret the term 'area adjoining land customers frontier'. It held that the said words do not mean only a few miles touching the frontier, but may include the entire district adjoining the frontier. It observed:

> 'It is true that the village next to the frontier adjoins the frontier. It is equally correct, however, to describe the entire district nearest the frontier as adjoining the frontier.'

20. The word 'adjacent' therefore, has to be understood with reference to the context and circumstances in which it is used. The word is used in defining 'mine' as including 'the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral'. The following is evident from the definition:

(i) If the plant/machinery is situated in the neighbouring area, but is not used for crushing, processing, treating or transporting the mineral, then it would not fall under the definition of 'mine'.

(ii) If the plant/machinery is not in the vicinity, but is situated in a distance area, wholly unconnected, it would not fall under the definition of 'mine', even if it is used for crushing, processing, treating the mineral extracted from the mine in question.

(iii) But if the plant/machinery is used for crushing, processing, treating or transporting the mineral, which is extracted from the neighbouring mine, and is situated near the mine, though not touching or abutting the mine, then it will fall within the definition of'mine'.

21. We may at this juncture take notice of the fact that the definition of 'Mine' in explanation (b) to Section 3 of the Act is not a special extended definition created only for the purpose of the Act. In fact, it virtually borrows the definition of "Mine" from the Mines Act, 1952. Section 2(j) of Mines Act defines "Mine" as meaning "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes:

(i) to (x) .....

(xi) any premises in or adjacent to an belonging to a mine on which any process ancillary to the getting, dressing or preparing for sale of minerals or of coke is being carried on."

There is therefore, nothing strange in any premises (or plant/machinery) in or adjacent to a mine on which any processing of the ore is carried on, being considered as a part of a mine.

22. If the processing machinery is situated in the vicinity of the mine, that is, in the area neighbouring to the mine particularly if it is in the same leased area where the mine is situated, it will fall within the definition of 'mine'. Where the mining lease is of thousands of hectares, and where the mine pit is itself of a diameter/width of one or two km, distances of 2.5 km to 6 km will be considered as 'adjacent' when judged from the size of the mine and the total area leased for mining. So long as the Processing Plant is within the same mining area leased to a mine operator, it will be considered adjacent to the mine, even if it is at a distance of 2.5 km. from the mine pit.

23. In this case, it is not in dispute that the petitioner has taken a mining lease of a large tract of land from the State Government. Malanjkhand Copper Mining & Ore concentration complex comprising the open pit mine, and the process plant (that is Primary Crusher, Secondary Crusher, Ball Mill, Concentrator Plant, Tailing Pumps as also Intake Well and Water Treatment) are situated within a single contiguous area leased to the petitioner. This is evident from the plan Annexure R-II produced by the State Government. All are situated within a distance varying from about 2.5 km. to 6 km. (except the intake well which is litter farter away). The activity of processing is closely connected to mining. The extended definition of 'mine' is obviously to avoid persons carrying on mining activity, bifurcating such activity and terming the processing part as a separate activity by obtaining a factory licence and thereby avoid payment of higher rate of duty. Further, as noticed above, the definition of 'Mine' in the Mines act itself includes the premises adjacent to the mine in which the process ancillary to getting, dressing or preparing for sale of minerals takes place. The definition of "Mine" contained in explanation (b) is not therefore something that is added to bring a greater burden under the Electricity Duty Act.

24. The definition of the term 'mine' include not only any premises/machinery in the mine, but also any premises/machinery adjacent to the mine, that is in the neighbouring area. The use of the word 'adjacent' in the context clearly shows the legislative intent is to include the plant and premises situated in the mining area leased/owned by the Mine Operators if such plant/premises is used for processing (crushing, processing, treating or transporting) of the ore extracted from the mine. This is obviously to scuttle any attempt by the mine operators to carve out and exclude the processing from 'Mining' by registering them as a separate 'factory'. Having regard to the extended definition of the word 'mine', there can be no doubt that the petitioner's processing plant consisting of Primary Crusher, Secondary Crusher, Ball Mill, Concentrator Plant, Tailing Pumps, as also Intake Well and Water Treatment Plant will be 'mine' as defined in the Table under Section 3 of the Act."

34. The said order was assailed before the Supreme Court in Civil Appeal No.6725/2008. The Supreme Court vide judgment rendered in *Hindustan Copper Limited-1's* case (supra), set aside the order of the Division Bench and remanded the matter to decide the question formulated by it, which reads as under:-

> "Whether copper concentrate is a mineral and whether Explanation to Part B of the Act applies even though manufacturing process is involved to bring it into existence?

35. After remand, the petition was again dismissed by Division Bench of this Court vide order dated 1.12.2011 in *Hindustan Copper Limited-2's* case (supra). The Bench held as under:-

> "11. The expression 'mine' used in explanation (b) to Part B of Section 3 creates a legal fiction. In interpreting the provision creating a legal fiction, the Court is required to ascertain for what purpose the fiction is created. [See: State of Bombay v. Pandurang Vinayak and Others, AIR 1953 SC 244] In explanation (b) while defining 'mine' the expression 'means and includes' has been used which has to be considered as exhaustive. In other words, the definition will embrace only what is comprised within the ordinary meaning of 'mine' part, together with what is mentioned in the inclusive part of the definition. The expression 'mineral' which is used in explanation (b) to Part B of Section 3 has not been defined in the Act and, therefore, as per well settled rules of statutory interpretation referred to supra it has to be read with regard to subject and object of the Act. The object of the Act is to raise revenue by prescribing rate of duty. As stated above, the highest rate of duty is prescribed for mining industries as it is exploiting the natural wealth which is non-renewable therefore, it must pay higher rate of duty which can be utilized for meeting the essential expenditures by the State Government. Taking into account the fact that the expression 'mine' creates a legal fiction and if the word 'mineral' is read subject to the context and object of the Act, it is graphically clear that wide meaning has to be given expression 'mineral'. If the copper ore is converted to copper concentrate by processing, it only enriches content of copper in the copper concentrate and it does not cease to be 'mineral', merely on its' conversion from copper ore to copper concentrate.
>
> 12. In view of the preceding analysis, in our considered opinion, copper concentrate is a mineral as defined in explanation (b) to Part B of Section 3 of the Act and, therefore, the explanation (b) to Part B of Section 3 of the Act applies to it.
>
> 13. Besides "copper concentrate" is the end product. What is 'crushed, processed, treated or transported' is not 'copper

concentrate' but the ore. The electricity in question is being consumed for such "crushing, processing, treating or transportation".

14. Another line of argument advanced was alleged discrimination between industries located in close proximity of the mine and other industries carrying on the same activity namely 'crushing, processing, treating or transportation', which are not located in such close proximity of the mine. The word 'adjacent' does not mean 'adjoining' or 'abutting', but has a wider connotation, and would include close proximity such being in the same locality. This proposition is not disputed, and therefore it is not necessary to refer to the case law cited for the meaning of the word "adjacent". In reply the learned Additional Advocate General submits that this differentiation is justified because the increased overheads such as transportation costs have been considered for not subjecting the far away industries to higher tax. Considering the case law cited above permitting wide discretion to the State in respect of taxation, we are inclined to agree with the submission of the learned Additional Advocate General.

15. In the result the writ petition fails and is hereby dismissed."

36. The Supreme Court in *Manganese Ore's* case (supra) has set aside the Division Bench judgment of this Court in *Hindustan Copper Limited-2's* case (supra) and held that the Copper concentrate is a different and distinct product and not the same mineral extracted and therefore, electricity duty at the rate prescribed for the 'mine' would not apply. The Court held as under:-

"29. Thus, the Ferro Manganese Plant, being a unit involved in manufacturing of ferromanganese alloy as opposed to a unit involved in crushing, treating, processing, etc. of manganese ore, cannot be treated within the extended definition of 'mine' within the Explanation (b) of Part B of Table of Rates of Duty to Section 3(1) of the Act.

30. The Executive Engineer and Chief Electrical Inspector, Government of Madhya Pradesh, vide its letter dated 06.02.2005 to the Superintendent Engineer and Deputy Electrical Inspector, Government of Madhya Pradesh, had confirmed as under:-

> "On spot inspection it is confirmed that, Ferro Manganese Plant does not come in the Mining Area and Electricity Duty @ 8% being charged at present by the M.P. State Electricity Board is proper."

31. The Ferromanganese Alloy so manufactured by the appellant using the mineral Manganese at its Ferromanganese plant is an entirely different product from its mineral raw material both physically and even chemically. Moreover, unlike Manganese

> ore a ferromanganese alloy can never be found in the natural state and it has to be manufactured from the manganese ore and other minerals only. The same logic applies to copper concentrate as a different and distinct product comes into existence.
>
> 32. Thus analyzed, we find that in both the cases, the different products in commercial parlance have emerged. Hence, we are inclined to think that the principle of noscitur a sociis has to be applied. As a logical corollary, tariff has to be levied as meant for manufacturing unit. Therefore, the analysis made by the High Court is not correct and, accordingly, the judgments rendered by it deserve to be set aside and we so direct. However, during this period if any amount has been paid by the appellants to the revenue, the same shall be adjusted towards future demands."

37. In writ petition bearing W.P. No.166/1996 (*M/s Vastu vs. M.P.E.B.*) (for short **"M/s Vastu-2"**) preferred before Indore Bench of this Court, a question was raised: as to whether the crushing activity carried on by the petitioner therein outside the mining area would be leviable to duty at the higher rate as provided by Section (3) of the 1949 Act (as amended by the Amendment Act of 1989). The extended definition to the term "mine" was applied to mean a mine to which the 1952 Act applies and includes the premises of machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral. The learned single Judge dismissed the said writ petition vide order dated 11.02.1998 thereby holding that the case was covered by the Division Bench judgment in *Stone Crusher Owners Association's* case (supra) which was confirmed by the Supreme Court. While considering the legality and validity of the order of the learned single Judge, which was assailed in *M/s Vastu-1's* case (supra), the Division Bench vide order dated 17.12.2002 observed that while no return was filed on behalf of the respondent-State, the respondent No.1 M.P. Electricity Board in its reply clearly admitted the averment made by the petitioner therein that the unit in question was situated outside the mining area and that the petitioner was not carrying on any mining activity, yet the writ petition was disposed of by holding that the case of the petitioner therein was covered by the judgment in *Stone Crusher Owners Association's* case (supra). The Division Bench further observed that the point projected in the present petition as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine', was not in issue nor decided in *Stone Crusher Owners Association's* case (supra). The relevant extract of the decision in *M/s Vastu-1's* case (supra) reads as under:-

> "3. We have perused the judgment dated 19.10.94 passed in M.P.No.673/93. In the said M.P. No.673/93, the challenge was to the vires to the said definition of 'mine' given in Sec.3(b) of the M.P. Electricity Duty Act, 1949 as also the amendment made in the Schedule, imposing higher tariff. The Division Bench held that the provisions under challenge do not suffer from any constitutional-vice or from any statutory invalidity. With this finding the said petition was dismissed. The point projected in the present petition as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine', was not in issue nor decided in M.P.673/93. In our considered opinion, the learned Single Judge ought to have considered the aforesaid issue involved in the petition. We, therefore, deem it proper to remit the case back to the learned Single Judge for deciding the petition afresh. It will also be appropriate to have the reply of the State filed in the case. After all it is the State which is the real contesting party inasmuch as the duty is to be paid to the State although through the agency of the M.P. Electricity Board. It is really surprising to note that the State having taken adjournments several times failed to file their reply. Shri Desai, learned Dy. Adv. General submits that the reply shall be filed by the State no sooner the case is listed before the Single Bench."

38. After remand of the matter from LPA in *Vastu-1* (supra), the learned single Bench vide order dated 13.08.2003 decided the Writ Petition No.166/1996 (*M/s Vastu vs. M.P. Electricity Board and others*) (for short **"M/s Vastu-3").** The Bench considered the return filed by the State, wherein it was stated on behalf of the State that the area in which the crushing machine of the petitioner firm was installed, was adjacent to the mine as the survey number of mining area is 1429/1/3 in Khajarana, Indore and in the same survey number the stone crusher of the petitioner Firm was situated. In rejoinder, the petitioner therein denied that its plant was installed in any part of the mining area nor was it adjacent to it but it was situated wholly outside the said area in another of the said survey number 1429/1/3. The Bench came to the conclusion that if the area of survey No.1429/1/3 on which petitioner's crusher was situated, was in the mining area or adjacent to it, the duty would be charged for the mine otherwise the duty would be charged in accordance to item No.(5) of Part-B of the Table appended to Section 3 of the Act but in the absence of any revenue record or any other document produced from either side showing that the area on which the crusher of the petitioner was installed was either in the mine or adjacent to it, the Bench passed the following order:-

> "16. On the basis of the above, it is not possible for this Court to examine and to come with a definite conclusion that whether the disputed area on which the

petitioner has installed the crusher is situated in mine or adjacent to it and hence, it would therefore, be just and proper to dispose of this petition by providing as under:-

> "The petitioner may approach Principal Secretary, Energy Department with his representation indicating therein whether the area in which the crusher is installed is in the mining area or adjacent to it or beyond it. The petitioner would be free to submit relevant documents in this regard. The Principal Secretary may call the report after getting that area inspected by an Officer not below the rank of Deputy Collector furnish the relevant revenue record so as to indicate the exact location of the crusher and if it is found that the crusher is installed wholly outside the mining area and is not adjacent to it, the necessary orders be passed in that regard in respect to the rates of the duty chargeable in terms of item (5) of table-B to Section 3 of the Act."

39. The point with regard to charging of electricity duty @40% on stone crusher unit, as applicable to mines, also received consideration in W.P. No.3153/2004 (*Shri Krishan Mehrotra vs. Madhya Pradesh State Electricity Board and others*) decided by a learned single Bench of this Court on 29.08.2008. In the facts of that case, the petitioner - an owner of a stone crusher carrying business of stone crushing such as purchasing the boulders from the mine owners and then crushing the boulders and converting them to "Gitti" - claimed that there was no mining lease sanctioned in his favour and that he had obtained a new electricity connection from the respondent with a contract demand of 60 HP to run the stone crusher which was installed in his premises. A grievance was raised that he had to make payment of electricity dues @4% of the electric tariff but since September, 1998 he was being charged electricity duty @40% of the electricity tariff on the ground that being a stone crusher, the petitioner is covered by the definition of 'mine' as provided under the 1949 Act. The grievance of the petitioner was resisted by the respondents inter alia stating that merely because the mine is at a distance of 10 kilometer, does not make any difference. The Bench took into consideration the earlier Division Bench decision of this Court in M.P. No.2821/1988 passed on 9.2.2005 **(Hindustan Copper Limited-3)** wherein while dealing with the question: as to whether use of the words "adjacent to a mine" would mean only the premises or machinery abutting to or adjacent the mine, and not premises or the plant, machinery situated at a distance of about 2.5 to 6 km, it was opined that the definition of the word "mine' not only includes premises/machinery in the mine but shall also include any premises/machinery adjacent to the mine, that is in the neighbouring area. The Division Bench also

held that this is obviously to scuttle any attempt by the mine operators to carve out and exclude the processing from 'mining' by registering them as a separate factory and therefore, in view of the extended definition of the word 'mine' there can be no doubt that the petitioner's processing plant consisting of primary crusher, tailing pumps as also intake well and water treatment plant will be 'mine' as defined in the table under Section 3 of the Act. After observing so, the learned single Bench in *Shri Krishan Mehrotra* (supra) concluded as under:-

> "9. In view of the aforesaid, it is clear that the Division Bench in fact was considering the word 'adjacent' with reference to certain activities by the mine owners. The activities consisting of Primary Crusher, Tailing Pumps, as also Intake Well and Water Treatment Plant were taken note of by the Division Bench which were owned and carried out by the mine owners itself.
>
> 10. The facts of the present case are entirely different. It is not the case of the respondents that the present petitioner is the holder of mining lease and is having a processing plant. The case of the petitioner in fact is that he is carrying out the activities of stone crusher by crushing the boulders into 'gitti'. It is nobody's case that the aforesaid gitti is being utilized and used in any of the processing of the ultimate object for which the mine or factory is situated. Respondents have also not made out any case that the conversion of boulders into small gitti have in any way a nexus with the activities run by the mine owners in whose favour mining lease has been granted. The present petitioner purchases boulders from the mine owners for converting it into gitti and gitti is being sold in the open market. The crushing plant is situated nearly about 10 km. away from the leased area granted.
>
> 11. It is the case of the petitioner that he purchases ballast from the traders and mine lessees. There is no mining lease sanctioned in favour of the petitioner. All the aforesaid facts have not been denied by the respondents while filing the return.
>
> 12. In view of the aforesaid facts and circumstances, I am of the view that the judgment passed by the Division Bench as aforesaid will have no application in the present case for the reasons stated hereinabove. In view of the aforesaid, I am of the view that respondents have not legally treated the stone crusher of the petitioner to be a 'mine' for the purposes of Section 3 of the Table of the Electricity Duty Act, 1949 and the electricity duty which is levieable from the petitioner is @ 4% as per part B of the Table, Item No.5(a) (ii) which relates to the industries receiving electricity at law tension tariff in excess of 25 HP upto 75 HP."

The single Bench decided the question by holding that the stone crushers not having mining lease and about 10 kms away from the lease area would not fall within the explanation "mine" under Section 3 of the 1949 Act.

40. The question with regard to the electricity tariff payable by a stone crusher, not situated within the mining land, had come up for consideration in W.P. No.846/2005 (*M/s Stuti Partnership, Indore vs. M.P.E.B.*) (for short "**M/s Stuti-2"**). The learned single Bench of Indore Bench of this Court allowed the writ petition by order dated 24.06.2009 and observed that the Division Bench judgment in **M/s Vastu-1** (supra) decided on 17.12.2002 was of the view that since the challenge in M.P. No.673/1993 had been raised to the vires of the definition of mine given under Explanation (b) of Part-B of Section 3 of the 1949 Act and said challenge had been rejected by the Division Bench, therefore, the definition of mine was not even a matter of any interpretation in *Stone Crusher Owners Association's* case (supra) and therefore, the observation made by Division Bench in *Stone Crusher Owners Association's* case (supra) could not be applied to the controversy as to whether the stone crusher in question was situated outside or adjacent to the mine and would also be covered under the definition of mine. The Court, therefore, directed the State for adjudication of quantum of electricity duty with a rider that it would not reopen the controversy as to whether the stone crusher of the said respondent is to be treated within the mining area or not, since specific declaration had been given by the writ court on the basis of the report of the Collector that the stone crusher is to be treated outside the mining land. Against the order of the learned single Judge dated 24.06.2009, the State preferred writ appeal forming the subject matter of the case in *M/s Stuti-1's* case (supra). On 15.12.2016, the Division Bench of Indore Bench of this Court passed the following order:-

> **"21.** In the Stone Crusher Owners Association and others (supra) the Division Bench dwelt with the challenge to the validity of the definition 'mines' as it stood vide Explanation (b) of Section 3 of the 1949 Act. The petition was at the instance of Stone Crusher owners who installed Stone crushing units at Jawahar Tekri, Indore alleging that their activity is industrial inasmuch as it consists of converting stones into stone chips, popularly known as 'gitti'. In the said case State of Madhy Pradesh had awarded a lease of Stone Mine situated at Jawahar Tekri to co-operative society known as Shramik Kamgar Karigaron Ki Sahkari Sanstha (Maryadit) Village Sinhasa, Jawahar Tekri, Indore. Stones extracted by the Society at Jawahar Tekri in form of boulders was sold to member of the Stone Crusher Owners Association who crushed it with power gererator (or diesel as the case may be) by electricity and convert it into 'gitti' and sell or supply to consumers. The challenge to validity of the

definition 'mines' vide Explanation 2 (b) of 1949 Act, was challenged on the following grounds; viz.,

i. Being beyond legislative competence.

ii. Discriminatory being violation of Article 14 of the Constitution of India - That the explanation (Sec. 3 Explanation (b) makes an irrational and arbitrary discrimination between premises and machinary used for crushing processing treating or transporting any mineral which is situated in or adjacent to a mine and the premises or machinery which is not so situated or adjacent to mine.

iii. That the boulders crushed loose their character and become raw material for the purposes of industrial activity of crushing and, therefore, the inclusive definition of 'mine' inapplicable.

22. The Division Bench upheld the validity on the ground that it is within the power of the State Legislature to have an 'extended definition of mine' for the purpose of charging electricity duty which includes crushing process etc. As activity in relation to minerals and in that view of that matter the charges applicable would be at the rate of 75 paise per unit and not at any lower rate as claimed by the petitioner." While dealing with the allegation of discrimination that those Stone Crushers are not located in the premises or Machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral, the Division Bench in the Stone Crusher Owners Association (supra) held : "12. Yet another submission put-forth was that the State has not charged the same rate in respect of other person the details of which have been given in the petition. It is alleged that the State is discriminating between the same class. The averments made in this regard in para (1) of the petition have not been controverted by the State or the Electricity Board. It is a wrong exercise of power by the authorities which does not make the law invalid. The respondents shall look into the matter and correct the bills issued in respect of persons mentioned in the petition.

23. The issue as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine being covered by decisions in the Crusher owners Association and others (supra) and Hindustan Copper Limited (supra), i.e., the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by the definition of 'mine' as contained in Explanation (b) to Section 3 of 1949 Act are liable to pay electricity duty

as applicable to the "mines (other than captive mines of a cement industry)".

24. Thus once the validity of the expression 'mines' as per Explanation 3 (b) of 1949 Act having been upheld in the Stone Crusher Owners Association and others (supra) decided on 17.10.1994, the contention that the respondent charged from a retrospective date on the basis of the explanation tendered by the Secretary, Department of Energy, State of Madhy Pradesh, does not stand to reason. The respondent unit having been held to be covered by the definition of mine, the respondent ought to have volunteered to pay the duty.

25. For the above mentioned reasons, the impugned order dated 24.6.2009 passed in W.P.No.846/2005, is liable to be set aside. Accordingly, it is set aside. Writ appeal filed by the appellant - State is allowed, but without orders as to costs."

41. In *M/s Ashish Enterprises's* case (supra), a single Bench of Indore Bench of this Court took note of the judgments of this Court in *M/s Stuti-2's* case (supra) and Division Bench decisions in *M/s Vastu-1's* case (supra) as well as Division Bench judgment in *Stone Crusher Owners Association's* case (supra) and observed as under:-

"It may be specifically noticed that the petitioner-firm has specifically maintained that the stone crusher run by it is situated in industrial area, Neemuch, and is not situated in any manner, in the mining land. Consequently, it is apparent that the electricity duty payable by the petitioner-firm is to be determined, treating the said stone crusher being situated in the land other than the mining land, and as such, the observations of the Division Bench in M.P. No.673/1993 are not even applicable. However, it is not even the matter of any dispute between the parties that the rates of electricity duty have varied from time to time, even for ordinary industries, situated outside the mining area. Therefore, it would be appropriate to relegate the matter to the Principal Secretary, Energy Department only for a limited purpose for adjudication of the quantum of electricity duty chargeable from the petitioner-firm. However, it would not be open for the said Authority to enter into the controversy, as to whether the stone crusher of the petitioner-firm is to be treated within the mining land or not, since the said stone crusher is concededly situated in industrial area, Neemuch i.e. outside the mining land.

As a result of the aforesaid discussion, the present writ petition is allowed to the extent that the orders dated December 21, 2006, passed by the Electricity Consumer Grievances Redressal Forum, Indore and the communication dated January 24, 2007, issued by the Executive Engineer, respondent no.3 are hereby set aside. As discussed above, the

> Principal Secretary, Energy Department shall adjudicate the quantum of electricity duty payable by the petitioner-firm.
>
> In this regard, the requisite order of determination of quantum of electricity duty shall be passed by the Principal Secretary, Energy Department, within a period of six months from the date a certified copy of this order is received. It would be open to the petitioner-firm to file written submissions, indicating the quantum of electricity, which it is liable to pay. If on such determination, it is found that any amount in excess has been paid by the petitioner-firm, then the same shall be refunded/adjusted by the authorities, in accordance with law."

42. In *Shri Ram Sharma Stone Crushers vs. State of M.P. and others,* 2016 (1) MPLJ 159 (SB), the term 'mine' as mentioned in 1949 Act which was amended w.e.f. 15th May, 1995 and further defined in the 1952 Act was considered with reference to the stone crushing unit of the petitioner therein engaged in the business of crushing of black stones who was charged electricity duty at the enhanced rate of 40% per month w.e.f. June, 2010 than the earlier prescribed rate of 8%. The learned single Bench found that though there was a dispute as to whether the machinery was situated adjacent to mine but the fact remained that the mine and machinery of the petitioner therein were situated in the same village i.e. Mou, Gwalior. Under the circumstances, considering the judgments in *Shri Krishan Mehrotra's* case (supra) and *Hindustan Copper Limited-2's* case (supra), the learned single Judge came to hold as under:-

> "12. The definition of mine shows that it is applicable to mines and it further includes the premises and machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting etc. Suffice it to say that once the mine and machinery in the question are situated in the same locality, it falls within the ambit of 'mine' under the Adhiniyam of 1949. Section 2(1)(j) of Mines Act also makes it clear that any premises in or adjacent to and belonging to mine will fall within the ambit of 'mine'. This is trite law that expression 'mine' used in explanation (b) to Part B of Section 3 creates a legal fiction. While interpreting the legal fiction, the court is required to ascertain for what purpose the fiction is created [See: *State of Bombay Vs. Pandurang Vinayak and Others, AIR 1953 SC 244).* In explanation (b) while defining 'mine' the expression ' means and includes' has been used which has to be considered as exhaustive. In other words, the definition will embrace only what is comprised within the ordinary meaning of 'mine' part together with what is mentioned in the inclusive part of the definition. Thus, in my view, the definition of "mine" is wide enough to include the petitioner firm."

43. The Division Bench of this Court in *Stone Crusher Owners Association's* case (supra) did not decide the issue that even if a person is not engaged in mining

activities and his stone crusher is not situated in or adjacent to a mine even then he would be covered by the extended definition of "mine" given in Explanation (b) of Part-B of Section 3 of the 1949 Act, therefore, the said decision is not applicable in the present case. In *M/s Vastu-1's* case (supra), the Division Bench specifically observed that the issue: as to whether a crushing unit situated outside the mining area, or to be more precise not situated in or adjacent to a mine, will also be covered by the said definition of mine, was not in issue nor decided in *Stone Crusher Owners Association's* case (supra). The judgment in *Hindustan Copper Limited-2's* case (supra) was set aside by the Supreme Court in *Manganese Ore's* case (supra) wherein the Court has held that the word "mineral" used in the aforesaid explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported and therefore, if there is no extraction of mineral, then there is no question of crushing, processing, treating or transporting the mineral. Once it was found by the learned single Judge that the appellants are neither the mine owners nor having their crushing units established at place adjacent or in the premises where the mine is situated, could not have held that the case of the appellant was covered by the decisions in *Stone Crusher Owners Association* (supra) and *Hindustan Copper Limited-2's* case (supra) firstly because the said issue was not dealt with by the Division Bench in *Stone Crusher Owners Association's* case (supra) and secondly, the decision in *Hindustan Copper Limited-2's* case (supra) was set aside by the Supreme Court in *Manganese Ore's* case (supra).

44. From the above discussion and in view of the answer to question Nos.(i) and (ii) above, it is concluded that:-

(i) the Division Bench judgment in *M/s Stuti-1's* case (supra) wherein it was held that the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by definition of 'mine' as contained in explanation (b) of Part B of Section 3(1) of 1949 Act are liable to pay electricity duty as applicable to "mines" (other than captive mines of a cement industry) does not lay down the correct law and is thus, overruled;

(ii) the Division Bench in *Vastu-1's* case (supra) correctly observed that as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in *Stone Crusher Association's* case (supra);

(iii) in Division Bench judgment of this Court in *Stone Crusher Association's* case (supra) though the argument was raised on behalf of the respondent-Company that the definition of 'mine' is

extended for the purposes of charging electricity duty which includes crushing, processing, etc. as activity in relation to minerals but the question as such was not decided and it was only held that the State is allowed wide choice in selection of objects and persons and such an exercise has never been said to be arbitrary or without any legislative competence and therefore, the legislature cannot be said to have erred in defining "mine" in Explanation (b) of Part B of Section 3(1) of the Act for the purpose of imposition of electricity duty. Only the validity of Section 3(1) of the 1949 Act was upheld in *Stone Crusher Association's* case (supra) which was later affirmed by the Supreme Court in *Manganese Ore's* case (supra) but since the question as to whether the stone crushing unit would be covered by the definition of 'mine' in terms of explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act was not decided in *Stone Crusher Association's* case (supra), therefore, the said decision does not lay down any law relating to the present controversy and it was not open to be relied upon to hold that all stone crushing unit would be chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act;

(iv) In view of the above, the decisions of this Court wherever it is held that the stone crushing units even though not occupied by the mine owners and/or not belonging to mine, situated in or adjacent to mine and even if situated outside the mining area are chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act, are not the correct enunciation of law and are, thus, overruled and such decisions where the rate of duty as per Entry 3 was held to be applicable to stone crushing units which were occupied by the mine owner and belonging to mine and situated in or adjacent to mine are upheld;

45. Having answered the question Nos.(i) to (iii) posed in the beginning, it would be essential to refer to the clarificatory circular dated 30.03.2010 issued by the Chief Engineer (Electrical Safety) and Chief Electrical Inspector, State of M.P. as the controversy involved herein emanates from the said circular. The said circular bears reference of a Single Bench decision of Indore Bench of this Court rendered in *M/s Ashish Enterprises* (supra) decided on 06.07.2009. The circular dated 30.03.2010 reads as under:-

''कार्यालय मुख्य अभियन्ता (विद्युत सुरक्षा) एवम् मुख्य विद्युत निरीक्षक म.प्र. शासन क–खण्ड, तृतीय मंजिल, सतपुड़ा भवन, भोपाल (म.प्र.) 462004

क्रमांकः सी/2/30/786/मु.अ. /भोपाल, दिनांक 30–03–2010

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विषयः माइंस अधिनियम 1952 की धारा 2 परिभाषा (1)(j)(x)(xi) एवं म.प्र. विद्युत शुल्क अधिनियम 1949 की धारा 3 भाग (ख) में दी गई परिभाषा स्पष्टीकरण (ख) के अन्तर्गत देय विद्युत शुल्क के सम्बन्ध में।

सन्दर्भः माननीय उच्च न्यायालय इन्दौर खण्डपीठ में मेसर्स आशीष इन्टरप्राइजेस के प्रकरण क्रमांक डब्ल्युपी 1640/2007 का निर्णय।

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'मेसर्स आशीष इन्टरप्राइजेस प्रकरण क्रमांक डब्ल्युपी 1640/2007 विरूद्ध म.प्र. शासन एवं अन्य में माननीय उच्च न्यायालय इन्दौर खण्डपीठ द्वारा दिए गए निर्णय के तारतम्य में म.प्र. में विभिन्न विद्युत वितरण कम्पनियों की जानकारी से यह स्थिति स्पष्ट हुई है कि माईंस एक्ट 1952 की धारा 2 परिभाषा (1)(j)(x)(xi) के अन्तर्गत दी गई परिभाषा एवं म.प्र. विद्युत शुल्क अधिनियम 1949 की धारा 3(ख) में दी गई परिभाषा का आशय अलग अलग निकाला जा रहा है। फलस्वरूप स्टोन क्रशर उपभोक्ता के मामले में कुछ स्थानो पर औद्योगिक क्षेत्र में विद्युत शुल्क की दरें 3 प्रतिशत, 3.5 प्रतिशत, 4 प्रतिशत, 8 प्रतिशत, 15 प्रतिशत एवं 40 प्रतिशत ली जा रही हैं। यह प्रकरण शासन के समक्ष प्रस्तुत हुआ।

*** *** ***

उक्तानुसार यह स्पष्ट है कि स्टोन क्रशर के कार्य में निकाली गई माईंस सामग्री जिसको उपयोग खनिज को चूरा (क्रशिंग) करने, उसका प्रसंस्करण करने, अभिक्रियान्वयन करने या उसका परिवहन करने के लिए किया जाता है चाहे वह माईंस के अन्दर हो या माईंस के बाहर किसी भी क्षेत्र में क्यों न हो, विद्युत शुल्क की दर 40 प्रतिशत की दर से देय होगी। यदि आपका क्षेत्र निर्गत का प्रतिशत से कम विद्युत शुल्क ली जा रही हो तो सम्बन्धित विद्युत वितरण कम्पनी से 10 दिन के भीतर सम्पर्क कर की गई कार्यवाही से अवगत करवायें तथा विगत वर्षों में यदि उनसे 40 प्रतिशत से कम विद्युत शुल्क वसूला गया हो तो अन्तर की राशि निकाली जाकर शासकीय कोष में जमा करना हो कार्यवाही कर अवगत कराए। ऐसे उपभोक्ता जिनसे 40 प्रतिशत से कम की विद्युत शुल्क ली जा रही है उनकी सूची एवं वसूली का विवरण निम्न प्रारूप में प्रस्तुत करें –

क्रं.	उपभोक्ता का नाम (स्टोन, क्रशर, स्टोन, रेत आदि के कार्य मे लगे)	वर्तमान में स्थापना कहाँ पर स्थापित है	ली जा रही विद्युत शुल्क का प्रतिशत	40 प्रतिशत से कम के अंतर की राशि	पत्र क्रं. जिससे राशि निकाल कर संबंधित विद्युत वितरण कंपनी का लिखा गया
1	2	3	4	5	6

सही/–
मुख्य अभियंता (वि. सु.) एवं मुख्य विद्युत निरीक्षक
म.प्र. शासन''

46. In the circular, it is noted that on the basis of the information received from the Electricity Distribution Companies in pursuance of the order passed in *M/s Ashish Enterprises's* case (supra) it is revealed that the two definitions envisaged under Section 2(1)(j)(x) and (xi) of the 1952 Act and Explanation (b) of Part-B of Section 3 of the 1949 Act are being misinterpreted, as a result of which, in cases of consumers of stone crushers at some places in industrial areas electricity charges are being levied at different rates i.e. @ 3%, 3.5%, 4%, 8%, 15% and 40%. The matter was placed before the Government and after considering the said two definitions, it is clarified in the circular that in the stone crushing work where the mining material is used for crushing; processing; treating or transporting the mineral, be it in or any area outside the mines, the electricity duty shall be payable at the rate of 40 percent. Accordingly, it was made clear that if in the area/jurisdiction of the addressees, the electricity duty is being levied less than the said percentage then contact be made with the concerned Electricity Distribution Company and the action taken report be submitted within 10 days and in case, in the preceding years the electricity duty has been charged below the rate of 40 percent, the difference amount be calculated and deposited with the Government Treasury under intimation to the undersigned therein. Requisite information with regard to recovery from the consumers who were charged electricity duty less than the rate of 40 percent was also sought in a prescribed format.

47. From perusal of the circular dated 30.03.2010 it is not explicit as to on what basis and reasoning, the clarification was issued in the circular dated 30.03.2010 to include all the stone crushers whether situated in or adjacent or outside the mining area for the purposes of electricity duty @40% where the mining material or mineral was being used for its crushing, processing, treating or transporting. The circular only takes note of decision in *M/s Ashish Enterprises's* case (supra) and that the matter with regard to levy of different rate of electricity duty to the stone crushers at some places in industrial area and different interpretation of definition of 'Mine" envisaged under explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j)(x) and (xi) of the 1952 Act being taken out, had come to the notice and the matter was placed before the State Government. There is nothing in the circular as to how and in what manner the provisions contained in Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act have been considered and the decision was taken by the State Government. In this view of the matter, the circular dated 30.03.2010 which is in the realm of an administrative order cannot override the statute and is a wrong interpretation of definition of 'mine'envisaged in Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act. Thus, it is held that the circular dated 30.03.2010 is not the correct interpretation of Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act.

48. Having answered the questions of law referred to for our opinion, the matters be now posted for hearing before an appropriate Bench as per roster.

Order accordingly

I.L.R. [2020] M.P. 647 (FB)
FULL BENCH

Before Mr. Justice Sujoy Paul, Mr. Justice J.P. Gupta & Smt. Justice Nandita Dubey

W.A. No. 756/2019 (Jabalpur) decided on 2 March, 2020

MEENAKSHI DUBEY …Appellant

Vs.

M.P. POORVA KSHETRA VIDYUT VITRAN CO. LTD. & ors. …Respondents

***A. Service Law – Compassionate Appointment – State Government Policy, Clause 2.2 – Validity – Entitlement of Married Daughters* – Held – Clause 2.2 to the extent it deprives the married daughter from right of consideration for compassionate appointment, is arbitrary and discriminatory in nature and is thus violative of Article 14, 15, 16 & 39 (a) of Constitution – Reference answered accordingly. (Paras 20 to 22)**

क. सेवा विधि – अनुकंपा नियुक्ति – राज्य सरकार की नीति, खंड 2.2 – विधिमान्यता – विवाहित पुत्रियों की हकदारी – अभिनिर्धारित – खंड 2.2 विवाहित पुत्रियों को अनुकंपा नियुक्ति के लिए विचार में लेने के अधिकार से वंचित करने की सीमा तक, मनमाना एवं विभेदकारी स्वरूप का है तथा इसलिए संविधान के अनुच्छेद 14, 15, 16 व 39(a) का उल्लंघन करता है – निर्देश तद्नुसार उत्तरित।

***B. Service Law – Compassionate Appointment – State Government Policy, Clause 2.2 – Right of Equality – Entitlement of Married Daughters* – Held – Clause 2.2 gives option to living spouse of deceased government servant to nominate son or unmarried daughter – No condition imposed while considering a son relating to marital status, but condition of "unmarried" is affixed for the daughter without any justification – It violates equality clause and cannot be countenanced. (Para 20)**

ख. सेवा विधि – अनुकंपा नियुक्ति – राज्य शासन की नीति, खंड 2.2 – समता का अधिकार – विवाहित पुत्रियों की हकदारी – अभिनिर्धारित – खंड 2.2 मृत शासकीय कर्मचारी के जीवित पति या पत्नी को पुत्र अथवा अविवाहित पुत्री को नामांकित/का नामनिर्दिष्ट करने का विकल्प देता है – पुत्र पर विचार करते समय विवाह स्थिति से संबंधित कोई शर्त अधिरोपित नहीं की गई है, परंतु पुत्री के लिए बिना किसी न्यायोचित्य के ''अविवाहित'' की शर्त लगाई गई है – यह समानता के खंड का उल्लंघन करता है तथा इसका समर्थन नहीं किया जा सकता।

***C. Service Law – Compassionate Appointment – State Government Policy, Clause 2.4 – Validity – Entitlement of Married Daughters* – Held – In clause 2.4. government partially recognized the right of married daughter but it was confined to such daughters who have no brothers – Thus, no reason to declare Clause 2.4 as *ultra vires.* (Para 20 & 22)**

ग. सेवा विधि – अनुकंपा नियुक्ति – राज्य सरकार की नीति, खंड 2.4 – विधिमान्यता – विवाहित पुत्रियों की हकदारी – अभिनिर्धारित – खंड 2.4 में शासन ने विवाहित पुत्री के अधिकार को आंशिक रूप से मान्य किया है परंतु वह उन पुत्रियों तक ही सीमित है जिनके कोई भाई नहीं हैं – अतः खंड 2.4 को अधिकारातीत घोषित करने का कोई कारण नहीं है।

Cases referred:

W.P. No. 3769/2017 decided on 09.10.2018 (DB), 2019 (2) MPLJ 707, 2018 Lab IC 1522, 2003 (2) WBLR (Cal) 94, AIR 2019 Utr 69, ILR 1992 Kar 3416, 2015 (3) LW 756, 2013 (8) MLJ 684, 2013 SCC OnLine Bom 1549, 2020 (1) GLT 198, MANU/UP/2275/2015, 2005 (104) FLR 271, (1955) 1 SCR 1045, (1987) 2 SCC 278, 2020 SCC OnLine SC 200.

Anubhav Jain, Sudha Gautam, Anand Sharma and *Sonali Viswas*, for the appellant.

Shashank Shekhar, A.G. for the respondent/State.

Ankit Agrawal, for the respondent-Company.

J U D G M E N T

The Judgment of the Court was delivered by : **SUJOY PAUL, J. :-** This Larger Bench is called upon to decide the following issue:

> *"Whether in the matter of compassionate appointment covered by Policy framed by the State Government wherein, certain class of dependent which includes unmarried daughter a widowed daughter and a divorced daughter and in case of a deceased Govt. servant who only has daughter, such married daughter who was wholly dependent on Govt. servant subject to she giving her undertaking of bearing responsibility of other dependents of the deceased Govt. servant, Clause 2.2 and 2.4 can be said to be violative of Article 14, 15, 25 and 51A (e) of the Constitution."*

2. It is profitable to note the background of the reference. W.P. No. 9631/2017 *(Meenakshi Dubey vs. Madhya Pradesh Poorv Kshetra Vidyut Vitran Company Limited and others)* was filed by the appellant/petitioner, the married daughter of deceased employee claiming compassionate appointment. The writ court by order dated 08.01.2019 dismissed the petition by holding that married woman does not

deserve consideration for compassionate appointment as per the policy of the Company. Aggrieved, she filed WA No.756/2019 which was decided on 08.01.2020 Pertinently, the petitioner therein did not challenge the constitutionality of any clause of the policy of compassionate appointment framed by the employer namely; Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Limited *(hereinafter called as* ***'Electricity Company').*** It appears that during the course of hearing of WA No.756/2019, a Division Bench judgment of Indore Bench in the case of *Smt. Meenakshi vs. State of M.P. and others, W.P.* No.3769/2017 decided on 09.10.2018, was cited by the appellant. In this WP filed before Indore Bench, *vires* of Clause 2.2, 2.3 and 2.4 of the policy of the State Government were called in question. The Indore Bench opined that Clause 2.2 and 2.4 to the extent right of married daughter specially when the deceased government servant was having male children also, has been curtailed, is certainly unconstitutional and violative of Article 14, 15, 25 and 51A (e) of the Constitution of India. Net result is that the policy to the extent it debars married woman from consideration for compassionate appointment is quashed and the respondent/State is directed to consider the case of the petitioner on merits.

3. The Division Bench in WA No.756/2019 recorded its disagreement with the decision of Indore Bench in *Smt. Meenakshi* (Supra) in holding Clause 2.2 and 2.4 of the policy as *ultra vires.* The Bench reproduced the relevant policy which was applicable to the Electricity Company. It was observed that the Indore Bench in *Smt. Meenakshi* (Supra) treated the appointment on compassionate ground as a right whereas such appointments are given solely on humanitarian grounds with the sole object to provide immediate relief to employee's family to tide over the sudden financial crises and such claim cannot be raised as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be given strictly on the basis of open invitation of applications and comparative merit, in consonance with Article 14 and 16 of the Constitution of India. No other mode of appointment is permissible. The concept of compassionate appointment is recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the Service Rules. In this backdrop, it was observed that the policy or scheme, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. While observing so, the Division Bench thought it proper to refer the issue for determination before the Larger Bench.

4. The Division Bench did not keep WA No.756/2019 pending and disposed it of by holding that appellant being a married daughter not shown to be dependent on her father, there exists no illegality in the impugned order which calls for any interference.

5. The aforesaid factual backdrop makes it clear that no *vires* of any provision of the policy/scheme of State Government or Electricity Company was subject matter of challenge in WP No. 9631/2017 or in WA No.756/2019. The policy of compassionate appointment of State Government and Electricity Company are indisputably different. Be that as it may, we are called upon to answer the reference and; hence, we deem it proper to deal with the issue referred for adjudication.

6. During the course of hearing, learned counsel for the parties fairly submitted that at present, policy of State Government dated 29.09.2014 is applicable. Clause 2.2 to 2.4 read as under:

> ''2.2 मृतक शासकीय सेवक के आश्रित पति/पत्नि द्वारा योग्यता न रखने अथवा स्वयं अनुकंपा नियुक्ति न लेना चाहे तो उसके द्वारा नामांकित पुत्र या **अविवाहित पुत्री**।
>
> 2.3 ऐसी विधवा अथवा तलाकशुदा पुत्री, जो दिवंगत शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उसके साथ रह रही हो अथवा उपरोक्त पात्र सदस्य न होने की स्थिति में विधवा पुत्रवधु जो शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उनके साथ रह रही हो।
>
> 2.4 दिवंगत शासकीय सेवक की संतान **सिर्फ पुत्र/पुत्रियां हो और वह** विवाहित हो तो दिवंगत शासकीय सेवक के **आश्रित पति/पत्नि द्वारा नामांकित विवाहित पुत्री**।
>
> यह स्पष्ट किया जाता है कि मृतक शासकीय सेवक के आश्रित पति/पत्नी जीवित होने पर ही विवाहित पुत्री को अनुकंपा नियुक्ति की पात्रता होगी । (ऐसे अनुकंपा नियुक्ति पाने वाली पुत्री को शासकीय सेवक के **आश्रित पति/पत्नी के पालन पोषण की जिम्मेदारी का शपथ पत्र देना होगा)''**
>
> *(Emphasis supplied)*

The learned counsel for the parties urged that there is no illegality or unconstitutionality in Clause 2.4 of the policy. At best, the clarification/condition appended to Clause 2.4 which is confined to a married daughter should be made applicable to son as well. Confining the duty for the daughter alone to take care of living spouse of deceased employee is discriminatory and arbitrary. We will deal with this point at appropriate stage.

7. Shri Anubhav Jain, learned counsel for the appellant contended that clause 2.2 is arbitrary, unjust, unreasonable and discriminatory in nature inasmuch as it excludes the married daughter from right of consideration for compassionate appointment. Shri Jain has taken pains to rely on the judgments of various High Courts in support of his aforesaid contention.

8. Shri Shashank Shekhar, learned Advocate General assisted by Shri Amit Singh, Advocate and Shri Ankit Agrawal, learned counsel for Electricity Company, in all fairness, urged that in our constitutional scheme, any provision which hits equality clause needs to be interfered with. During the course of hearing, learned Advocate General prayed for deferring the hearing of this matter for a later date by contending that in the meantime, the Government will consider the validity of Clause 2.2 and 2.4 of the policy and will make necessary corrections. The validity of corrected policy can be examined by this Bench. Although we appreciate the fair stand taken by learned Advocate General, we are not inclined to defer the hearing of this matter because (i) this is not a regular matter; indeed, it is a reference made to Larger Bench hence, we are under an obligation to answer the reference. (ii) if this Bench interferes with the clauses of the policy, it will still be open to State Government to redraft/ reframe the said Clauses or issue a fresh policy; (iii) the Indore Bench decided WP No.3769/2017 on 09.10.2018 and declared certain clauses of policy as unconstitutional. Sufficient time was available to rectify the said clauses or introduce a new policy.

9. The policy of compassionate appointment of different State Governments became subject matter of challenge before the High Courts and similar clauses which excludes the right of consideration of a married daughter were taken note of and interfered with by the High Courts on the anvil of Article 14 and 15 of the Constitution. It is profitable to refer to certain judgments. This Court in 2019 (2) MPLJ 707 *(Bhawna Chourasia vs. State of M.P.)* held as under:

> *"15. This is a matter of common knowledge that in present days there are sizable number of families having single child. In many families, there are no male child. The daughter takes care of parents even after her marriage. The parents rely on their daughters heavily. Cases are not unknown where sons have failed to discharge their obligation of taking care of parents and it is taken care of and obligation is sincerely discharged by married daughters.* ***Thus, it will be travesty of justice if married daughters are deprived from right of consideration for compassionate appointment."***
>
> *(Emphasis supplied)*

The Chattisgarh High Court in WP(S) No.296/2014 *(Sarojni Bhoi vs. State of Chattisgarh and others)* opined that criteria to grant compassionate appointment should be dependency rather than marriage. A daughter even after marriage remains daughter of her father and she could not be treated as not belonging to her father's family. Institution of marriage was basic civil right of man and woman and marriage by itself was not a disqualification. Resultantly, the impugned policy of Government prohibiting consideration of married daughter from compassionate appointment was held to be violative of Article 14 of the Constitution. The

Chattisgarh High Court considered its previous Division Bench judgment in the case of *Bailadila Berozgar Sangh vs. National Mineral Corporation Ltd.* wherein it was held that:

> *"....It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation.* ***Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing*** **so**."
>
> *(Emphasis supplied)*

10. Similarly, the question "Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying-in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid?" came up for consideration before a Larger Bench of High Court of Calcutta in *State of W.B. and others vs. Purnima Das and others* (2018 Lab IC 1522). The relevant Clause 2(2) of the policy which was subject matter of examination was :

> *"2(2) For the purpose of appointment on compassionate ground a dependent of a government employee shall mean wife/ husband / son* ***/unmarried daughter of the employee*** *who is/was solely dependent on the government employee."*

The ancillary question cropped up before the Larger Bench was whether the classification created by Government by depriving the married daughter from right of consideration for compassionate appointment is a valid classification. Deepankar Datta, J' speaking for the Bench opined as under:

> *".....We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to 'a class'. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified,* ***but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme.*** *A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be*

> *treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival.* ***It is, therefore, difficult for us to sustain the classification as reasonable."***
>
> *(Emphasis supplied)*

In no uncertain terms, it was held that it is the dependency factor that would merit consideration and not the marital status of the applicant. The Calcutta High Court considered its previous judgment in the case of *Smt. Usha Singh vs. State of W.B.,* 2003 (2) WBLR (Cal) 94 wherein it was opined as under:

> *".....Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is eligible but an unemployed married daughter is ineligible irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the father. Take the case of a teacher who died-in-harness leaving him surviving his illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned Advocate, this family cannot be helped. Is this the intended result of the rule? Or does this interpretation advance the object of the rule? What is the basis for the qualification which debars the married daughter? and what is the nexus between the qualification and the object sought to be achieved? In my view,* ***there is none.*** *If any one suggests that a son married or unmarried would look after the parent and his brothers and sisters and that a married sister would not do as much, my answer will be that experience has been otherwise. Not only that the experience has been otherwise but also judicial notice has been taken thereof by a Court no less than the Apex Court in the case of Savita v. Union of India reported in (1996) 2 SCC 380 wherein Their Lordships quoted with approval a common saying:* ***'A son is a son until he gets a wife. A daughter is a daughter throughout her life'."***
>
> *(Emphasis supplied)*

Consequently, the Larger Bench answered the question as under:

> *"111. Our answer to the question formulated in paragraph 6 supra is that* ***complete exclusion of married daughters*** *like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they* ***are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid.***
>
> *112. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and*

> *February 3, 2009 (governing the case of Purnima) i.e.* ***the adjective 'unmarried' before 'daughter', is struck down as violative of the Constitution.*** *It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death* ***and agree to look after the other family members of the deceased, if the claim is to be considered further."***
>
> *(Emphasis supplied)*

The judgment of *Purnima Das etc.* (Supra) was unsuccessfully challenged by the State of West Bengal before the Supreme Court in SLP(C) No.17638-17639 of 2018 which were dismissed on 23.07.2019. The similar question came up for consideration before a Larger Bench of High Court of Uttarakhand in the case of *Udham Singh Nagar District Cooperative Bank Ltd. And another vs. Anjula Singh and others, AIR 2019 Utr 69.* The relevant question posed before the Larger Bench reads as under:

> *"(ii)* ***Whether non-inclusion of a "married daughter"*** *in the definition of "family", under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in* ***violation of Articles 14, 15 and 16 in Part III of the Constitution of India ?"***
>
> *(Emphasis supplied)*

The answer reads thus:

> *"(ii) Question No.2 should also be answered in the affirmative. Non-inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India."*

11. It is noteworthy that similar view was taken by Karnataka High Court in ILR 1992 Kar 3416 *(R. Jayamma V.Karnataka Electricity Board)*. In the said case, it was held as under:

> *"10. This discrimination, in refusing compassionate appointment on the only ground that the woman is married is violative of*

> *Constitutional Guarantees. It is out of keeping with the trend of times when men and women compete on equal terms in all areas. The Electricity Board would do well to revise its guidelines and remove such anachronisms."*

The Madras High Court in 2015 (3) LW 756 *(R. Govindammal V. The Principal Secretary, Social Welfare and Nutritious Meal Programme Department & others)* opined thus:

> *"14. Therefore, I am of the view that G.O.Ms. No. 560 dated 3-8-1977 depriving compassionate appointment to married daughters, while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15(3) of the Constitution. But the State cannot discriminate women in the matter of compassionate appointment, on the ground of marriage."*

In *R. Govindammal(Supra),* the Madras High Court took note of a judgment reported in 2013 (8) MLJ 684 *(Krishnaveni vs. Kadamparai Electricity Generation Block, Coimbator District)* in which it was ruled that if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also.

12. The Bombay High Court in *Sou. Swara Sachin Kulkrni v. Superintending Engineer, Pune Irrigation Project Circle,* 2013 SCC On Line Bom 1549 opined as under:

> *"3 Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances,* ***the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage."***

It was further held as under:

> *"3 We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State."*

13. In a recent judgment by High Court of Tripura in *Debashri Chakraborty vs. State of Tripura and others,* 2020 (1) GLT 198, the court has taken note of

various judgments of the High Courts including the judgment of Allahabad High Court in *Vimla Shrivastava and others vs. State of UP and others* reported in MANU/UP/2275/2015 and judgment of Karnataka High Court in *Manjula Vs. State of Karnataka,* 2005 (104) FLR 271. After taking note of series of judgments authored by different High Courts, the court answered the question as under:

> *"ii. Question No.2 should also be answered in the affirmative. Non-inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations,* ***thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.***
>
> *iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations."*
>
> *(Emphasis supplied)*

The common string in the aforesaid judgments of various High Courts is clear like a cloudless sky that the action/clauses of the policy which deprives married daughter from right of consideration for compassionate appointment runs contrary to Articles 14, 15, 16 and 39(a) of the Constitution. We concur with the above view taken by various High Courts.

14. The Constitution Bench of Supreme Court in *Budhan Choudhry vs. State of Bihar,* (1955) 1 SCR 1045 made it clear that to pass a test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. In view of this decision, Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. As noticed, the various High Courts held that the classification made by impugned clause amounts to an artificial classification which divides a homogenous class and creates a class within the class.

15. The Apex Court in *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai,* (1987) 2 SCC 278 opined that a daughter after her marriage does not cease to be a daughter of her father or mother and observed as under:

> *"12. We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that* ***it is the moral obligation of the children to maintain their parents.*** *In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.*
>
> *13. After giving our best consideration to the question, we are of the view that Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself."*
>
> *(Emphasis supplied)*

16. It is noteworthy that in the case of *Vijaya Manohar(Supra),* the Apex Court was talking about 'moral obligation' of children to maintain their parents. The Parliament in its wisdom introduced The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This Act places equal duty on both, sons and daughters to take care and maintain the parents. In view of this Act, the obligation to take care of parents assumes more importance and it is not only a "moral duty", it became a "statutory duty" of children as well. This aspect was considered in *Krishnaveni's* case (supra) wherein it was held as under:

> *"28. The case on hand is a classic case, wherein, the deceased Government servant has no male issue. Nowadays, it is a common thing that a family have a single child; either male or female. Thus, if a Government servant has only daughter, as in this case, the widow of the Government servant cannot be stated that her married daughter could not be provided compassionate appointment, particularly, when she has to solely rely on her daughter.* ***As stated above, Maintenance and Welfare of Parents and Senior Citizens Act, also now places equal responsibility on both the son and daughter to take care of their parents."***

17. We are not oblivious of the settled legal position that compassionate appointment is an exception to general rule. As per the policy of compassionate appointment, State has already decided to consider claims of the married daughters (Clause 2.4) for compassionate appointment but such consideration was confined to such daughters who have no brothers. After the death of government servant, it is open to the spouse to decide and opt whether his/her son or daughter is best suited for compassionate appointment and take responsibilities

towards family which were being discharged by the deceased government servant earlier.

The offending clause which restricts such consideration only for such married daughter is subject matter of consideration and examination. The Constitution Bench of Supreme Court in *Budhan Choudhry(Supra)* held that substantive law, procedural law or even an action can be interfered with if it does not pass the "litmus test" laid down in the said case. Hence, in a case of this nature, adjudication is not required regarding creation of right of married woman, indeed, judicial review is focused against curtailment of claim of such married woman when deceased government servant died leaving behind son/s.

18. The matter may be viewed from another angle. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (for short 'CEDAW') was ratified by the UNO on 18-12-1979. The Government of India who was an active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. Article 1 defines discrimination against women to mean - **"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment** or exercise by women, **irrespective of their marital status,** on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Article 2(b) makes it obligatory for the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women" to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State

parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that - "the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women". Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms. Article 5(a) of CEDAW on which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-a-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and need for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures modify law/policy and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

19. In a recent judgment reported in 2020 SCC OnLine SC 200 *(Secretary, Ministry of Defence vs. Babita Puniya and others),* the Apex Court opined that -

> *"67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of nondiscrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1)."*

This recent judgment in *Babita Puniya(Supra)* is a very important step to ensure "Gender Justice". In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2.2 to the extent it deprives married woman from

right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature.

21. Looking from any angle, it is crystal clear that clause 2.2 which deprives the married daughter from right of consideration cannot sustain judicial scrutiny. Thus, for different reasons, we are inclined to hold that Indore Bench has rightly interfered with Clause 2.2 of the said policy in the case of *Smt. Meenakshi* (Supra).

22. In nutshell, broadly, we are in agreement with the conclusion drawn by Indore Bench in *Smt. Meenakshi(Supra)* and deem it proper to answer the reference as under:

> "Clause 2.2 of the policy dated 29.09.2014 is violative of Articles 14, 15, 16 and 39(a) of the Constitution of India to the extent it deprives the married daughter from right of consideration for compassionate appointment. We find no reason to declare Clause 2.4 of the policy as *ultra vires.* To this extent, we overrule the judgment of Indore Bench in the case of *Meenakshi(Supra)"*

23. The issue is answered accordingly.

Order accordingly

I.L.R. [2020] M.P. 660 (DB)
WRIT APPEAL

Before Mr. Justice Ajay Kumar Mittal, Chief Justice &
Mr. Justice Vijay Kumar Shukla

W.A. No. 821/2019 (Jabalpur) decided on 14 January, 2020

PRADEEP KORI …Appellant

Vs.

STATE OF M.P. & anr. …Respondents

***Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Writ Appeal – Scope & Jurisdiction* – Petition u/S 482 dismissed by Single Judge – Writ Appeal filed – Held – Full Bench concluded that no appeal would be maintainable against an order passed by Judicial Court in**

civil or criminal proceedings – Writ Appeal not maintainable and is dismissed. (Paras 4, 6 & 8)

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – रिट अपील – विस्तार व अधिकारिता – धारा 482 के अंतर्गत याचिका एकल न्यायाधीश द्वारा खारिज – रिट अपील प्रस्तुत – अभिनिर्धारित – पूर्ण न्यायपीठ ने निष्कर्षित किया है कि सिविल अथवा दाण्डिक कार्यवाहियों में न्यायिक न्यायालय द्वारा पारित एक आदेश के विरूद्ध कोई अपील पोषणीय नहीं होगी – रिट अपील पोषणीय नहीं तथा खारिज।

Cases referred:

W.A. No. 538/2017 decided on 20.08.2018, (2017) 5 SCC 533, 2017 (4) MPLJ 109.

Abhijeet Awasthy, for the appellant.
H.S. Chhabra, G.A. for the respondent No. 1/State.

J U D G M E N T

The Judgment of the Court was delivered by :
V.K.SHUKLA, J.:- The present appeal is filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005(hereinafter referred to as 'Adhiniyam, 2005'), being aggrieved by the dismissal of Misc.Cri.Case No. 8098/2016 vide order dated 08-02-2019, passed by the learned Single Judge, whereby the prayer for quashment of Criminal Case No.3218/2008 pending before the Court of Chief Judicial Magistrar, (sic: Magistrate) Betul for commission of offences under Sections 420, 467, 468 and 471 of the Indian Penal Code has been rejected.

2. Learned counsel for the respondent/State raised a preliminary objection regarding maintainability of the present appeal under the provisions of Adhiniyam, 2005. He submits that the learned Single Judge has declined to interfere under Section 482 of the Code of Criminal Procedure and therefore, the present appeal is not maintainable in view of the provisions of Section 2 of Adhiniyam, 2005. It is stated that the writ appeal under Section 2 of Adhinyam, 2005 is maintainable only against an order passed in exercise of the writ jurisdiction of the Constitution of India.

3. Per contra, learned counsel for the appellant submitted that the present appeal is maintainable in view of the judgment passed by a Coordinate Bench of this court in the case of *State of M.P. and others Vs. Sanjay Kumar Koshti,* W.A.No. 538/2017 decided on 20-08-2018.

4. We have heard the learned counsel for the parties. To appreciate the aforesaid submissions, the provision of Section 2 of Adhiniyam, 2005 is reproduced as under :

> ***"2. Appeal to the Division Bench of the High Court from a Judgement or order of one Judge of the High Court made in exercise of original jurisdiction.-***
>
> *(1) An appeal shall lie from a Judgement or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court:*
>
> *Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Artical 227 of the Constitution ofIndia.*
>
> *(2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge :*
>
> *Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period. "*

On a bare reading of provisions of Section 2, it is manifest that an intra court appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court. It is further provided in the aforesaid provision that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

5. The submission of the learned counsel for the appellant that the powers exercised under Section 482 Cr.PC by the learned Single Judge in the present case declining quashing of the criminal proceedings initiated against him is akin to the provisions of Article 226 of the Constitution of India, we do not find any merit in the aforesaid submission. In the case of *Ram Kishan Fauji Vs. State of Haryana and others,* (2017)5 SCC 533, a question came for consideration before the Apex Court regarding maintainability of the Letters Patent Appeal before the Division Bench against an order passed by the learned Single Judge in exercise of the criminal jurisdiction. In the said case, while considering the aforesaid issue, the Apex Court also considered the difference between exercise of power under Article 226 and Article 227 of the Constitution of India. It was held that under Article 226, the High Courts have power to issue directions, orders and writs to any person or authority including any Government whereas under Article 227 every High Court has power of superintendence over all courts and Tribunals

throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. It has been further held that a statement by a Single Judge that he has exercised power under Article 227 cannot take away the right of appeal against such judgment if the power is otherwise found to have been exercised under Article 226. In para-38, the Apex Court held that it is law that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution. The exercise of jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution. In para-45, the court recorded that the intra court appeal would not lie in respect of an order passed by the court in a proceedings connected with criminal jurisdiction.Para-45 reads as under:

> *"45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdiction is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in Hari Vishnu Kamath does not render any assistance to the argument advanced by the learned counsel for the respondent State."*

6. Similarly a question arose regarding maintainability of an intra court appeal under Section 2(1) of Adhiniyam, 2005 against an order passed by the learned Single Judge in writ jurisdiction arising out of an award of Labour Court before the Full Bench of this court in the case of *Shailendra Kumar Vs. Divisional Forest Officer and another*, 2017(4) MPLJ, 109. After referring to various pronouncements of the Apex Court dealing with the jurisdiction under Article 226 and 227, the Full Bench held that an order passed in a writ petition arising out of an award of a Labour Court is composite order under Article 226 and 227 of the Constitution. Therefore, intra court appeal against such order would be maintainable. It was also recorded that the orders passed by Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before High Courts are only under Article 227 of Constitution. Thus, no intra court appeal would be maintainable against an order passed by Single Judge in proceedings arising out of an order passed by Judicial Court , may be civil or criminal proceedings. Relevant para-18 of Full Bench is referred as under:

> *"18. We may clarify that the orders passed by the Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before the High Courts are only under Article 227 of the Constitution of India. Thus, no intra court appeal would be maintainable against an order passed by the learned Single Judge in proceedings arising out of an order passed by the learned Single Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings. "*

7. The judgment relied by the learned counsel for the appellant in the case of *Sanjay Kumar Koshti*(supra) would not apply to the facts of the present case. Therein, the learned Single Judge had heard the writ petition as well as connected petition under Section 482 CrPC simultaneously filed by the same applicant challenging the findings of the High Power Committee regarding caste certificate in a writ petition as well as quashing of registration of FIR under Section 482 CrPC and therefore, both the matters were heard analogously by the learned Single Judge. The writ petition was allowed quashing the findings of the High Power Committee in the writ jurisdiction. In view of the order passed in writ petition, quashing the findings of High Power Committee, the learned Single Judge had also allowed the connected 482 CrPC petition. In this background, the High Court had entertained the writ appeal against the order passed under Section 482 CrPC on the premises that the learned Single Judge has disposed of the 482 CrPC petition quashing the FIR only in view of the order passed in the writ petition. Therefore, the judgment passed in the case of *Sanjay Kumar Koshti*(supra) would not apply in the facts of the present case.

8. The law relating to maintainability of intra-court appeal in criminal matter is well settled in the case of *Ram Kishan Fauji*(supra) and also by the Full Bench of this court in the case of *Shailendra Kumar* (supra) where it has been laid down that no writ appeal would be maintainable against an order passed by the learned Single Judge in a proceedings arising out of an order passed by the Judicial Court in civil or criminal proceedings.

9. Accordingly, the writ appeal is not maintainable and the same is dismissed.

Appeal dismissed

I.L.R. [2020] M.P. 665 (DB)
WRIT APPEAL

Before Mr. Justice Sheel Nagu & Mr. Justice Rajeev Kumar Shrivastava

W.A. No. 2035/2019 (Gwalior) decided on 28 February, 2020

DEVENDRA RAJORIYA …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***Right to Children of Free and Compulsory Education Act (35 of 2009), Section 25 – Pupil-Teacher Ratio* – Held – A teacher does not have any justiciable right to successfully assail his transfer solely on ground that the same cause disturbance to pupil-transfer ratio prescribed in 2009 Act – Breach of pupil teacher ratio may confer a justiciable right to student but not to teacher because Act of 2009 is children-centric and not teacher-centric – Appeal dismissed. (Para 5.1 & 7)**

निःशुल्क और अनिवार्य बाल शिक्षा का अधिकार अधिनियम (2009 का 35), धारा 25 – छात्र–शिक्षक अनुपात – अभिनिर्धारित – एक शिक्षक को केवल इस आधार पर अपने स्थानांतरण का सफलतापूर्वक विरोध का न्याय योग्य अधिकार नहीं है कि उक्त से अधिनियम 2009 में विहित छात्र–शिक्षक अनुपात को बाधा कारित होगी – छात्र–शिक्षक अनुपात का भंग छात्र को एक न्याय योग्य अधिकार प्रदत्त करता है लेकिन शिक्षक को अधिकार नहीं क्योंकि 2009 का अधिनियम बालक–केंद्रित है, और न कि शिक्षक केंद्रित – अपील खारिज।

Girdhari Singh Chauhan, for the appellant.
Ankur Mody, Addl. A.G. for the respondent/State.

O R D E R

The Order of the Court was passed by :

SHEEL NAGU, J.:- The instant intra-court appeal preferred u/S 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, assails the final order passed by learned Single Judge dated 06.12.2019 in WP.26384/19 exercising writ jurisdiction u/Art.226 of the Constitution dismissing the petition in question by which challenge was unsuccessfully made to the transfer of petitioner [Primary Teacher] from UEGS Dharam Singh Ka Pura, Pithan, Block Ater, District Bhind to Primary School Kamanpura, Block Mehgaon, District Bhind.

2. Learned Single Judge repelled the said challenge on the anvil of Section 25 of the Right of Children to Free and Compulsory Education Act, 2009 ("2009 Act" for brevity) by holding that impugned transfer of the petitioner may have led to disturbance in the Pupil-Teacher ratio statutorily required to be maintained as

per Section 25 of 2009 Act but since it lies within the domain of employer to ensure the said ratio, the breach of the same does not bestow any right upon any transferred employee to successfully challenge his transfer on that count alone.

3. This Court initially was of the view that since the petition was dismissed *in limine*, the State may be asked to respond to aforesaid ground of violation of Section 25 of 2009 Act by filing reply, however, after going through the scheme of 2009 Act, this Court decided to proceed and dispose of this appeal in the following manner.

4. 2009 Act was promulgated as a manifestation of right to elementary education which was introduced as fundamental right by incorporation of Art.21A by way of Constitution [Eighty-sixth Amendment] Act, 2002 which was brought into effect from 01.04.2010.

5. Section 25 of 2009 Act provides, thus:

> **"25. Pupil-Teacher Ratio.**—(*1*) 1[Within three years] from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.
>
> (*2*) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (*1*), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27."

5.1 A bare reading of the aforesaid provision in juxtaposition to the object sought to be achieved by 2009 Act, it is clear as day light that the government has to ensure the pupil-teacher ratio as per Section 25 for maintaining quality in elementary education. The 2009 Act is predominantly promulgated for the benefit of all children of the age between 6 to 14 years. The breach of this pupil- teacher ratio may confer a justiciable right to the student of elementary education, but cannot bestow any justiciable right upon a teacher who is transferred entailing disturbance in pupil-teacher ratio at the school from where he/she is transferred out. This is so because the 2009 Act is children-centric and not teacher-centric.

6. The sole ground of the petitioner before this Court is that the impugned transfer leads to disturbing the statutory pupil-teacher ratio provided u/Sec.25 of 2009 Act.

7. In view of above discussion based on the nature of the scheme of 2009 Act, it is evident that the petitioner who is a teacher does not have any justiciable right to successfully assail his transfer solely on the ground that the same causes disturbance to the pupil-teacher ratio prescribed in 2009 Act.

8. Consequently, this Court does not find any justifiable reason to interfere in the well-reasoned order of learned Single Judge. Accordingly, present appeal stands dismissed, sans cost.

Appeal dismissed

I.L.R. [2020] M.P. 667 (DB)
WRIT APPEAL

Before Mr. Justice Sanjay Yadav & Mr. Justice Atul Sreedharan

W.A. No. 234/2019 (Jabalpur) decided on 29 February, 2020

FIVES STEIN INDIA PROJECT PVT. LTD. (M/S) …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***A. Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 19 and Constitution – Article 226/227 – Alternate Remedy* – Held – Against the award passed, petitioner has a remedy of Appeal u/S 19 of the Act of 2006 – When alternative efficacious remedy is available, writ petition under Article 226, not the appropriate remedy – Single Judge rightly denied indulgence – Appeal dismissed. (Paras 22, 23 & 27 to 29)**

क. सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 19 एवं संविधान – अनुच्छेद 226/227 – वैकल्पिक उपचार – अभिनिर्धारित – पारित अधिनिर्णय के विरूद्ध, याची के पास 2006 के अधिनियम की धारा 19 के अंतर्गत अपील का उपचार है – जब वैकल्पिक प्रभावकारी उपचार उपलब्ध है, अनुच्छेद 226 के अंतर्गत रिट याचिका, समुचित उपचार नहीं – एकल न्यायाधीश ने उचित रूप से अनुग्रह अस्वीकार किया – अपील खारिज।

***B. Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 18(4) – Jurisdiction* – Held – Section 18(4) empowers the Council to act as an Arbitrator or Conciliator in dispute between a supplier located within its jurisdiction and a buyer located anywhere in India – The provision overrides applicability of any other law for the time being in force when an action is taken under 2006 Act – Council had jurisdiction to pass the Award. (Para 19 & 20)**

ख. सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 18(4) – अधिकारिता – अभिनिर्धारित – धारा 18(4) परिषद् को अपनी अधिकारिता के भीतर स्थित एक प्रदायकर्ता तथा भारत में कहीं भी स्थित एक क्रेता के मध्य विवाद में मध्यस्थ अथवा सुलहकर्ता के रूप में कार्य करने हेतु सशक्त करती है – यह उपबंध उस समय के लिए किसी अन्य विधि की प्रयोज्यता पर अध्यारोही होता है जब अधिनियम 2006 के अंतर्गत कोई कार्रवाई की जाती है– परिषद् को अधिनिर्णय पारित करने की अधिकारिता थी।

Cases referred:

(2011) 14 SCC 337, (2014) 1 SCC 603, (2012) 8 SCC 524, AIR 1964 SC 358, AIR 1987 SC 849, 2013 SCC OnLine Cal 22786, 2018 SCC OnLine Bom 2039, (1996) 4 SCC 76, (2011) 2 SCC 782, (2012) 11 SCC 651, (2015) 6 SCC 773, (2013) 5 CHN 375, 2014 SCC Online Cal 20072 : (2015) 4 CHN 1.

Joy Saha with *Akshay Sapre* and *Tridib Bose*, for the appellant.
Sanjay Kumar Agrawal, for the respondent No. 3.

O R D E R

The Order of the Court was passed by :
SANJAY YADAV, J. :-This appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is directed against an order dated 02.11.2018 passed in Writ Petition No.22577/2018.

2. The writ petition was directed against the Award dated 26.11.2014 passed by the Micro and Small Enterprises Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (for short "2006 Act").

3. The relevant facts which led to the dispute was that being engaged in the business of manufacturing and engineering of nuclear and thermal components, the appellant had placed purchase orders with the respondent No.3-Mahakaushal Refractories (Pvt.) Ltd. of Silica Alumina Bricks. Claiming it to be of sub-standard, dispute arose between the petitioner/appellant and the respondent No.3 which led the respondent to invoke the jurisdiction of the Council under Section 18 of 2006 Act for conciliation. The petitioner raised objection as to maintainability. The Council while overruling the objection and taking note of the fact that despite repeated opportunities, the petitioner did not appear, proceeded to hold that the conciliation having failed, took up the dispute for arbitration and after affording opportunity to the petitioner, passed the Award dated 26.11.2014 of Rs.23,53,845/- towards principal amount and Rs.31,08,192/-interest upto 18.07.2014 as per Section 16 of 2006 Act.

4. Aggrieved, the petitioner preferred a writ petition on the following six grounds :

(i) the Award has not been passed within the statutory mandatory period of 90 days from the date of commencement of reference and, therefore, is a nullity lacking jurisdiction.

(ii) Rule 5 of the Madhya Pradesh Micro and Small. Enterprises Facilitation Council Rules, 2006 has no application beyond the territory of State of Madhya Pradesh.

(iii) Since there was no termination of purported conciliation proceedings in terms of the provisions of Section 76 of the Arbitration

and Conciliation Act, 1996, the assumption of jurisdiction by the Council as an Arbitrator lacks inherent jurisdiction, rendering the Award as a nullity.

(iv) The objection raised before the Council as to its jurisdiction was not decided, which vitiates the Award.

(v) There is a delay on the part of respondent No.3 in initiating the execution of the Award.

(vi) The execution of the impugned Award of a private party, cannot be made by way of public demand.

5. Learned Single Judge vide impugned order declined to entertain the writ petition holding that the petitioner has an effective remedy of Appeal under Section 19 of 2006 Act. Observing that the Council was within its competence to have entered into an arbitration proceeding and that the stipulation contained under Section 76 of the Arbitration and Conciliation Act, 1996 (for brevity '1996 Act') being overridden by Section 24 of the 2006 Act, learned Single Judge did not perceive any jurisdictional error in exercise of power by the Council.

6. Learned Single Judge upheld the validity of Rule 5 of the M.P. Micro and Small Enterprises Facilitation Rules, 2006 framed by the State Government in purported exercise of powers under Section 30 of 2006 Act. Furthermore, while dispelling the contention that the existence of alternative remedy is no bar to entertain a writ petition under Article 226 of the Constitution, learned Single Judge held that in cases where an alternative efficacious statutory remedy is provided and the statutory provision itself requires an appeal to be filed along with pre-deposit of certain percentage of the amount, the writ petition cannot be entertained unless it suffers a jurisdictional error or is a nullity. Both these circumstances, being not there, led learned Single Judge decline to entertain the writ petition. It finds support in its proposition in the decisions in *Nivedita Sharma vs Cellular Operators Association of India* (2011) 14 SCC 337*, Commissioner of Income Tax vs Chhabil Dass Agarwal* (2014) 1 SCC 603 and *Cicily Kallarackal vs Vehicle Factory* (2012) 8 SCC 524.

7. The order is being challenged in this inter-Court Appeal.

8. Taking us through Sections 21, 23, 76 and Section 80 of 1996 Act and Article 32 and 33 of the Agreement, it is urged on behalf of the appellant that, the arbitration proceedings drawn by the Council was *dehors* its jurisdiction. The Council, it is urged, was under the obligation to have followed the procedure laid down in the 1996 Act even while entertaining the application under Section 18 of 2006 Act. It is urged that unless intimated that it is entering into the arbitral proceedings on the failure of conciliation, the assumption of arbitral jurisdiction was without any authority of law and was, therefore, a nullity. The decisions in

State of Uttar Pradesh vs Singhara Singh AIR 1964 SC 358; *Balasinor Nagrik Co-operative Bank Limited vs Babubhai Shankerlal Pandya* AIR 1987 SC 849; *Agriculture Finance Co. Ltd. vs Micro and Small Enterprises Facilitation Council*, 2013 SCC On Line Cal 22786 and *Gujarat State Petronet Ltd. vs Micro and Small Enterprises Facilitation Council* 2018 SCC OnLine Bom 2039 were relied upon to bring home these submissions.

9. Responding to the contention raised on behalf of the appellant, the respondent No.3 has supported the view taken by learned Single Judge.

10. Considered rival submissions and perused the material on record.

11. The main contention in writ petition was that the Award was a nullity as the Council lacked inherent jurisdiction.

12. Apparently, the Council was dispensing under 2006 Act. The enactment of 2006 Act is to provide for facilitating its promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. It is not in dispute that respondent No.3 is a small enterprise and the provisions of 2006 Act are applicable.

13. Chapter V of 2006 Act makes provision regarding delayed payment to micro and small enterprises. Section 15 envisages liability of buyer to make payment. It stipulates :

> "Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:
>
> Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

14. Section 16 of 2006 Act makes provision regarding payment of interest. It stipulates :

> "Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from time the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."

15. Furthermore, Section 17 lays down that "for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16". Section 18 deals with dispute resolution. It starts with a non-obstante clause contained under sub-section (1) of Section 18 stipulating that "Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council." Effect of non-obstante clause would be that inspite of the provisions of the Act mentioned thereafter, it shall have full operation and is used to override the mentioned law in specified circumstances.

16. Furthermore, sub-section (2) of Section 18 lays down the procedure for conciliation. It states "on receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act."

17. Thus, an effort is first to be made to conciliate on the dispute to get it resolved and for that, the provision as contained in Part III of 1996 Act wherein procedure is laid down in Sections 65 to 81, is to be adhered to.

18. The facts of the present case reveal that conciliation failed because the petitioner took objection as to the jurisdiction and did not participate. However, as the statute empowered the Council to entertain a dispute, it was within its jurisdiction in entertaining the same. Since the conciliation failed, sub-section (3) of Section 18 empowered the Council to either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration for which the provision of 1996 Act was made applicable. The provision contained under sub- section (3) of Section 18 thus does not contemplate a pre- decisional hearing before taking up the dispute for the arbitration. The procedure laid down in 1996 Act are made applicable only after the dispute is taken up for arbitration. The Council, in the instant case, was thus within its competence in taking up the dispute for arbitration on the failure of conciliation.

19. Another non-obstante clause contained under sub-section (4) of Section 18 empowers the Council or the centre to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. It stipulates : "Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute

resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India". Thus, the provision overrides applicability of any other law for the time being in force when an action is taken under 2006 Act. In this context, reference can be had of the decision in *Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt) vs K. Devi* (1996) 4 SCC 76 wherein it is held :

> "77. "Non Obstante clause is sometimes appended to a Section in the beginning, with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it, will have its full operation of that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment." (See: Union of India vs. G.M. Kokil AIR 1984 SC 1022; Chandavarkar Sita Ratna Rao vs Ashalata S. Gurnam (1986) 4 SCC 447, R.S Raghunath vs State of Karnataka (1992) 1 SCC 335; G.P. Singh's Principles of Statutory Interpretation)."

20. It is further noted that the Council is duly constituted vide Notification issued by the State Government as provided under Section 20 of 2006 Act and the composition is as per Section 21 thereof. Thus, besides being empowered to take up the dispute for arbitration after failure of conciliation, the Council which was duly constituted having statutory quorum was within its jurisdiction to pass the impugned Award.

21. That, Section 19 of 2006 Act provides :

> "19. Application for setting aside decree, award or order : No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court:
>
> Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

22. Thus, incumbent it was upon the petitioner to have availed the remedy under Section 19 of 2006 Act against the impugned Award.

23. The issue as to whether when there exist an alternative efficacious remedy and, more particularly, when it is in the form as stipulated under Section 19 of 2006 Act, a writ petition under Article 226 of the Constitution will not be an appropriate remedy. In this context, reference can be had of the decisions in *Kanaiyalal Lalchand Sachdev vs. State of Maharashtra* (2011) 2 SCC 782, *Union of India vs. Guwahati Carbon Ltd.* (2012) 11 SCC 651 and *Union of India vs Major General Shri Kant Sharma* (2015) 6 SCC 773.

24. In *Kanaiyalal Lalchand Sachdev* (supra), it is held :

> "23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh vs. National Insurance Co. Ltd.; Surya Dev Rai vs. Ram Chander Rai; State Bank of India vs. Allied Chemical Laboratories.)"

25. In *Guwahati Carbon Ltd.* (supra), it is held :

> 10. In other words, existence of an adequate alternative remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (see Rashid Ahmed vs. Municipal Board, Kairana).
>
> 11. In Whirlpool Corpn. v. Registrar of Trade Marks 1998 8 SCC 1, this Court held:
>
> > "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."
>
> ...
>
> 15. In our opinion, the assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The Excise Law is a complete code in order to seek redress in excise matters and hence may not be

appropriate for the writ court to entertain a petition under Article 226 of the Constitution. Therefore, the learned Single Judge was justified in observing that since the assessee has a remedy in the form of a right of appeal under the statute, that remedy must be exhausted first. The order passed by the learned Single Judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the respondent assessee.

26. In *Major General Shri Kant Sharma*, it is held -

> "36. The aforesaid decisions rendered by this Court can be summarised as follows:
>
> (i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India. (Refer : L.Chandra Kumar vs Union of India (1997) 3 SCC 261 and S.N. Mukherjee vs Union of India (1990) 4 SCC 594).
>
> (ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer : Mafatlal Industries Ltd. vs Union of India (1997) 5 SCC 536).
>
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma vs. Cellular Operators Assn. of India (2011) 14 SCC 337).
>
> (iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma (supra))."

27. In the case at hand, having failed to establish the three parameters viz. (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of the principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged, learned Single Judge rightly declined the indulgence as the petitioner has efficacious alternative remedy under Section 19 of 2006 Act.

28. Last but not the least. Section 24 of 2006 Act mandates that the provisions of Sections 15 to 23 (under Chapter V) shall have overriding effect. It stipulates that "the provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

29. In view whereof also, the petitioner cannot escape the liability to seek redressal of grievance against the Award under Section 19 of 2006 Act.

30. In these factual and legal aspects, the decisions in *Agriculture Finance Co. Ltd. vs Micro & Small Enterprises Facilitation Council* 2013 SCC Online Cal 22786 : (2013) 5 CHN 375, *Lioyd Insulations (India) Ltd. vs State of W.B.* 2014 SCC Online Cal 20072 : (2015) 4 CHN 1; *Reliance Communications Ltd. vs State of Bihar* Civil Writ Jurisdiction Case No.14884/2016 decided on 11.04.2017 relied by learned counsel for the appellant will be of no assistance.

31. When the impugned order passed in Writ Petition No.22577/2018 is tested on the anvil of above analysis, it cannot be faulted with.

32. Consequently, the appeal fails and is **dismissed.** No costs.

Appeal dismissed

I.L.R. [2020] M.P. 675
WRIT PETITION

Before Mr. Justice Vivek Rusia

W.P. No. 8619/2011 (Indore) decided on 6 January, 2020

TUKOJIRAO PUAR (DECEASED) THROUGH LRs.
SHRIMANT GAYATRI RAJE PUAR & ors. …Petitioners

Vs.

THE BOARD OF REVENUE & ors. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Sections 50, 51 & 56 and Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 41 & 42 – Suo Motu Power of Review* – Held – When Board of Revenue passed order u/S 41 or 42 of the Ceiling Act, that would be an order passed u/S 56 of the Code by virtue of power conferred u/S 7 of MPLRC by State Government – Board of Revenue can exercise power of review u/S 51 of the Code because revenue authorities appointed under the Code has been borrowed as competent authority under Ceiling Act, hence that authority or Board comes with all the powers given in the Code – No illegality in impugned order – Petition dismissed with cost. (Paras 15, 17 & 20)**

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 50, 51 व 56 एवं कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 41 व 42 – स्वप्रेरणा से पुनर्विलोकन की शक्ति – अभिनिर्धारित – जब राजस्व बोर्ड ने अधिकतम सीमा अधिनियम की धारा 41 या 42 के अंतर्गत आदेश पारित कर दिया तब वह राज्य सरकार द्वारा, म.प्र. भू. राजस्व संहिता की धारा 7 के अंतर्गत प्रदत्त शक्ति के कारण से संहिता की धारा 56 के अंतर्गत पारित किया गया एक आदेश होगा – राजस्व बोर्ड संहिता की धारा 51 के अंतर्गत पुनर्विलोकन की शक्ति का प्रयोग कर सकता है क्योंकि संहिता के अंतर्गत नियुक्त राजस्व प्राधिकारीगण को अधिकतम सीमा अधिनियम के अंतर्गत सक्षम प्राधिकारी के रूप में उधार लिया गया है, अतः वह प्राधिकारी या बोर्ड संहिता में दी गई सभी शक्तियों के साथ आता है – आक्षेपित आदेश में कोई अवैधता नहीं – याचिका, व्यय के साथ खारिज।

***B. Land Revenue Code, M.P. (20 of 1959), Sections 50, 51 & 56 – Power of Revision & Review – Scope & Jurisdiction* – Held – Board of Revenue is empowered to exercise the power of revision as well as power of review of any order passed under the MPLRC or any other enactment for the time being in force – Power of Review is not confined to the orders passed only under the MPLRC. (Para 14)**

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 50, 51 व 56 – पुनरीक्षण व पुनर्विलोकन की शक्ति – व्याप्ति व अधिकारिता – अभिनिर्धारित – राजस्व बोर्ड, म.प्र.भू. राजस्व संहिता अथवा वर्तमान मे प्रवृत्त किसी अन्य अधिनियमिती के अंतर्गत पारित किये गये किसी आदेश के पुनरीक्षण की शक्ति के साथ–साथ पुनर्विलोकन की शक्ति का प्रयोग करने के लिए सशक्त है – पुनर्विलोकन की शक्ति केवल म.प्र.भू. राजस्व संहिता के अंतर्गत पारित आदेशों तक के लिए सीमित नहीं है।

Cases referred:

AIR 2011 MP 27, 2010 RN 124, 1995 RN 150, (2008) 14 SCC 531, (1976) 2 SCC 181, C.A. Nos. 6638 & 6637/2010 decided on 17.10.2019 (Supreme Court), AIR 1976 Raj. 187, W.P. No. 6296/2010 decided on 23.04.2012, 2008 (2) MPLJ 4, AIR 1987 SC 1353, 1980 RN 225, 1969 MPLJ 704, 1979 RN 553.

A.K. Chitale with *K.Chitale*, for the petitioners.
Vinay Gandhi, G.A. for the respondents/State.

(Supplied: Paragraph numbers)

O R D E R

VIVEK RUSIA, J.:- The petitioner (since dead now represented through legal heirs) has filed the present petition being aggrieved by order dated 29.4.2011 passed by Board of Revenue, M.P., Gwalior in Review Petition No.712-PBR/10, whereby the preliminary objections raised filed by him have been dismissed.

2. Facts of the case necessary for disposal of this petition are as under:

(i) The M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as "the Ceiling Act" for short) was enacted by the State of M.P. on 1.10.1960 to provide for imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matters ancillary thereto.

(ii) When the Ceiling Act came into force, there were many agricultural lands and forest land in the territory of erstwhile Dewas Senior State held in the name of petitioner's father; Tukojirao Puar Religious and Charitable Trust; Shri Krishnajirao Puar Religious and Charitable Trust; and Dewas Farm Project Pvt. Ltd. The rulers of Dewas Senior State also owned a palace called "Anand Bhavan Palace and land which were included in the list of private property as ex-rulers of the erstwhile Dewas Senior State.

(iii) The proceedings were initiated under the Ceiling Act against the petitioner by the Additional Commissioner, Ujjain exercising the powers of the competent authority under the Ceiling Act, since the land was partly in Dewas District and partly in Ratlam District and the final order was passed by the competent authority on 18.1.1999 against the petitioner.

(iv) The petitioner filed an appeal against the aforesaid order dated 18.1.1999 u/s. 41 of the Ceiling Act before the Board of Revenue. The Board of Revenue allowed the appeal vide order dated 19.5.2006 holding that the order dated 18.1.1999 is unlawful and accordingly quashed all actions and proceedings against the petitioner initiated under the Ceiling Act.

(v) After the lapse of four years, the Board of Revenue has passed the order dated 22.5.2010 in exercise of suo motu power to review its own order dated 19.5.2006. The petitioner appeared before the Board of Revenue by raising an objection that in the Ceiling Act, there is no such provision of review. The provisions of revenue u/s. 51 of the M.P. Land Revenue Code (MPLRC) are not applicable to the authorities under the Ceiling Act. The petitioner also raised an objection about the period of limitation for exercising power of review.

(vi) The Board of Revenue has rejected the aforesaid contention of the petitioner and registered the case as Suo Motu Review 712/PBR/10-Dewas and issued the show-cause notice. The petitioner replied to the show-cause notice in detail and also raised a preliminary objection that the review is not maintainable. On 22.9.2010, the petitioner filed the additional reply as well as written arguments on 22.12.2010. Vide order dated 29.4.2011, the Board of Revenue has disallowed the preliminary objections by holding that u/s. 51 of MPLRC the review is maintainable and fixed the case for final arguments. Being aggrieved by the aforesaid order, the petitioner has filed the present petition.

3. Shri A.K. Chitale, learned senior counsel appearing for the petitioner, submitted that the Board of Revenue has failed to consider the well established

principle of law that judicial or quasi judicial authority cannot review its own order unless the power of review is expressly conferred upon it by the statute. The Board of Revenue has exercised the power of review under the Ceiling Act in which there is no such provision for review like Section 51 of the MPLRC. Even if the Board of Revenue has borrowed the provision of Section 51 of MPLRC in order to exercise the power of review, such review is maintainable only against the order passed under the MPLRC subject to Section 44 and 50 of the MPLRC. There is limitation prescribed under the MPLRC for exercising the power of review. Assuming without admitting that the order under the Ceiling Act can be reviewed, but the scope of review is very limited. As per sub-section (2) of Section 51 of MPLRC, no order shall be reviewed except on the grounds provided for in the CPC. In the CPC, the provision of Order 47 Rule 1 and by virtue of sub-rule (1)(c), there has to be a discovery of new or important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed. Therefore, in view of such limited scope of review, the reviewing authority cannot examine the order of its predecessors as an appellate authority by re-assessing the evidence. The power of review cannot be exercised on the ground that earlier decision was erroneous on merits or a different view than the one taken in the earlier decision was possible. From the Explanation appended to Order 47 Rule 1, it is clear that subsequent change of judicial thinking is not a ground for review of a judgment which has already attained finality. The Full Bench of this Court in the case of *Kishori Singh V/s. State of M.P.* : AIR 2011 MP 27 has held that reasonable time for exercising *suo motu* power of review u/s. 50 of the MPLRC would be 180 days in case of irreparable loss to the petitioner or within a period of one year in case the petitioner is not put to irreparable loss. Hence, the Board of Revenue cannot be permitted to start review proceedings after lapse of four years when the order dated 19.5.2006 in appeal u/s. 41 of the Ceiling Act has attained finality. In support of his contention, he has placed reliance over the judgment of this Court in the case of *Biharilal V/s. State of M.P.* : 2010 RN 124 in which it has been specifically held that the competent authority under the Repeal Act i.e. Urban Land (Ceiling & Regulation) Act is not vested with the power of review. The provisions of Section 51 of the MPLRC not attracted. Learned senior counsel for the petitioner also placed reliance over the judgment of this Court in the case of *Chitra Rekha Bai @ Usha Devi V/s. Board of Revenue* : 1995 RN 150 in which it has been held that the power of review is a creature of statute and the Ceiling Act does not confer any such power of review, hence, the same cannot be exercised. In support of the ground that the power of review has to be exercised within reasonable time, he has placed reliance over the judgment passed by the apex Court in the case of *M.P. Housing Board V/s. Shiv Shankar Mandil* : (2008) 14 SCC 531.

4. Shri Chitale, learned senior counsel for the petitioner, further submitted that even if it is held that the Board of Revenue is having power to review its own order, but such power cannot be exercised beyond the period of limitation. The power of review could be exercised within a reasonable period. The Full Bench of this Court in the case of *Ranveer Singh V/s. State of M.P.* : AIR 2011 MP 27 has held that the revisional authority can exercise the power of review u/s. 50 of the MPLRC within a period of 180 days from the date of knowledge, therefore, same analogy applies to the provision of review also. There is no limitation for exercising power of review in the Ceiling Act. In support of his contention, he has also placed reliance over the judgment of apex Court in the case of *M/s. S.B. Gurbaksh Singh V/s. Union of India* : (1976) 2 SCC 181.

5. Shri Chitale further submitted that even in the Land Acquisition Act, 1894, there is no provision for review of the award once passed u/s. 11 of the Act. The only provision is for correction of clerical errors in the award which is provided u/s. 13A of the Act and such correction can be made any time but not later than six months from the date of the award. The apex Court in the case of recent judgment passed in the case of *Naresh Kumar V/s. Govt. of NCT of Delhi* (Civil Appeal Nos. 6638 and 6637/2010 decided on 17.10.2019) has held that the power of review can be exercised only when the statute provides for the same. In absence of any such provision in the concerned statute, such power of review cannot be exercised by the authority concerned. The jurisdiction of review can be derived only from the statute. He concluded his argument by submitting that the Board of Revenue has travelled beyond its jurisdiction while passing the order dated 22.5.2010 as well as order dated 29.4.2011, therefore, both the orders are illegal and liable to be set aside.

6. *Per contra*, Shri Vinay Gandhi, learned Govt. Advocate appearing for the respondents/State, submitted that the family of the petitioner comprising 7 members is only entitled to hold the land admeasuring 525 Acres. The petitioner has sold 31.446 Acres of land situated in Village Jalalkhedi and 237.18 Acres of land situated at Village Nagda after the publication of Ceiling Act, therefore, the said transaction has been done in order to nullify the provisions of the Ceiling Act. Thereafter, on 13.9.1962, a Trust has been created and major part of the land has been transferred. The family of the petitioner comprising of 7 members were holding 1834.33 Acres of land in Village Nagda and 400.21 Acres in Village Raghogarh in total 2234.54 Acres and out of which, the petitioner with all 7 family members is entitled to hold 525 Acres only. The Additional Commissioner vide order dated 15.1.1999 had rightly passed the order, but the Board of Revenue vide order dated 19.5.2006 gave a wrong interpretation of definition envisaged u/s. 2('Ja') and 2('Jha') of the Ceiling Act and in fact, after the independence, the petitioner was holding surplus land, therefore, the Board of Revenue has rightly exercised the power of review. The Board of Revenue has also held that 2234.54

Acres of land has been declared as a forest land, but the same cannot be part of the forest land and 160.11 Acres of land has wrongly been excluded by virtue of urban land. Land admeasuring 21.56 Acres has been released as the same is involved in various Court-cases. 291.34 Acres of land has been released treating it to be a trust property. Hence, out of 2234.54 Acres, the Board of Revenue has held that the petitioner is having only 90.45 Acres of land. The petitioner has been given undue benefit of surplus land worth of Crores of rupees which is liable to be vested with the State Government, therefore, in order to protect the Government land, the Board of Revenue has rightly exercised the power of review.

7. In order to refute the argument of Shri Chitale that there is no power of review in the Ceiling Act, Shri Gandhi, learned Govt. Advocate, emphasized that u/s. 44 of the MPLRC, appeal shall lie from every original order passed under the Code or the rules made thereunder, but in case of power of revision u/s. 50 and power of review u/s. 51, the Board and every Revenue Officer may on its own motion or on the application of any party interested review any order passed by itself or by any of its predecessors and pass such order in reference thereto as it thinks fit. This power has not been confined only to the order passed under the MPLRC but passed under any other enactment. In support of his contention, he has placed reliance over the judgment passed by the High Court of Rajasthan in the case of *Hemsingh V/s. The Collector* : AIR 1976 Raj. 187.

8. Shri Gandhi, learned Govt. Advocate, further submitted that the order which is illegal can be reviewed at any time and for which no limitation is provided u/s. 51 of the MPLRC. In support of his contention, he has placed reliance of this Court in the case of *Aslam Gani Patrawala V/s. Jasbeer Singh* (W.P. No.6296/2010 decided on 23.4.2012) and in the case of *Jeevan Lal V/s. State of M.P.* : 2008 (2) MPLJ 4. He has also placed reliance over the judgment of apex Court in the case of *Collector V/s. Katiji* : AIR 1987 SC 1353 in which it has been held that for condoning the delay, necessity of liberal approach should be extended to the State Government also. Therefore, in view of the writ petition is liable to be dismissed. The petitioner is having remedy to approach this Court again after passing of the final order by the Board of Revenue as the present petition has been filed against an interlocutory order. The Board of Revenue will consider all the grounds which have been raised in this petition.

9. I have heard Shri A.K. Chitale, learned senior counsel appearing for the petitioner and Shri Vinay Gandhi, learned Govt. Advocate appearing for the respondents/State at length and perused the material available on record.

10. The petitioner has raised purely a legal issue in the present petition. According to the petitioner, order dated 19.5.2006 was passed by the Board of Revenue under the provisions of Ceiling act and thereafter, vide order dated 22.5.2010, the Board of Revenue has suo motu exercised the power of review and

re-opened the case against the petitioner. The petitioner has raised preliminary objection about the power of Board of Revenue to exercise the review jurisdiction in absence of any provision under the Ceiling Act.

11. The State Government has enacted the Act called as M.P. Ceiling on Agricultural Holdings Act, 1960 with a view to provide more equitable distribution of land by fixing ceiling on existing holdings as well as on future acquisition of agricultural lands. The surplus land vesting in Government will be allotted on payment of occupancy price to needy persons and cooperative farming societies in certain priorities. The Ceiling Act provides for imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matters ancillary thereto. The object of the Ceiling Act is to provide the land to needy or landless persons by the State Government and for giving effective implementation of it, the authorities under the MPLRC have been empowered by way of notification.

12. Section 2(e) of the Ceiling Act defines "competent authority" and it means - in respect of a holder whose entire land is situated within a sub-division, the Sub Divisional Officer may be appointed by the State Government. Likewise, if the land is situated more than one sub-division of same district, the Government may appoint competent authority. U/s. 41 of the Ceiling Act against every order of a revenue officer or competent authority under this Act, an appeal shall lie to the authority competent to hear the appeal under sub-section (1) of Section 44 of the MPLRC. Likewise, the power of revision has been vested u/s. 42 of the Ceiling Act with the Board of Revenue or the Commissioner. Section 2(e), Section 41 and 42 of the Ceiling Act are reproduced below :

> **"2. Definitions** - (e) "competent authority" means --
>
> (i) in respect of a holder whose entire land is situate within a Sub-Division, the Sub-Divisional Officer and/or such other Revenue Officer, not below the rank of a Deputy Collector as may be appointed by the State Government;
>
> (ii) in respect of a holder whose entire land is situate in more than one Sub-Division of the same district, the Collector or the Additional Collector and where there is no Additional Collector for the district such Deputy Collector, as may be empowered by the State Government to exercise the powers of Collector under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) for the purpose; and
>
> (iii) in respect of a holder whose land is situate in more than one district such authority as may be appointed by the State Government;"
>
> **"41. Appeals-** Except where the provisions of this Act provide otherwise, against every order of a Revenue Officer or competent authority under this Act or the rules made thereunder, an appeal shall lie:

(i) if such order is passed by a Revenue Officer either as competent authority or otherwise to the authority competent to hear appeals under Sub-section (1) of Section 44 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) from an order passed by a Revenue Officer of the same rank under the said Code;

(ii) if such order is passed by the competent authority where such authority is an officer other than a Revenue Officer appointed under sub-clause (iii) of clause (e) of section 2 to the Board of Revenue as if such officer were an Additional Settlement Commissioner appointed under section 65 of the said Code :

Provided that the surplus land vested in the State Government shall not revert to the holder thereof as a consequence of remand of the case."

"42. Revision- The Board of Revenue or the Commissioner may on its/his motion or on the application by any party at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of any competent authority subordinate to it/him call for and examine the record of any case pending before or disposed of by such competent authority, and may pass such orders in reference thereto as it/he thinks fit:

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard: Provided further that no application for revision shall be entertained against an order against which an appeal is provided under this Act :

Provided also that the surplus land vested in the State Government shall not revert to the holder thereof as a consequence of remand of the case."

13. The Board of Revenue is established u/s. 3 of the MPLRC and according to which, there shall be a Board of Revenue of Madhya Pradesh consisting of a President and two or more other members as the State Government may, from time to time, think fit to appoint. Section 7 of the MPLRC provides for jurisdiction of Board and according to which, the Board shall exercise the powers and discharge the functions conferred upon it by or under the MPLRC and such functions of the State Government as may be specified by notification issued by the State Government in that behalf and such other functions as have been conferred or may be conferred by or under any Central or State Act. Section 7 of the MPLRC is reproduced below :

> **"7. Jurisdiction of Board.** — (1) The Board shall exercise the powers and discharge the functions confer red upon it by or under this Code and such functions of the State Government as may be specified by notification by the State Government in that behalf and such other functions as have been confer red or may be confer red by or under any Central or State Act on the Chief Revenue Author it or the Chief Controlling Revenue Authority.
>
> (2) The State Government may, subject to such conditions as it may deem fit to impose, by notification, confer upon, or entrust to the Board or any member of the Board additional power s or functions as signed to the State Government by or under any enactment for the time being in force."

14. By way of notification the Board of Revenue is empowered to hear the appeals so also the revisions under the Ceiling Act. Section 44 of the MPLRC provides remedy of appeal and appellate authorities and according to which, an appeal shall lie from every original order under this Code or the rules made thereunder, but the same is not there in Section 50 and 51 of the MPLRC under which the Board of Revenue exercises the power of revision and review. U/s. 50 of the MPLRC, the Board of Revenue may, at any time on its own motion or on an application made by any party or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may, at any time on his own motion, call for the record of any case which has been decided or proceedings in which an order has been passed by any Revenue Officer subordinate to it. This power is not confined to the order passed under the MPLRC. Likewise in exercise of review also, u/s. 51 of the MPLRC, the Board and every Revenue Officer may, either on its own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it thinks fit subject to certain conditions as per the proviso. The power of review is also not confined to the order passed under the MPLRC. It is not in dispute that the Ceiling Act as well as MPLRC both deals in the field of agricultural lands. The 'order' is defined in Section 56 of the MPLRC which means, in this Chapter, unless the context otherwise requires, expression "order" means the formal expression of the decision given by the Board or a Revenue Officer in respect of any matter in exercise of its/his powers under this Code or any other enactment for the time being in force, as the case may be. Therefore, according to conjoint reading of Section 50, 51 and 56 of the MPLRC, the Board of Revenue is empowered to exercise the power of revision as well as power of review of any order passed under the MPLRC or any other enactment for the time being in force. Section 50, 51 and 56 of the MPLRC are reproduced below :

> **"50. Revision.**— (1) The Board may, at any time on its motion or on the application made by any party or the Collector or the

Settlement Officer may, at any time on his motion, call for the record of any case which has been decided or proceeding in which an order has been passed by any Revenue Officer subordinate to it or him and in which no appeal lies thereto, and if it appears that such subordinate Revenue Officer ,—

(a) has exercised a jurisdiction not vested in him by this Code, or

(b) has failed to exercise a jurisdiction so vested, or

(c) has acted in the exercise of his jurisdiction illegally or with material irregularity the Board or the Collector or the Settlement Officer may make such order in the case as it or him thinks fit;

Provided that the Board or the Collector or the Settlement Officer shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of the proceeding, except where,—

(a) The order , if it had been made in favour of the party applying for revision to the Board, would have finally disposed of the proceedings, or

(b) The order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The Board or Collector or the Settlement Officer shall not, under this section vary or reverse any order against which an appeal lies either to the Board or to any Revenue Officer subordinate thereto.

(3) A revision, shall not operate as a stay of proceeding before the Revenue Officer except where such proceeding is stayed by the Board or the Collector or the Settlement Officer, as the case may be.

(4) No application for revision shall be entertained, —

(a) against an order appealable under this Code;

(b) against an order to the Settlement Commissioner under Section 210;

(c) unless presented within sixty days to the Board :

Provided that where the order, against which the application for revision is being presented, made before the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2011, in such case revision shall be entertained within ninety days from the date of order.

(5) No order shall be varied or reversed in revision unless notice has been served on the par ties interested and opportunity given to them of being heard.

(6) Notwithstanding anything contained in 'sub-section (1) ,—

(i) where proceedings in respect of any case have been commenced by the Board under sub-section (1), no action shall be taken by the Collector or the Settlement Officer in respect thereof ;

(ii) where proceeding in respect of any such case have been commenced by the Collector or the Settlement Officer under sub-section (1), the Board may either refrain from taking any action under this section in respect of such case until the final disposal of such proceedings by the Collector or the Settlement Officer, as the case may be, or may withdraw such proceedings and pass such order as it may deem fit."

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

Provided that —

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

(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;

(iii) no order affecting any question of right between private per sons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within [sixty days] from the passing of the order : Provided that where the order, against which the application for review is being presented, made before the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2011, in such case review shall be entertained within ninety days from the date of order.]

(2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908) .

(3) For the purposes of this section, the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.

(4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority."

"56. Construction of order.— In this Chapter, unless the context otherwise requires, expression "order" means the formal expression of the decision given by the Board or a Revenue Officer in respect of any matter in exercise of its/his powers under this Code or any other enactment for the time being in force, as the case may be."

15. When any power and functions under any Central or State Act are conferred on the Board of Revenue by the State Government u/s. 7 of MPLRC, then its orders are covered by Section 51 of the MPLRC. When the Board of Revenue has passed the order u/s. 41 or 42 of Ceiling Act, that would be an order passed u/s. 56 of the MPLRC by virtue of power conferred u/s. 7 of the MPLRC by State Government.

16. In the case of *N.K. Doongaji V/s. State of M.P.* : 1980 RN 225 (High Court), the Board of Revenue has declined to review its own order passed in Excise Act, the Division Bench of this Court has held that Section 51 read with Section 56 of MPLRC together conferred the power of review in respect of any order made under the Code or any other enactment. Para 4 of the aforesaid judgment is quoted below :

"4. As regards the petition filed by Doongaji, the Board of Revenue, by order dated 22nd March 1978, rejected the application for review solely on the ground that there was no power of review under the Excise Act or the rules made thereunder. The Board of Revenue was not right in rejecting the application for review because the power of review is derived from section 51 read with section 56 of M.P. Land Revenue Code. These two sections read together confer the power of review in respect of any order made under the Code or under any other enactment (See *Govind Prasad Agarwal v. State of M.P.* 1968 R.N. 512). The power conferred is wide enough to embrace orders passed under the rules made under the Excise Act. Misc. Petition No.175 of 1978 has, therefore, to be allowed."

17. Therefore, when the Board of Revenue has been given power of revision, then it can exercise of power of review u/s. 51 of the MPLRC because the revenue authority appointed under the MPLRC has been borrowed as competent authority under the Ceiling Act, hence, that authority or Board comes with all the powers given in the MPLRC.

18. The Division Bench of this Court in the case of *Govind Prasad Agarwal V/s. State of M.P.* : 1969 MPLJ 704 while dealing in the case of Abolition Act has held that the Collector is competent u/s. 51 of the MPLRC to review an order passed by a Dy. Commissioner on 14.5.1957 u/s. 6(2) of the Abolition Act even assuming that no review is permissible under the Abolition Act. The Division Bench has considered the definition of 'order' in Section 56 of the MPLRC which include 'order' passed under the MPLRC or any other law and the provisions of Section 51 apply to all the orders passed by the revenue authorities.

19. In the case of *Ramdeen V/s. State of M.P.* : 1979 RN 553 (High Court), the Division Bench of this Court has held as under :

> **"6 .** In so far as an appeal is concerned, the Ceiling Act provides that there shall be only one appeal before the Board of Revenue and thereafter the order becomes final. No appeal is provided under the Land Revenue Code against the decision of the Board of Revenue. The finality expressed in the latter part of sub-section (3) of section 4 of the Ceiling Act means that there shall be no further appeal against the decision of the Board of Revenue. The Board of Revenue is given the power of review by section 51 of the Code. The language of the section does not confine its power to an order made under the M. P. Land Revenue Code along as in the case under section 44. The order of the Board of Revenue passed in appeal under sub-section (3) of section 4 of the Ceiling Act would be as much an order within the meaning of section 56 as any passed under the Code. Section 44 of the Code dealing with the provisions of appeal and appellate authority, by the opening words used in the section confines the rights of appeal in regard to orders made under the Code and the rules made therefore such words curtailing the sweep of the power and restricting itself to the orders under the Code are significantly absent in section 51. The scheme of the Code shows that it was not intended to limit the power of review of a Revenue Officer to orders passed under the Code or rules made thereunder only. The Board of Revenue while passing the order under section 4(3) of the Ceiling Act passed it with all the incidence of an order under section 56 and the order was amenable to section 51 of the Code. It is, therefore, logical to conclude that the Board of Revenue would have powers of review in respect of decisions passed by it under the Ceiling Act."

20. In view of the above discussion, I do not find any illegality in the impugned order dated 29.4.2011 passed by the Board of Revenue. Hence, the writ being devoid of merit and substance is hereby dismissed with costs of **Rs.10,000/- (Ten Thousand)**.

Petition dismissed

I.L.R. [2020] M.P. 688 (DB)
WRIT PETITION

Before Mr. Justice Sanjay Yadav & Mr. Justice Atul Sreedharan
W.P. No. 14383/2019 (Jabalpur) decided on 18 February, 2020

SHUBHAM SINGH BAGHEL …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. National Security Act (65 of 1980), Section 3(5) – Detention Order – Appeal – Intimation of – **Held – District Magistrate, in the ground of detention has to inform petitioner of his entitlement to appeal not only to State Government, but also to detaining authority and Central Government – Although initial detention order was just and proper but in absence of such intimation, such order is bad in law and hereby set aside. (Paras 8 to 10)**

क. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(5) – निरोध आदेश – अपील – की सूचना – अभिनिर्धारित – जिला मजिस्ट्रेट को निरोध के आधार में, याची को, न केवल राज्य सरकार को अपितु निरोध प्राधिकारी एवं केंद्र सरकार को भी अपील करने के उसके हक के बारे में सूचित करना होता है – यद्यपि आरंभिक निरोध आदेश न्यायसंगत एवं उचित था किंतु उक्त सूचना की अनुपस्थिति में, विधि में उक्त आदेश अनुचित है और एतद् द्वारा अपास्त।

B. National Security Act (65 of 1980), Section 3 – Detention Order – Ground – **Held – 19 cases already registered against petitioner – In present case, allegation of cow vigilantism against petitioner worth derision in the strongest terms – Detention order was just and proper. (Para 7 & 8)**

ख. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 – निरोध आदेश – आधार – अभिनिर्धारित – याची के विरूद्ध 19 प्रकरण पहले से पंजीबद्ध – वर्तमान प्रकरण में, याची के विरूद्ध गौ रक्षण का अभिकथन, कठोरतम शब्दों में हास्यास्पद है – निरोध आदेश न्यायसंगत एवं उचित था।

Case referred :

(2018) 9 SCC 501.

Narendranath Tripathi, for the petitioner.
J.K. Pillai, G.A. for the State.

O R D E R

The Order of the Court was passed by:
ATUL SREEDHARAN, J:- The present petition has been filed by the mother of the petitioner, who was held in detention under the National Security Act, 1980

(hereinafter referred to as 'NSA'). It is undisputed that the petitioner has been released from the detention.

2. Upon being asked by us, learned counsel for the petitioner has submitted that his persistence to take this case to its logical end is on account of vindicating the fair name of the petitioner. The Petitioner was taken into preventive detention under the NSA, by order dated 03.07.2019, passed by the respondent No.2. The grounds of detention were also served upon the detenue on the same day. The petitioner was detained under the NSA on account of an F.I.R. that was registered against him, being Crime No.210/2019 dated 23.05.2019 registered at Police Station Dunda, Seoni, Distt. Seoni for offences U/s.341, 294, 323 read with Section 34 of the I.P.C. Before referring to the F.I.R. against the petitioner, which was the *causa-causans* or the immediate cause, it would be relevant to refer to Crime No.207/2019 dated 22.05.2019 registered at the same Police Station, for offences U/s.4 of the Madhya Pradesh Go Vansh Pratished Adhiniyam, 2004 and under Section 5/9 of the aforesaid Act. As per the said F. I. R. , the accused persons in that case being Dilip Malviya and Anjum Ansari were allegedly carrying beef in two satchels on the scooter. Source information received by the Police made them intercept the accused persons by laying a road block. The accused persons attempted to run away from the scene of occurrence and were apprehended by the Police and the offending meat was allegedly recovered from them. At that juncture, the petitioner along with the other co-accused persons arrived at the scene of occurrence and assaulted the two accused persons being Dilip Malviya and Anjum Ansari for allegedly carrying beef. From the said assault, the F.I.R was registered against the petitioner and other co-accused persons on the very next day by the brother of Dilip Malviya. The F.I.R. is to the effect that the petitioner along with the accused persons assaulted Dilip Malviya and Anjum Ansari for being in possession of beef, made video of the same and uploaded it on the social media. The contention of the learned counsel for the petitioner is that he is being harassed and demonised, as he was one who had informed the Police about Dilip Malviya and Anjum Ansari carrying the offending meat.

3. The State however, has a different story to tell and has referred to the documents filed by the petitioner himself at page 28, which reflects a long list of cases registered against the petitioner, which are altogether 19 in number. Learned counsel for the petitioner has submitted that several of these cases were registered against the petitioner while he was still a minor. Learned counsel for the petitioner has submitted that as on date, the petitioner is only 24 years old and the first case that was registered against him was in the year 2008, at which point of time, the petitioner was allegedly only 14 years of age. There are at least 14 cases which have been registered against the petitioner even after he attained adulthood, which reflect that the petitioner persisted in life of crime, as is apparent from the number

of cases that have been registered against him. Learned counsel for the petitioner has stated that the cases that were registered against the petitioner while he was still a juvenile, cannot be taken into consideration in view of Section 24 of the Juvenile Justice Act, 2015. Section 24 of the said Act pertains to removal or disqualification on the findings of an offence against juvenile. Sub-section (1) of Section 24 of the said Act provides that notwithstanding anything contained in any other law presently in force, a child who had committed an offence and has been dealt under the provisions of Juvenile Justice Act, shall not suffer disqualification attached to a conviction under such law. The proviso to sub-section (1) of Section 24 of the Act clearly discloses that a child who has completed or is above the age of 16 years and is found to be in conflict with law, then the provision of sub-section (1) of Section 24 of the Act shall not apply to him.

4. We are unable to agree with the contention put forth by the learned counsel for the petitioner that in view of Section 24 of the Act, this Court cannot take into account those cases which were registered against the petitioner as a juvenile. Section 24 sub-section (1) of the Juvenile Justice Act, only accords protection to the juvenile for such acts done by him while being under the age of 16 years for which, a conviction if recorded, the same shall not disqualify him from occupying either a Government post, after he attains adulthood or stand for election to a public office. The proviso also makes it clear that for this misdemeanour/ offence committed by a juvenile in conflict with law, the protection of sub-section (1) of Section 24 is no longer available, if he completes the age of 16 years.

5. On perusal of list of 1 9 cases against the petitioner, this Court finds that he has been acquitted in most of those cases either on account of a compromise between the petitioner and the complainant or the acquittal has been based on a benefit of doubt. In 7 cases, he has been acquitted and in 2 cases under the Arms Act, the case has been disposed of and one case has been disposed of in the Lok Adalat and one another case has been disposed of, which however, is not under the Arms Act. Most of the cases that were registered against the petitioner are admittedly for minor offences. They were either of theft or of offences of hurling abuses, causing hurt and criminal intimidation. Besides the cases under the Indian Penal Code and the Arms Act, the petitioner was also proceeded against the prohibitory provisions of the Cr.P.C. for maintaining peace in the locality and one case of externment, which order of the District Magistrate was set aside on an appeal by the Commissioner.

6. The present case which is pending against the petitioner is one of vigilantism. Even though, the impact of the offence may have been limited only to the two injured persons, it is the motive behind the act of vigilantism, which makes it a matter of concern for the maintenance of public order. Nothing can raise

an apprehension or breach of public order than a situation where a citizen takes the law into his own hands in order to dispense an inference of justice as per his perception. If acts of vigilantism are not checked at the very outset, it can rapidly deteriorate into a situation where average citizens, emboldened by the absence of State authority to check them, start taking law into their own hands and start dispensing justice according to their own whims and fancies.

7. The petitioner herein, admittedly a member of Shri Ram Sene, has indulged in this act of vigilantism against the victims who were perceived to be carrying beef, motivated by religious consideration on account of which, he took the law into his own hands. Basically, the act of the petitioner is one of abject disdain for the rule of law and the mistaken perception that he would be protected by the establishment of the State. As a rule, a singular act may not be adequate enough to proceed a person under the National Security Act. However, in a situation such as the present one where, the petitioner has forcibly indulged in an act of vigilantism, brazenly trying to usurp the authority of the State, may provide the District Magistrate the objective satisfaction that, if the petitioner is not taken into preventive custody, the petitioner may indulge in further acts of vigilantism and thereby attempt the undermine authority of the State leading to a situation where disruption of public order is a reasonable inference to draw.

8. The Supreme Court has also expressed its concern over the rising number of cases related to, what can be categorised as "Cow Vigilantism" and has poignantly observed **"Lynching and mob violence are creeping threats that may gradually take the shape of a Typhon-like monster as evidenced in the wake of the rising wave of incidents of recurring patterns by frenzied mobs across the country instigated by intolerance and misinformed by circulation of fake news and false stories. There has been an unfortunate litany of spiralling mob violence and agonised horror presenting a grim and gruesome picture that compels us to reflect whether the populace of a great Republic like ours has lost the values of tolerance to sustain a diverse culture. Besides, bystander apathy, numbness of the mute spectators of the scene of the crime, inertia of the law-enforcing machinery to prevent such crimes and nip them in the bud and grandstanding of the incident by the perpetrators of the crimes including in the social media aggravates the entire problem. One must constantly remind oneself that an attitude of morbid intolerance is absolutely intolerable and agonisingly painful"**[1] (Emphasis ours). The emphasised part of the observation reflects the portents of threat to "Public Order" and thus, we are of the opinion, that acts of vigilantism may be construed by the State as acts threatening the stability of Public Order. The allegation of cow vigilantism against the Petitioner, if true, are worthy of derision in the strongest terms. There is

[1] **2018) 9 SCC 501 - Tehseen S. Poonawalla v. Union of India - Paragraph 24**

nothing laudatory in the allegations against the Petitioner and his initial detention under the NSA was most just and proper. However, the lapses on the part of the State thereafter in not conforming with the strict provisions of the NSA subsequently, rendered the continued incarceration of the Petitioner under the NSA, unlawful.

9. Under the circumstances, though the subjective satisfaction of the respondent No.2 to proceed against the petitioner under the provisions of the N.S.A. cannot be faulted, the grounds of detention given to the petitioner have only informed him about his right to make an appeal to the Secretary, Home Department, Government of Madhya Pradesh, against the order of detention. Without going into an elaborate reiteration of the law, as it exists today, the District Magistrate, in the ground of detention has to inform the petitioner that he is entitled to an appeal against the order of detention not only to the State Government, but also to the detaining authority and the Central Government, as provided under Section 3(5) of the N.S.A.

10. Thus, in the absence of such intimation been given to the petitioner with regard to his right to appeal, we have no hesitation in holding that the impugned order of detention was rendered bad in law subsequently and therefore, is set aside. As it is undisputed that the petitioner has been released from detention, no orders are required to be passed in that regard.

11. Consequently, the petition stands disposed of.

Order accordingly

I.L.R. [2020] M.P. 692
WRIT PETITION
Before Mr. Justice Sanjay Dwivedi
W.P. No. 10006/2016 (Jabalpur) decided on 25 February, 2020

CHANDRAMANI TRIPATHI …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

Civil Services (Pension) Rules, M.P., 1976, Rule 9(6)(b) – Institution of Judicial Proceedings – Relevant Date **– Held – Date of making complaint or report to police, is the date of institution of judicial proceedings – Petitioner retired on 31.12.2015 – Although challan filed on 05.02.2016 but offence was registered on 14.09.15, hence judicial proceedings will be deemed to be pending on date of retirement – Part of pension & gratuity rightly withheld – Petition dismissed. (Paras 12 to 15)**

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 9(6)(b) – न्यायिक कार्यवाहियों का संस्थापन – सुसंगत तिथि – अभिनिर्धारित – पुलिस को की गई शिकायत या रिपोर्ट की तिथि ही न्यायिक कार्यवाहियों के संस्थापन की तिथि है – याची 31.12.2015 को सेवानिवृत्त – यद्यपि चालान, 05.02.2016 को प्रस्तुत किया गया था परंतु 14.09.2015 को अपराध पंजीबद्ध किया गया था, अतः, सेवानिवृत्ति की तिथि को न्यायिक कार्यवाहियां लंबित होना समझा जाएगा – पेंशन व उपदान के भाग को उचित रूप से रोका गया – याचिका खारिज।

Cases referred :

(1991) 4 SCC 109, W.P. No. 8514/2013 decided on 10.03.2016, 1999 (1) MPLJ 105, 2003 (1) MPLJ 513.

Ajeet Kumar Singh, for the petitioner.
Deepak Kumar Singh, Dy. G.A. for the respondents/State.

O R D E R

SANJAY DWIVEDI, J.:-This petition is of year 2016 and pleadings are complete, therefore, with consent of learned counsel for the parties, it is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner has not assailed any specific order, but sought a direction for the respondents to release his gratuity amount and also full pension with interest @8.5% per annum.

3. As per the facts of the case, the petitioner after attaining the age of superannuation, retired w.e.f. 31.12.2015 from the post of Assistant Sub Inspector (A.S.I.) from the Police Department. When he was in service, a Lokayukt had registered a case against him and the said case was pending and during the pendency of the said case, the petitioner got retired from service and is being paid anticipatory pension @90% and also released the amount of gratuity to that extent only. The challan was filed on 05.02.2016 and the charges were framed by the Special Court on 19.02.2016.

4. The criminal case is still pending. The petitioner submits that as per Rule-9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 [hereinafter referred to as 'the Rules, 1976'], only the Governor can withhold the pension that too under the circumstance when the employee is held guilty.

5. But, here in this case, there was no charge against the petitioner at the time of retirement, therefore, he submits that withholding of pension and gratuity is illegal and contrary to the law laid-down by the Supreme Court in the case of *Union of India Vs. K.V. Jankiraman* reported in (1991) 4 SCC 109 and further reliance has been placed upon the order dated 10.03.2016 passed in W.P. No.8514/

2013 [*Prahlad Amarchya Vs. Principal Secretary, State of M.P. & Another*] by the Indore Bench of this Court.

6. *Per contra*, learned Deputy Government Advocate for the respondents/ State, relies upon the reply filed by them. As per the respondents, the provisions of Rule-9(4) and Rule-64 of the Rules, 1976, clearly provide that when a Government servant is retired and against whom, any departmental or judicial proceedings are instituted, a provisional pension and death-cum-retirement gratuity as provided in Rule-64, shall be sanctioned.

7. It is also submitted by the respondents that the case on which the petitioner is placing reliance, is not applicable in the present case because the said case is applicable in the matter of promotion, saying that if an employee is considered by the DPC and is facing any departmental or judicial proceeding, the recommendation of the DPC shall be kept in the seal cover. Accordingly, the respondents have claimed that the petition is without any substance and the contentions raised by learned counsel for the petitioner, are meritless, therefore, the petition should be dismissed.

8. The basic contention as raised by learned counsel for the petitioner is that on the date of retirement, there was no departmental or judicial proceedings pending against the petitioner, as he retired on 31.12.2015 but challan has been filed by the Lokayukt on 05.02.2016 and charges were framed by the Special Court on 19.02.2016, therefore, in view of the law laid-down by the Indore Bench in W.P. No.8514/2013, he is entitled to get 100% pension and gratuity because on the date of retirement, there was no judicial proceeding pending against him.

9. The Indore Bench in the aforesaid order, has observed that as per Rule-9(6)(b), judicial proceeding shall be deemed to be instituted in respect of a criminal case, on the date on which the cognizance has been taken and the Magistrate takes cognizance on the basis of that report, therefore, judicial proceedings cannot be said to be pending on the date of retirement.

10. However, from bare reading of the respective provision i.e. Rule-9(6)(b) of the Rules, 1976, which is quoted hereinbelow:-

> **"9. Right of governor to withhold or withdraw pension**.
>
> (6) For the purpose of this rule -
>
> (b) judicial proceedings shall be deemed to be instituted -
>
> (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and
>
> (ii) In the case of civil proceedings, on the date the plaint is presented in the court."

there is no doubt that the date of institution of judicial proceeding is not the date of taking cognizance by the Magistrate on a complaint or report made to a police officer, but the date on which the complaint or report is made to a police officer, is material and the same is treated to be the date of institution of judicial proceeding, if cognizance on the said report is taken by the Magistrate.

11. Although the interpretation as has been made by the Co-ordinate Bench in W.P. No.8514/2013, on which the petitioner is placing reliance, does not seem to be proper and it gives completely different meaning as can be gathered from the respective provision as quoted hereinabove.

12. In my opinion, the date of making complaint or report to the police, is the date to be treated as the date of judicial institution. The order passed by this Court in the case of *Amrit Rao Mukut Rao Survey Vs. State of M.P.* reported in 1999(1) MPLJ 105, gives stand to the view taken by this Court dealing with the same provision, has clarified that the date of making complaint or report to the police officer, is also treated to be the date of institution of judicial proceeding. The High Court in the case of *Amrit Rao Mukut Rao Survey* (supra), has observed as under:-

> **"7.** Sub-rule (6)(b) of Rule 9 of the Rules defines institution of judicial proceedings. It provides that judicial proceedings shall be deemed to be instituted in the case of Criminal proceedings on the date on which the complaint or report of a police officer, or which the Magistrate takes cognizance, is made, and in the case of civil proceedings, on the date the plaint is presented in Court. Therefore, criminal proceedings are deemed to be instituted on the date on which the complaint is made.
>
> **8.** In the present case, the petitioner himself has stated that the report was lodged on the basis of the information on 27-11-1987. Thus judicial proceedings were instituted on 27-11-1987 before the retirement of the petitioner on 30-1-1988. Since the complaint was made on 27-11-1987 it will be deemed that judicial proceedings were instituted on 27-11-1987 before the date of retirement of the petitioner.
>
> **9.** Considering the scope of Rule 9(3) and Rule 9(6)(b) of the Rules, it is apparent that the proceedings were deemed to be instituted in the year 1987. Hence, under Rule 9(3) of the Rules, the proceedings cannot be quashed as the proceedings were instituted while the petitioner was in service, before his retirement."

13. Thus, it is clear that the Indore Bench has not been apprised about the view expressed by the Co-ordinate Bench in the case of *Amrit Rao Mukut Rao Survey* (supra), therefore, in view of the law laid-down by the larger Bench of this Court in the case of *Jabalpur Bus Operators Association Vs. State of M.P. & Others* reported in 2003(1) MPLJ 513, the view taken by the Indore Bench in W.P. No.8514/2013 can be said to be *per incuriam* and the view taken by the High Court in the case of *Amrit Rao Mukut Rao Survey* (Supra) would prevail.

14. Even otherwise, the provision of Rule-9(6)(b) of the Rules, 1976, is also clear and gives the meaning that the date of institution of judicial proceedings would be the date on which the complaint or the report was made to the police officer.

15. In the present case, since the petitioner retired on 31.12.2015, but the offence has been registered against him on 14.09.2015 i.e. prior to the date of retirement, meaning thereby that on the date of retirement, judicial proceedings were pending against the petitioner, therefore, in view of the provisions of Rule-64 of the Rules, 1976, petitioner's pension and gratuity is rightly withheld.

16. In view of the above, the order impugned passed by the authority withholding the pension and gratuity of the petitioner according to the provisions of Rule-64 of the Rules, 1976, is proper and does not call for any interference.

17. Accordingly, this petition being without any substance, is hereby **dismissed**.

Petition dismissed

I.L.R. [2020] M.P. 696
MISCELLANEOUS PETITION
Before Mr. Justice G.S. Ahluwalia
M.P. No. 546/2019 (Gwalior) decided on 24 June, 2019

NATIONAL INSURANCE CO. LTD. …Petitioner

Vs.

SMT. RAM KHILONI alias KHILONI & ors. …Respondents

***A. Motor Vehicles Act (59 of 1988), Section 166 and Income Tax Act (43 of 1961), Section 194-A(3)(ix)(ix-a) – Deductions on Amount of Interest – Scope* – Held – Insurance company is liable to deduct TDS on the interest paid by it as per provisions of Section 194-A(3)(ix)(ix-a) of the Act of 1961 and if assessee is of the view that, tax has been deducted in excess, then he can always claim refund of the same from income tax department – Impugned order set aside – Petition allowed. (Paras 22 to 26)**

क. मोटर यान अधिनियम (1988 का 59), धारा 166 एवं आयकर अधिनियम (1961 का 43), धारा 194–A(3)(ix)(ix–a) – ब्याज की रकम पर कटौती – व्याप्ति – **अभिनिर्धारित – बीमा कंपनी, 1961 के अधिनियम की धारा 194–A(3)(ix)(ix–a) के उपबंधों के अनुसार, उसके द्वारा भुगतान किये गये ब्याज पर टी डी एस कटौती हेतु दायी है और यदि निर्धारिती का यह दृष्टिकोण है कि अधिक कर की कटौती की गई है तब वह आयकर विभाग से उसके प्रतिदाय का सदैव दावा कर सकता है – आक्षेपित आदेश अपास्त – याचिका मंजूर।**

B. ***Income Tax Act (43 of 1961), Section 145 & 194-A(3)(ix)(ix-a) – Computation of Income*** **– Held – The interest received by an assessee on any compensation or on enhanced compensation as the case may be, shall be deemed to be the income of the previous year in which it is received and if total interest exceeds Rs. 50,000 then Insurance Company has to deduct TDS. (Paras 8 to 10)**

ख. आयकर अधिनियम (1961 का 43), धारा 145 व 194–A(3)(ix)(ix–a) – आय की संगणना – अभिनिर्धारित – निर्धारिती द्वारा किसी प्रतिकर पर या बढ़ाये गये प्रतिकर पर जैसा कि प्रकरण हो, प्राप्त ब्याज को पूर्व वर्ष जिसमें उसे प्राप्त किया गया है की आय समझा जाएगा, और यदि कुल ब्याज रू. 50,000/– से अधिक होता है तब बीमा कंपनी को टी डी एस की कटौती करनी होती है।

C. ***Interpretation of Statutes – Word "Exemption"*** **– Held – The word "exemption" has to be construed strictly and in case of any ambiguity, the benefit must go to the revenue. (Para 14)**

ग. कानूनों का निर्वचन – शब्द ''छूट'' – अभिनिर्धारित – शब्द ''छूट'' का कठोरता से अर्थान्वयन किया जाना चाहिए और किसी अस्पष्टता की स्थिति में, लाभ, राजस्व को जाना चाहिए।

Cases referred :

2004 ACJ 1996, W.P. No. 939/2005 decided on 16.01.2006, 2009 ACJ 1937, 2016 ACJ 78, 2014 ACJ 1497, W.P. No. 3837/2016 decided on 06.10.2018, C.R. No. 274/2008 decided on 23.11.2010, 1994 Supp (3) SCC 606, (2006) 4 SCC 57, (1990) 84 CTR (SC) 164, (1990) 84 CTR (SC) 144, (2017) 13 SCC 759, (1997) 10 SCC 243, 2011 (1) MPLJ 251.

R.V. Sharma, for the petitioner.
Meena Singhal, for the respondent Nos. 1 to 5.

O R D E R

G.S. AHLUWALIA, J.:- This petition under Article 227 of the Constitution of India has been filed against the order dated 1-11-2018 passed by 6th Additional Motor Accident Claims Tribunal, Gwalior in Execution Claim Case No.107/2018, by which the Insurance Company has been directed to pay the amount of interest, which has been deducted by way of TDS.

2. The necessary facts for the disposal of the present petition in short are that the respondents no.1 to 5 had filed a claim petition under Section 166 of Motor Vehicles Act, and 6th Motor Accident Claims Tribunal by impugned award, held that the driver, owner as well as the Insurance Company are jointly and severally liable to pay compensation with interest payable from the date of claim petition.

3. The Insurance Company calculated the interest amount and deposited the entire compensation amount as well as the interest amount after deducting TDS on interest.

4. The respondents no.1 to 5 objected to it and the Executing Claims Tribunal by impugned order has decided the objection in favour of the claimants and held that if the interest amount is spread over to the number of years from the date of filing of the claim, then in none of the financial year, the interest more than Rs.50,000/- had accrued, therefore, the Insurance Company has wrongly deducted the TDS on interest and thus, has directed the petitioner to deposit the amount of TDS, so deducted on the interest paid by it.

5. Challenging the order passed by the Executing Claims Tribunal, it is submitted by the Counsel for the petitioner, that in view of Section 145-B of Income Tax Act, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received. It is further submitted that the petitioner has rightly deducted the TDS on the interest which has been paid to the claimants and if the claimants are of the view, that excess tax has been deducted, then they can claim refund from the Income Tax Department. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the High Court of Gujarat in the case of *United India Insurance Co. Ltd., Vs. Mitaben Dharmeshbhai Shah and others*, reported in 2004 ACJ 1996, Order passed by a co-ordinate Bench of this Court in the case of *National Insurance Company Ltd., Vs. Sunita and others* passed in W.P. No. 939/2005 on 16-1-2006, *United India Insurance Company Ltd. Vs. Janki Devi and others* reported in 2009 ACJ 1937, Judgment passed by High Court of Karnataka in the case of *Oriental Insurance Co. Ltd. Vs. Chennabasavaiah and others* reported in 2016 ACJ 78, Judgment passed by High Court of Kerala in the case of *National Insurance Co. Ltd. Vs. Subhas N. Chandrabose and others* reported in 2014 ACJ 1497, and a coordinate bench of this Court in the case of *New India Assurance Co. Ltd. VS. Beerval Rawat and others* passed on 6-10-2018 in W.P. No. 3837/2016.

6. *Per contra*, it is submitted by the Counsel for the respondents no.1 to 5 that the interest paid to the claimants is to be spread over in number of years from the date of filing of the claim and the TDS should be deducted only when the spread over interest for a particular year exceeds Rs.50,000/-. To buttress her contentions, the Counsel for the respondents no.1 to 5 has relied upon the judgment passed by a co-ordinate bench of this Court in the case of *United India Insurance Co. Ltd. Vs. Ramlal and others* passed on 23-11-2010 in C.R. No. 274 of 2008.

7. Considered the submissions made by the Counsel for the parties.

8. Section 145-B of Income Tax Act, reads as under :

145-B. Taxability of certain income.— (1) Notwithstanding anything to the contrary contained in Section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii)of clause (24) of Section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

9. Section 194-A(3)(ix) and (ix-a) of Income Tax Act would apply, for deduction of Tax at source in case if interest paid on the compensation amount awarded by the Motor Accidents Claims Tribunal, exceeds Rs.50,000/-. Section 194-A (3)(ix) (ix-a) of Income Tax Act reads as under :

194-A. Interest other than "Interest on Securities".— (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of "Interest on Securities", shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force:

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause *(a)* or clause *(b)* of Section 44-AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income tax under this section.

Explanation.—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) *omitted*

(3) The provisions of sub-section (1) shall not apply—

(*ix*) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

> (*ix-a*) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;

10. If Section 194-A(3)(ix)(ix-a) and Section 145-B of Income Tax Act are read conjointly, then it would be clear that the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received and if the total interest exceeds Rs.50,000/-, then the Insurance Company has to deduct the TDS.

11. Further, a person would become entitled for the compensation amount, only after the award is passed and before that, it cannot be said that the claimant is entitled for any compensation or interest.

12. The Counsel for the respondents no.1 to 5 has relied upon the judgment passed by the co-ordinate bench of this Court in the case of *Ramlal and others* and submitted that the interest paid by the Insurance Company has to be spread over in number of years from the date of filing of the claim petition.

13. Considered the submissions made by the Counsel for the respondents no. 1 to 5.

14. It is well established principle of law, that the provision of exemption has to be construed strictly and in case of any ambiguity, the benefit must go to the revenue.

15. The Supreme Court in the case of *Novopan India Ltd. Vs. CCE & C*, reported in 1994 Supp (3) SCC 606 has held as under :

> **16.** We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* — and in *Union of India v. Wood Papers* referred to therein — represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in *Mangalore Chemicals* and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave* that such a notification has to be interpreted in

> the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

The Supreme Court in the case of *State of Jharkhand Vs. Tata Cummins Ltd.* reported in (2006) 4 SCC 57 has held as under :

> **16.** Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly....

16. The Counsel for the respondents no.1 to 5, could not point out any provision requiring the Insurance Company to deduct the TDS after spreading over the interest in number of years from the date of filing of the claim petition.

17. In the case of *Ramlal* (Supra) reliance was placed on a judgment passed by the Supreme Court in the case of *Smt. Rama Bai Vs. CIT* reported in (1990) 84 CTR (SC) 164 and *K.S. Krishna Rao Vs. CIT* reported in (1990) 84 CTR (SC) 144. Both the above mentioned judgments have been passed in the case of award of interest in the Land Acquisition Matters. However, the cases of Land Acquisition cannot be equated with Motor Accident Claim Cases. In the cases of Land Acquisition, an owner becomes entitled for compensation from the date of taking over of possession of land whereas in the case of Motor Accident Claim Cases, a claimant becomes entitled for compensation, only after the award is passed after adjudication of his entitlement. An award under the Motor Vehicles Act can be passed only when it is proved by the claimants that the deceased/injured was not negligent, and the driver of the vehicle was driving the vehicle in a rash and negligent manner, and further the deceased had died in a vehicular accident, whereas in the case of compensation under the Land Acquisition Act, an owner becomes entitled to receive the compensation, immediately after his land is acquired and possession is taken. Even otherwise, the Supreme Court in the case of *CIT Belgaum Urban Development Authority Vs. CIT* reported in (2017) 13 SCC 759 has held as under:

> **9.** The respondent does not dispute the payment of Rs 1,96,780 as payment of interest for belated payment of compensation in respect of land acquired and the fact that the said interest paid for belated payment of compensation is liable to income tax is not disputed. However, the question is as to whether the tax in respect of the said payment has to be deducted

at source under Section 194-A of the Act? It has been clearly laid down in the decision cited by the learned counsel appearing for the appellants in *Bikram Singh case* that the said payment which is exigible to income tax regarding interest payable for the belated payment of compensation is covered under Section 194-A and has to be deducted at source. In the said case, the Land Acquisition Officer had deducted at source the tax payable in respect of the interest under Section 194-A of the Act regarding interest payable for belated payment of compensation in the land acquired and the said action on the part of the Land Acquisition Officer was challenged before the High Court of Punjab and Haryana. The writ petition was dismissed holding that the deduction of the payment of interest at source under Section 194-A by the Land Acquisition Collector was valid and perfectly justified. Being aggrieved by the same, Civil Appeal No. 12500 of 1996 was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court has clearly laid down in para 10 of the said judgment as follows (p. 557 of ITR): (*Bikram Singh case*, SCC pp. 247-48, para 10)

"10. But the question is whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be exigible to income tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event. Therefore, we hold that it is a revenue receipt exigible to tax under Section 4 of the Income Tax Act. Section 194-A of the Act has no application for the purpose of this case as it encompasses deduction of the income tax at the source. However, the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year."

10. It is clear from the principle laid down by the Hon'ble Supreme Court as narrated in para 10 of the judgment in *Bikram Singh* case as cited above, that the Hon'ble Supreme Court has clearly laid down that interest payable for belated payment of compensation for the land

acquired is exigible to tax and the Land Acquisition Officer was justified in deducting the tax under Section 194-A of the Act for the said payment also. There is no merit in the contention of the learned counsel appearing for the respondent that the Hon'ble Supreme Court has laid down in the said case that, though the Hon'ble Supreme Court has held that it is a revenue receipt exigible to tax under Section 4 of the Act, Section 194-A of the Act has no application for the payment of interest applicable as it is clear that the said principle has not been laid down by the Hon'ble Supreme Court in para 10 of the judgment as narrated above. What has been laid down by the Hon'ble Supreme Court is that the interest payable for belated payment of compensation for the land acquired is exigible to tax and the Hon'ble Supreme Court has confirmed the deduction of tax towards payment of interest under Section 194-A of the Act and has further observed, "Section 194-A of the Act has no application for the purpose of this case". In view of the fact that the Land Acquisition Officer had already deducted the amount under Section 194-A of the Act, mere fact that the assessee can spread over the income for a period in which payment came to be made would not by itself be a ground to exempt it from Section 194-A of the Act, as it is always open for the assessee to claim refund of the amount, if tax is deducted in excess or paid in excess. There is also no merit in the contention of the learned counsel appearing for the respondent that in view of the circular, instruction issued by the Government of Karnataka, no deduction has been made at source in view of the principle laid down by the Hon'ble Supreme Court in *Bikram Singh case*, as circular cannot override the principle laid down by the Hon'ble Supreme Court.

18. It is not out of place to mention here that in the case of *Bikram Singh Vs. Land Acquisition Officer*, reported in (1997) 10 SCC 243, the judgments passed by the Supreme Court in the case of *Smt. Ramabai* (Supra) and *K.S. Krishna Rao* (Supra) were taken into consideration.

19. It is next contended by the Counsel for the respondents no.1 to 5, that since, the Claims Tribunal has apportioned the compensation amount amongst the claimants, and since, the interest payable to each of the claimant is ascertainable, therefore, the Insurance Company was not right in deducting the TDS on the entire interest. To buttress her contentions, the Counsel for the respondents no.1 to 5 has relied upon the judgment passed by a co-ordinate bench of this Court in the case of *National Insurance Company Limited Vs. Smt. Draupadibai* reported in 2011(1) MPLJ 251.

20. Considered the submissions made by the Counsel for the respondents no. 1 to 5/claimants.

21. This Court has gone through the award passed by the Claims Tribunal, which reads as under:

> (1) अनावेदकगण, आवेदकगण को संयुक्ततः पृथक पृथक रूप से क्षतिपूर्ति की राशि 6,55,000/– रूपये (छः लाख पचपन हजार रूपये) एवं उक्त राशि पर दावा दिनांक 11.01.2017 से 6 प्रतिशत वार्षिक की दर वसूली दिनांक तक ब्याज अदा करेंगे।
>
> (2) यह कि आवेदकगण द्वारा कोई अंतरिम क्षतिपूर्ति की राशि प्राप्त की गयी हो तो उसे इस अवॉर्ड की राशि में समायोजित किया जाये।
>
> (3) **क्षतिपूर्ति राशि अधिकरण में जमा किये जाने पर** आवेदक क्र. 1 को 30 प्रतिशत राशि एवं आवेदक क्र. 2 एवं 4 को 20–20 प्रतिशत राशि तथा आवेदक क्रमांक–3 व 5 को 15–15 प्रतिशत राशि प्रदान की जावे।
>
> (4) आवेदक क्र. 1 को प्राप्त होने वाली राशि में से 50 प्रतिशत राशि उसे जर्ये बचत खाता के माध्यम से नगद भुगतान की जावे तथा शेष राशि 5 वर्ष के लिये सावधि खाते में जमा की जावे तथा उक्त राशि पर मिलने वाले त्रैमासिक ब्याज का भुगतान बचत खाते के माध्यम से किया जावे। आवेदक क्र. 2 को प्राप्त होने वाली राशि 3 वर्ष के लिये तथा आवेदक क्र. 4 को प्राप्त होने वाली राशि 5 वर्ष के लिये किसी राष्ट्रीयकृत बैंक में सावधि खाते में जमा की जावें।
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> (5) आवेदक क्र. 3 को मिलने वाली राशि में से 50 प्रतिशत राशि उसे जर्ये बचत खाता के माध्यम से नगद भुगतान की जावे तथा शेष राशि 3 वर्ष के लिये सावधि खाते में जमा की जावे तथा उक्त राशि पर मिलने वाले त्रैमासिक ब्याज का भुगतान बचत खाते के माध्यम से किया जावे तथा आवेदक क्र. 5 को प्राप्त होने वाली राशि उसके वयस्क होने तक किसी राष्ट्रीयकृत बैंक में सावधि खाते में जमा की जावे।
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> (6) अनावेदकगण स्वयं के साथ साथ आवेदकगण का वाद व्यय वहन करेंगे।
>
> (7) अधिवक्ता शुल्क प्रमाणित होने पर अथवा नियमानुसार जो भी कम हो जोड़ा जाये।
>
> उपरोक्तानुसार व्यय तालिका तैयार की जावे।
>
> मेरे बोलने पर टंकित किया गया।
>
> स्थान : ग्वालियर ।
> दिनॉक : 28.04.2018
>
> (राम जी गुप्ता)
> प्रथम मोटर दुर्घटना दावा अधिकरण
> ग्वालियर, म0प्र0

22. Thus, it is clear that the Insurance Company has been directed to deposit the lump sum compensation amount along with interest and only after the amount

with interest is deposited by the Insurance Company, the said amount was to be apportioned amongst the claimants. The Insurance Company was not directed to calculate the compensation amount with interest as per the share determined by the Claims Tribunal. Under these circumstances, this Court is of the considered opinion, that the Insurance Company did not commit any mistake in deducting the TDS on the entire interest. However, each of the claimant would be entitled to claim refund from the Income Tax Department, in case, if he/she is of the view that excessive tax has been deducted. The co-ordinate bench of this Court in the case of *Smt. Draupadibai* (Supra) has held as under :

> 13. It is however, made clear that the aforesaid interpretation of section 194A of the 1961 Act applies only in cases were the compensation amount has been apportioned and the interest payable to each of the claimants is ascertainable but the position may be different when no such apportionment is done by the Tribunal in the award and interest payable to each claimant separately is not ascertainable at the time of depositing the interest amount before the Tribunal.
>
> Underline applied

23. Thus, this Court is of the considered opinion, that the Insurance Company is liable to deduct TDS on the interest paid by it as per the provisions of Section 194-A (3)(ix)(ix-a) of the Income Tax Act, and if the assessee is of the view, that the tax has been deducted in excess, then he can always claim refund of the same from the Income Tax Department.

24. Accordingly, this Court is of the considered opinion that the Executing Claims Tribunal, committed material illegality by holding that the Insurance Company is not liable to deduct the TDS.

25. Resultantly, the order dated 1-11-2018 passed by 6th Additional Motor Accident Claims Tribunal, Gwalior in Execution Claim Case No. 107/2018 is hereby set aside.

26. The petition succeeds and is hereby Allowed.

Petition allowed

I.L.R. [2020] M.P. 706
APPELLATE CIVIL
Before Mr. Justice G.S. Ahluwalia
S.A. No. 113/2002 (Gwalior) decided on 18 July, 2019

RAJARAM THROUGH LRs.
SMT. BHAGWATI BAI & ors. …Appellants
Vs.
LAXMAN & ors. …Respondents

A. Succession Act, Indian (39 of 1925), Section 63(c) – Will – Proof **– Held – Where the signature/thumb impression of testator of Will are not admitted, then Will is required to be strictly proved in accordance with provisions of Section 63(c) of the Act of 1925. (Para 16)**

क. उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 63(c) – वसीयतनामा – सबूत – अभिनिर्धारित – जहां वसीयतनामें के वसीयतकर्ता के हस्ताक्षर/अंगूठा निशानी स्वीकृत नहीं है तब वसीयतनामें को 1925 के अधिनियम की धारा 63(c) के उपबंधों के अनुसरण में कठोरता से साबित किया जाना अपेक्षित है।

B. Succession Act, Indian (39 of 1925), Section 63(c) – Will – Burden of Proof **– Held – It is for the propounder (defendant) of Will to remove all suspicious circumstances – No attesting witnesses were examined by defendant /respondents – Further, evidence of the scribe of the Will cannot be equated with that of attesting witnesses – Courts below wrongly shifted the burden of proof on Plaintiff that the Will was not forged or concocted – Respondents failed to prove the Will as per Section 63(c) – Appeal allowed. (Paras 11 & 14 to 16)**

ख. उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 63(c) – वसीयतनामा – सबूत का भार – अभिनिर्धारित – सभी संदेहास्पद परिस्थितियों को हटाना, वसीयतनामें के प्रतिपादक (प्रतिवादी) के लिए है – प्रतिवादी/प्रत्यर्थीगण द्वारा किसी अनुप्रमाणक साक्षी का परीक्षण नहीं किया गया था – इसके अतिरिक्त, वसीयत के लेखक का साक्ष्य, अनुप्रमाणक साक्षियों के साक्ष्य के साथ समीकृत नहीं किया जा सकता – निचले न्यायालय ने इसके सबूत का भार कि वसीयतनामा, कूटरचित अथवा मनगढंत नहीं था, गलत रूप से वादी पर डाला था – प्रत्यर्थीगण, धारा 63(c) के अनुसार, वसीयतनामा साबित करने में असफल रहे – अपील मंजूर।

Cases referred:

2014 (3) MPLJ 542, AIR 1959 SC 443, (2008) 14 SCC 754, (2010) 5 SCC 770, C.A. No. 5901-5902/2009 decided on 11.07.2019 (Supreme Court).

Abhishek Singh Bhadoriya, for the appellants.
None, for the respondents.

O R D E R

G.S. AHLUWALIA, J.:-This second appeal under Section 100 of CPC has been filed against the judgment and decree dated 30.10.2001 passed by 4th Additional District Judge, Vidisha in Regular Civil Appeal No. 27-A/2001 thereby affirming the judgment and decree dated 19.03.2001 passed by 1st Civil Judge, Class-II, Vidisha in Civil Suit No. 20-A/1997.

2. The necessary facts for the disposal of the present appeal in short are that the original plaintiff Rajaram (who expired during the pendency of this appeal and the present appellants are his legal representatives) filed a suit for declaration of title and permanent injunction. His case was that Prabhulal had five sons. The plaintiff Rajaram and the defendant No. 2 Babulal are the sons of Prabhulal. Another son Narayan Singh has expired. Fourth son Hukum Singh was already given in adoption and the fifth son Ramcharan has renowned the world. The defendant No. 1 is a minor son of the defendant No. 2. It was pleaded that Narayan Singh has died issueless and he was the owner of agriculture land bearing Survey No. 314 min area 0.113 hectare and Survey No. 651/1 area 0.481 hectare situated in village Atarikhejda, Tahsil Gyaraspur, District Vidisha. As Narayan Singh was unmarried and has died issueless, therefore, the plaintiff as well as defendant No. 2 have equal share in his property. It was further pleaded that as Narayan Singh was not keeping well, therefore, taking advantage of the same, a forged Will dated 07.02.1995 was got prepared by the defendant No. 2, which was in fact antedated, by which the property was bequeathed by Narayan Singh in favour of the defendant No. 1 and it was claimed that since the Will dated 07.02.1995 was a forged and concocted document, therefore, the defendant No. 1 does not get any title by virtue of the Will in question. It was further pleaded that Narayan Singh was jointly looked after by the plaintiff and defendant No. 2. The plaint was later on amended and it was pleaded that in the light of the order dated 31.03.1997 passed by SDO, Vidisha, the defendants No. 1 and 2 have forcibly taken possession of the disputed property and thus, relief for possession as well as mesne profit @ Rs.500/- was also incorporated.

3. The defendants No. 1 and 2 filed their written statement and claimed that Narayan Singh was having Survey No.651/1/1 area 0.481 hectares and Survey No. 314 min area 0.112 hectare. It was further admitted that Narayan Singh was unmarried. It was further pleaded that Narayan Singh had executed a Will dated 10.11.1995 in the presence of the respected members of the Society in favour of the defendant No. 1 and from thereafter the defendant No. 1 is the owner and title holder of the property in dispute. It was further denied that the Will is forged or concocted document. It was specifically pleaded that in fact, Narayan Singh had executed the said Will. It was further pleaded that Narayan Singh was residing with the defendant No. 2 for the last 25 years and it was the defendant No. 2 who

was looking after Narayan Singh. Even the last rites were performed by the defendant No. 2. It was further denied that the defendants had ever taken forcible possession, but it was pleaded that the defendants are in possession of the land right from the very beginning and thus, it was prayed that the suit be dismissed.

4. The Trial Court after framing the issues and recording the evidence dismissed the suit and held that Mitthu Singh (DW-2) has specifically admitted that he is the scribe of the Will and this witness has also admitted the signature of Narayan Singh and other witnesses on the said Will (Ex. D-2). It was held by the Trial Court that the plaintiff has not led any evidence to show that the Will (Ex. D-2) executed by Narayan Singh was forged or concocted. Accordingly, the suit was dismissed.

5. Being aggrieved by the judgment and decree passed by the Trial Court, the appellant filed the regular civil appeal, which too suffered dismissal by judgment and decree dated 30.10.2001 passed by 4th Additional District Judge, Vidisha in Regular Civil Appeal No. 27-A/2001.

6. The present appeal has been admitted on the following substantial question of law:-

> "Whether the Will (Ex.D/2) dated 10.11.1995 is duly proved as required under Section 63(c) of the Indian Succession Act, 1925?"

7. Challenging the judgment and decree passed by the Courts below, it is submitted by the counsel for the appellant that the defendants have failed to prove the execution of the decree as per the provision of Section 63(c) of the Indian Succession Act and neither any attesting witness was examined nor any witness who could identify the signatures of the attesting witnesses have been examined. The defendants have examined only Mitthu Singh (DW-2) who is the scribe of the Will. It is further submitted that the Courts below have wrongly put the burden on the plaintiff, whereas it is for the propounder of the Will to prove the Will beyond all the suspicious circumstances.

8. None appears for the respondent though served.

9. Heard the learned counsel for the appellant.

10. Mitthu Singh (DW-2) has stated that he had written the Will, on which Narayan Singh had affixed his thumb impression. However, this witness is completely silent about the signing of the Will by attesting witnesses. Mitthu Singh (DW-2) merely stated that at the time of execution of the Will, Ganesh Ram, Hukum Singh, Ratan Singh, Hari Singh and one more Hari Singh were present, but he has not stated that the Will was signed by these witnesses. Thus, the evidence of Mitthu Singh (DW-2) can be read only to the extent that he is scribe of the Will (Ex. D-2) and Narayan Singh had affixed his thumb impression.

11. The next question for consideration is that whether the scribe of the Will can be said to be an attesting witness or not ? A coordinate Bench of this Court in the case of *Noorbaksh Khan Vs. Salim Khan and others* reported in 2014 (3) MPLJ 542 has held as under:-

> **"6.** For a valid 'will' in terms of section 63 of Succession Act (39 of 1925), it is to be attested by two witnesses. Further, to prove factum of execution of 'will', in terms of section 68 of the Evidence Act, it is to be proved at least by one of the attesting witnesses.
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> **7.** Section 3 of the Transfer of Property Act defines the word "attested" and the meaning of the definition clause is well explained by the Hon'ble Apex Court reported in AIR 1969 SC 1147, M.L.Abdul Jabbar Sahib Vs. H.V.Venkata Sastri & Sons to the following effect:
>
> > "8. It is to be noticed that the word "attested", the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put, the essential conditions of valid attestation under S.3 are: (1) two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgment of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature *animo attestandi*, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature. If a person puts his signature on the document for some other purpose, e.g., to certify that he is as scribe or an identifier or a registering officer, he is not an attesting witness."
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> **8.** In AIR 2001 SC 2802, N. Kamalam (dead) and another Vs. Ayyaswamy and another, Hon'ble Supreme Court has again elaborately and lucidly explained the scope, meaning and consequences of attestation in the context of factum of execution of 'will'. Significant requirements are found to be two fold; (1) that, the attesting witness should witness the execution which implies his presence; and (2) that, he should certify or mark for execution by subscribing his name as a witness; which implies a concious intention to attest, i.e., attesting witness as *animus to attest*.
>
> **9.** Subscribing of signatures on the 'will' by the scribe cannot be equated with the signatures of attesting witnesses as signatures of the attesting witnesses are for a specific purpose of having witnessed the execution and for fulfillment of the statutory requirements.
>
> **10.** The scribe appends his signatures on the 'will' as scribe. He is not a witness to the 'will' but a mere writer of the 'will'. The element

of the *animus to attest* is missing, i.e., intention to attest is missing. His signatures are only for the purpose of authenticating that he was a scribe of the 'will'.

11. In view of the aforesaid enunciation of law holding the field, the evidence of the scribe, P.W.2, Jai Babu in the case in hand cannot substitute for that of attesting witnesses.

13. As such, deposition of P.W.2, Jai Babu cannot be substituted to that of attesting witnesses and the 'will' cannot be said to have been proved. His deposition leads to suspicion as regards not only factum of its execution but also contents thereof."

Thus, the evidence of Mitthu Singh cannot be equated with that of attesting witness. Further Mitthu Singh has not stated that the Will was executed on the dictations of Narayan Singh and the Will was ever read over to Narayan Singh before he put his thumb impression. The defendant has not examined any of the attesting witnesses.

12. The Supreme Court in the case of *H. Venkatachala Iyengar v. B.N. Thimmajamma* reported in AIR 1959 SC 443 has held as under:-

"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was

intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will

may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

13. The Supreme Court in the case of *Babu Singh and others Vs. Ram Sahai alias Ram Singh* reported in (2008) 14 SCC 754, has held as under:-

"12. Indisputably, a will is to be attested by two witnesses in terms of Section 63(1)(c) of the Succession Act, 1925. Indisputably, the requirement of Section 68 of the Evidence Act, 1872 (the Act) is required to be complied with for proving a will. Section 63(1)(c) of the Succession Act mandates attestation by two witnesses. Thus, not only must the execution of will be proved, but actual execution must also be attested by at least two witnesses. Attestation of execution of will must be in conformity with the provisions of Section 3 of the Transfer of Property Act.

13. "Attestation" and "execution" connote two different meanings. Some documents do not require attestation. Some documents are required by law to be attested.

14. In terms of Section 68 of the Act, although it is not necessary to call more than one attesting witness to prove due execution of a will but that would not mean that an attested document shall be proved by the evidence of one attesting witness only and two or more attesting witnesses need not be examined at all. Section 68 of the Act lays down the mode of proof. It envisages the necessity of more evidence than mere attestation, as the words "at least" have been used therein. When genuineness of a will is in question, apart from execution and attestation of will, it is also the duty of a person seeking declaration about the validity of the will to dispel the surrounding suspicious circumstances existing, if any. Thus, in addition to proving the execution of the will by examining the attesting witnesses, the propounder is also required to lead evidence to explain the surrounding suspicious circumstances, if any. Proof of execution of the will would, inter alia, depend thereupon.

15. The court, while granting probate of the will, must take into consideration all relevant factors. It must be found that the will was product of a free will. The testator must have full knowledge and understanding as regards the contents thereof. For the said purpose, the background facts may also be taken note of. Where, however, a plea of undue influence was taken, the onus therefor would be on the objector and not on the offender. (See *Savithri v. Karthyayani Amma*.)

14. The Supreme Court in the case of *Balathandayutham and another v. Ezhilarasan* reported in (2010) 5 SCC 770 has held as under:-

"14. When a will is surrounded by suspicious circumstances, the person propounding the will has a very heavy burden to discharge. This has been authoritatively explained by this Court in H. Venkatachala Iyengar v. B.N. Thimmajamma. P.B. Gajendragadkar, J. (as His Lordship then was) in para20 of the judgment, speaking for the three-Judge Bench in H. Venkatachala held that in a case where the testator's mind is feeble and he is debilitated and there is not sufficient evidence as to the mental capacity of the testator or where the deposition in the will is unnatural, improbable or unfair in the light of the circumstances or it appears that the bequest in the will is not the result of the testator's free will and mind, the court may consider that the will in question is encircled by suspicious circumstances.

15. Going by this test, as we must, we find that both the wills, Ext. B-19 and Ext. B-20 are surrounded by suspicious circumstances. The ratio in H. Venkatachala is that in such a situation the Court

> "would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts will be reluctant to treat the document as the last will of the testator." (See AIR p. 452, para 20.)

Following the aforesaid principle, this Court is constrained to hold that the appellants did not succeed in discharging its onus of removing the suspicious circumstances surrounding Exts. B-19 and B-20. As such there is no reason for us to find any error in the judgment of the High Court.

16. Insofar as the execution of the will is concerned, under Section 63 of the Succession Act, 1925 it has to be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence, and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of

such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

17. Section 68 of the Evidence Act, 1872 further provides that if a document is required by law to be attested it shall not be used as an evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the court is capable of giving evidence. There is a proviso under Section 68 but we are not concerned with the proviso here.

18. Commenting on these provisions, this Court in H. Venkatachala laid down that Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as an evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. It was further held that Section 63 of the Succession Act requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. (See AIR p. 451, para 18.)

19. The law, thus, laid down in H. Venkatachala is still holding field and this Court has followed the same in various other judgments. (See Madhukar D. Shende v. Tarabai Aba Shedage, Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and Savithri v. Karthyayani Amma.)"

Thus, it is for the propounder of the Will to remove all the suspicious circumstances. The Courts below have wrongly shifted the burden on the plaintiff to prove that the Will was not forged or concocted one.

15. It is not out of place to mention here that the testator of the Will had died within a month of the execution of the Will. None of the witnesses has stated that Narayan Singh was medically and mentally fit at the time of the execution of the Will. On the contrary, it is the case of the defendants themselves that Narayan Singh was not keeping well. Babulal (DW-1) has also not stated that the Will was ever signed by Narayan Singh in his presence.

16. The Supreme Court in the case of *Ganesan (D) Th. LRs. Vs. Kalanjiam* by judgment dated 11.07.2019 passed in *Civil Appeal No. 5901-5902 of 2009* has held that where the signature of the testator on the Will is undisputed, then it is not necessary that it must be proved that the testator must necessarily sign the Will in the presence of the attesting witnesses only or both the attesting witnesses put their signatures on the Will simultaneously at the same time in presence of each other and the testator. However, in the present case, thumb impression of Narayan Singh has not been admitted by the plaintiff. Thus, where the signature / thumb impression of the testator of the Will are not admitted then the Will is required to be strictly proved in accordance with the provisions of Section 63(c) of the Indian Succession Act. As the respondents / defendants have failed to prove the Will in accordance with the provisions of Section 63(c) of the Indian Succession Act, this Court is of the considered opinion that the Courts below committed material illegality by shifting the burden on the plaintiff and have wrongly held that the Will was duly proved by the defendants.

17. Accordingly, the substantial questions of law is answered in favour of the appellants.

18. The judgment and decree dated 30.10.2001 passed by 4th Additional District Judge, Vidisha in Regular Civil Appeal No. 27-A/2001 and the judgment and decree dated 19.03.2001 passed by 1st Civil Judge, Class-II, Vidisha in Civil Suit No. 20-A/1997, are hereby set aside. The suit filed by the plaintiff / appellant is hereby decreed.

19. In view of the undisputed fact that Narayan Singh was the owner of Survey No. 314 min area 0.113 hectare and Survey No. 651/1 area 0.481 hectare and the plaintiff Rajaram and defendant Babulal being the real brothers of Narayan Singh are his Class-II heirs, therefore, the following decree is passed:

> 1. The appellants and defendant No. 2 have 1/2 share in the property in dispute, i.e., Survey No. 314 min area 0.113 hectare and Survey No. 651/1 area 0.481 hectare situated in village Atarikhejda, Tahsil Gyaraspur, District Vidisha.
>
> 2. The appellants are entitled for possession of 1/2 of the disputed property after partition.
>
> 3. The appellants are entitled to get their names mutated in the revenue records.
>
> 4. Counsel's fee if certified.

20. Resultantly, the appeal succeeds and is hereby allowed. The decree be drawn accordingly.

Appeal allowed

I.L.R.[2020] M.P. 716 (DB)
APPELLATE CIVIL

Before Mr. Justice Sujoy Paul & Mr. Justice Mohd. Fahim Anwar

F.A. No. 1825/2019 (Jabalpur) decided on 2 March, 2020

DHARMENDRA TIWARI …Appellant

Vs.

SMT. RASHMI TIWARI …Respondent

***Hindu Marriage Act (25 of 1955), Section 10 & 25 – Judicial Separation & Permanent Alimony/Maintenance* – Held – In case where judicial separation is sought u/S 10, there is no barrier for grant of permanent alimony/maintenance to wife for her future life, but after considering the income and other property of the person against whom order is to be passed – Appeal dismissed. (Para 8)**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 10 व 25 – न्यायिक पृथक्करण व स्थाई निर्वाह व्यय/भरणपोषण – अभिनिर्धारित – ऐसे प्रकरण में जहां धारा 10 के अंतर्गत न्यायिक पृथक्करण चाहा गया है, वहां पत्नी को उसके भावी जीवन के लिए स्थाई निर्वाह व्यय/भरण पोषण प्रदान करने हेतु कोई अवरोध नहीं है, परंतु ऐसे व्यक्ति जिसके विरूद्ध आदेश पारित किया जाना है, की आय तथा अन्य संपत्ति को विचार में लेने के पश्चात् – अपील खारिज।

Cases referred:

(2005) 11 SCC 553, AIR 1988 Allahabad 150, (2000) 1 MPLJ 19.

Hitendra Golhani, for the appellant.
Devendra Kumar Shukla, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by:
MOHD. FAHIM ANWAR, J.:- This first appeal under section 19(1) of Family Court Act, 1984 has been filed by the appellant/husband against the judgment and decree dated 23.9.2019 passed by Principal Judge, Family Court, Rewa in RCS HM No.16-A/2017, whereby the application filed by the appellant under section 10 of the Hindu Marriage Act, 1955 for judicial separation was allowed, however directed the appellant to pay maintenance @ Rs.6,000/- per month to the respondent/wife from the date of the order. Being aggrieved by this part of the judgment and decree, the appellant has filed this appeal.

2. The facts of the case in brief are that the appellant and respondent are legally wedded husband and wife and their marriage was solemnized as per Hindu

rites and rituals on 14.5.2015 at village Kachnar, District Satna. After marriage they lived together peacefully for few days. Thereafter the behaviour of respondent/wife became abnormal towards the appellant and his family members and she started treating them with cruelty. It is alleged that the respondent/wife had told the appellant that she wanted to marry some other person and she had married with the appellant under the pressure of her parents. The respondent/wife was unhappy with the poor economic condition of appellant. The respondent/wife threatened the appellant that she will commit suicide and falsely implicate the appellant and his family members. Due to this threat appellant was compelled to reside separately from his joint family. The respondent/wife in January, 2016 consumed poisonous substance and was admitted in SGM Hospital, Rewa by appellant. Thereafter, the wife returned to her matrimonial home on 1.6.2016 and resided till 3.6.2016 in joint family. Thereafter she again left her matrimonial home on 4.6.2016 along with her belongings. The respondent/wife and her family members used to threaten the appellant on mobile phone to falsely implicate him and his family members in criminal case. Thus, the appellant was compelled to file complaint against the respondent/wife. Being annoyed, the respondent/wife filed false dowry complaint at Women Cell, Satna, which was later on transferred to Rewa Police and complaint under section 498-A of IPC read with section 3/4 of Dowry Prohibition Act was registered against the appellant/husband. Thus, the appellant filed a case for judicial separation against the respondent/wife on the ground of cruelty and desertion.

3. The Family Court considered the application filed by the appellant/husband under section 10 of the Hindu Marriage Act and held that there is material evidence that mental cruelty and harassment were meted out by respondent/wife against the appellant and joint residency of the parties would be injurious to both and dangerous to their life. The Family Court therefore allowed judicial separation between the parties, but directed the appellant/husband to pay Rs.6,000/-per month as maintenance to the respondent/wife.

4. Learned counsel appearing on behalf of appellant/husband has submitted that so far as the part of the judgment and decree, which relates to payment of maintenance @ Rs.6,000/- per month to the respondent/wife is concerned, it is contrary to law. It is submitted that as the Family Court has found that cruelty and harassment were meted out by the respondent/wife to the appellant/husband and his family members, therefore allowed the application filed by the appellant/husband under section 10 of the Hindu Marriage Act and has granted judicial separation, therefore, the order awarding maintenance @ Rs.6,000/- per month to the respondent/wife is not justified. The said part of the judgment is arbitrary and suffers from non-application of judicial mind. Submitting aforesaid, it is prayed

that this appeal may be allowed and the order awarding maintenance @ Rs.6,000/- per month to the respondent/wife may be set aside. In support of his contention, learned counsel has relied upon the judgment of the Apex Court in the case of *Trupti Das Vs. Rabindranath Mohapatra* [(2005) 11 SCC 553].

5. On the other hand, learned counsel appearing on behalf of respondent/wife has supported the impugned judgment and decree passed by the learned Family Court and submitted that the appellant is working as Medical Representative and is earning Rs.25,000/- per month and the respondent/wife is not capable of meeting out her day to day expenses and she is living in her parental house in compulsion, therefore, there is no error in the judgment and decree passed by the Family Court granting maintenance @ Rs.6,000/- per month to the respondent/wife. It is submitted that the appeal is devoid of substance and it be dismissed.

6. There is provision of granting permanent alimony and maintenance under section 25 of the Hindu Marriage Act. Provision of sub-section (1) of Section 25 of the Act is relevant, which reads thus :-

> **"25. Permanent alimony and maintenance** - (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

7. In the case of *Vinod Chandra Sharma Vs. Smt.Rajesh Pathak* (AIR 1988 Allahabad 150) the Allahabad High Court while considering the case held thus :

> "4. The power to grant alimony contained in S.25 of the Hindu Marriage Act has to be exercised when the court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination or variation by the passing of the decree of a type mentioned in Ss.10, 11 and 13 of the Act. Read with Ss. 23, 26 and 27 of the Act, a decree can be assumed to have been passed when an application for divorce or similar other relief is granted but surely not when the application is dismissed."

8. So there appears to be no dispute that in the cases where judicial separation is sought for under section 10 of the Hindu Marriage Act, there is no barrier for granting permanent alimony or maintenance to the wife for supporting her future life, but that too after considering the income and other property of the person against whom the order is going to be passed.

9. During the course of argument, learned counsel appearing on behalf of the appellant has stressed on the words inserted in section 25 of the Hindu Marriage Act "on application made to the Court for granting the alimony". In this regard he has relied on the case of *Trupti Das* (supra).

10. On going through the facts of the aforesaid case, it appears that the husband has filed the case for divorce on the ground of desertion and cruelty. The parties led evidence in support of their respective cases. The Family Court granted decree for divorce on both the grounds. Against the said order, matter was taken by the wife to the High Court of Orissa in appeal. The High Court set aside the order passed by the Family Court, whereby a decree for divorce was granted holding that the Family Court was not justified in granting the decree for divorce. Even after recording this finding the High Court in the concluding portion of the judgment suo motu granted a decree of judicial separation, as envisaged under section 10 of the Hindu Marriage Act and also directed for payment of maintenance to the wife by the husband. In that case the Hon'ble Apex Court has held that if the suit was for divorce, then the decree of judicial separation cannot be granted and simultaneously it has also held that in this situation direction of payment of maintenance is also not permissible. The Hon'ble Apex Court has allowed the appeal and set aside the decree for judicial separation and grant of maintenance.

11. In the instant case, the husband has filed the suit for judicial separation which was granted after allowing his application. In the said suit, wife has filed written reply so in our considered opinion there was no occasion before her to make a prayer for granting her permanent alimony or maintenance because she is not expected to presume that the judicial separation asked by the husband will definitely be granted. On going through the reply filed by the respondent/wife, it is clear that she has not only pleaded regarding the income of appellant/husband, but also has led evidence that the appellant/husband is a Medical Representative and his income is around Rs.25,000/- to Rs.30,000/- per month.

12. A Single Bench of this Court, in *Surajmal Ramchandra Khati Vs. Rukminibai* [(2000) 1 MPLJ 19], has considered section 25 of the Act in the light of section 23(A) of the Act, which is added at the later stage. In the aforesaid case it is held thus : -

"7. While considering provisions of section 25 of the Act, provisions of section 23(A) cannot be ignored which provides that -

> "In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground."

It means that in absence the petition filed by other spouse who has been contesting said litigation as respondent, is entitled to claim any relief under the provisions of the Act by making counter claim on the ground of petitioner's adultery, cruelty or desertion. And such spouse would be entitled to get such relief if he proves the said fact. That spouse would be entitled to get said relief from the Court as if the said spouse had presented a petition seeking such relief on that ground. Thus, keeping in view the spirit of provisions of section 23(A), the spirit behind the enactment will have to be seen. The Act has adopted a broader approach while dealing with matrimonial cases. Therefore, the word 'on application made to it' used in sub-section (1) of section 25 will have to be interpreted in a broader view. This word 'on application made to it' should not be construed in a strict sense. It does not mean always that such spouse is required to present a separate application for making a prayer for permanent alimony."

13. *In Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy* (Civil Appeal No.5369 of 2017) decided on 19.4.2017, in this regard although no law appears to have been laid down, but the findings are relevant because in a suit under section 10 of Hindu Marriage Act, for judicial separation, the trial Court has allowed the prayer, granted the decree of judicial separation and also granted permanent alimony of Rs.2,500/- per month and Rs.2,000/- per month, which was lateron enhanced to the extent of Rs.6,000/- per month each to the wife and minor son respectively, in the subsequent miscellaneous suit. In the revision filed by the wife the amount was enhanced to Rs.16,000/- per month and lateron in the review petition to the tune of Rs.23,000/- per month by the High Court of Calcutta. The matter which was before the Hon'ble Apex Court was that in a review petition the High Court could not increase the amount. After hearing both the parties, the Court has reduced the amount from Rs.23,000/- per month to Rs.20,000/- per month and specifically held that the alimony which is granted in the suits filed

under section 10 of the Act can be altered by filing the application under section 25(2) of the Act.

14. In view of aforesaid, in our considered opinion there is no error or illegality in the judgment and decree passed by the Family Court for judicial separation on account of desertion and cruelty and the Court below has rightly granted permanent alimony to the respondent/wife.

15. Considering the facts and circumstances of the case, the judgment and decree passed by the Family Court needs no interference by this Court and deserves to be upheld.

16. Consequently, this appeal has no merit and is dismissed. The judgment and decree passed by the Family Court is upheld.

Appeal dismissed

I.L.R. [2020] M.P. 721
CRIMINAL REVISION

Before Mr. Justice B.K. Shrivastava

Cr.R. No. 3037/2017 (Jabalpur) decided on 29 February, 2020

MOHD. LAEEQ KHAN ...Applicant

Vs.

SMT. SHEHNAZ KHAN & ors. …Non-applicants

***A. Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(b), 12 & 20(d) – Maintenance – Eligibility* – Held – The daughter/ child above the age of 18 years not entitled for maintenance under the Act of 2005 – Revision allowed. (Para 8 & 9)**

क. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(b), 12 व 20(d) – भरणपोषण – पात्रता – अभिनिर्धारित – पुत्री / 18 वर्ष से ऊपर की आयु का बालक 2005 के अधिनियम के अंतर्गत भरणपोषण हेतु हकदार नहीं है – पुनरीक्षण मंजूर।

***B. Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(b), 12 & 20(d) – "Child"* – Held – Term "child" clearly refers to any person below the age of 18 years, whether married or unmarried. (Para 6 to 8)**

ख. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(b), 12 व 20(d) – ''बालक'' – अभिनिर्धारित – शब्द ''बालक'' स्पष्ट रूप से 18 वर्ष से कम आयु का कोई व्यक्ति, विवाहित अथवा अविवाहित निर्दिष्ट करता है।

C. Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(b), 12 & 20(d) – Interpretation of Statute – "Child" – **Held – Act of 2005 is a secular statute, thus no bar on its applicability despite personal laws of the parties. (Para 7 & 8)**

ग. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(b), 12 व 20(d) – कानून का निर्वचन – ''बालक'' – अभिनिर्धारित – 2005 का अधिनियम एक पंथ निरपेक्ष कानून है, अतः पक्षकारों की स्वीय विधि होने के बावजूद इसकी प्रयोज्यता पर कोई वर्जन नहीं है।

M. Shafiqullah, for the applicant.
None, for the non-applicants.

O R D E R

B.K. SHRIVASTAVA, J.:- This revision has been filed under Section 397/401 of CrPC on 30.10.2017 by the applicant **Mohd. Laeeq Khan** against the judgment dated 12.09.2017 passed in Criminal Appeal No. 595/2016 by VII ASJ, Bhopal, whereby the appellate Court confirmed the order dated 19.07.2016 passed in Criminal Case No. 1268/2013 by JMFC, Bhopal.

2. It is an admitted position that the applicant is the husband of the respondent No. 1 and father of respondent Nos. 2, 3 and 4. All respondents filed an application under Section 12 of "Protection of Women from Domestic Violence Act, 2005". Marriage of the applicant was solemnized with the respondent No. 1 on 27.05.1995. Applicant challenged the impugned order only to the extent of granting the maintenance to respondent No. 2 Saman Khan.

3. It is submitted by the applicant's counsel that respondent No. 2 Saman Khan is a girl of above 18 years and the child who is above eighteen years is not come under the purview of the "Protection of Women from Domestic Violence Act, 2005" (hereinafter will be referred as "Act 2005"). The respondents were duly served on 28.09.2018 in this case but after several opportunities, they did not appear to contest the case.

4. It appears from the order passed by Smt. Shalu Sirohi, JMFC, Bhopal on 19.07.2016 in MJC No.1268/2013 that the Court awarded the maintenance @ Rs.1,000/- per month to respondent No. 2 who is the daughter of the applicant. The aforesaid order was also confirmed by the VII ASJ, Bhopal in Criminal Appeal No. 595/2016 vide judgment dated 12.09.2019.

5. Copy of the original application under Section 12 of the Act 2005 shows that the age of the respondent No. 2 Saman Khan was mentioned as "19 years" in the cause title of the aforesaid petition. Relief claimed at page No. 5 of the petition in which the maintenance was claimed under Section 20 of the aforesaid Act.

JMFC, Bhopal mentioned in para-20 of the order dated 19.07.2016 that Saman Khan is a girl aged about 22 years. In the cause title of the aforesaid judgment, the age has been mentioned as 21 years. The Appellate Court also mentioned the age of Saman Khan as 23 years in the cause title of the judgment dated 12.09.2017.

6. Therefore, it is clearly established that at each and every stage, the age of Saman Khan/respondent No. 2 was mentioned above 18 years. Whether the child/girl aged above 18 years is entitled to get the relief under Section 20 of the Act, 1985 or not? For this purpose, it will be useful to refer the Section 20. Section 20(d) of the Protection of Women from Domestic Violence Act, 2005 says:

> "20. Monetary reliefs- (1) While disposing of an application under sub-Section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to, -
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure 1973 (2 of 1974) or any other law for the time being in force."

7. The word "Child" has been used in the aforesaid Section which has been defined in Section 2(b) as under:"

> 2. Definitions.- In this Act, unless the context otherwise requires,-
>
> (b) "Child" means any person below the age of eighteen years and includes any adopted, step or foster child; "

8. The opening word "unless the context otherwise", means that insofar as any of the definition clauses mentioned in Section 2 is used or employed in any other part of the Act, wherein the context demands any other meaning, the definition clauses as mentioned therein should receive the meaning as defined in the Act. It does not mean that the definition clauses should obtain an interpretation, which suit the facts and circumstances of the case, that too depending on the personal law of the parties. D.V. Act being a secular statute. It is the context in which the statute has employed the word, that should receive the contextual interpretation. The Domestic Violence Act is a statute by itself and the words and definitions used therein unless they are ambiguous and calls for any aid from external source needs to be interpreted in the contenxt (sic: context) in which the words are employed in

the statue (sic: statute). In other words, the definition of the term "child" as is available in the Domestic Violence Act is so clear, and for the purpose of interpreting it, an external aid, in the form of an definition and provision used in other statute, though may be applicable to the party considering their personal law, need not be brought in. It is clear that the "child" as defined in the Domestic Violence Act specifically refers to any person below the age of 18 years. These scope of the terms is clear categoric and unambiguous. There is no scope for any other interpretation. The term "Child" used in Section 2(d) clearly referes to any person below the age of 18 years, whether married or unmarried.

9. Therefore, it is a clear position of law that the daughter/child aged above 18 years cannot claim the maintenance amount under the aforesaid "Act, 1985". Therefore, it appears that the trial Court committed mistake by awarding the maintenance amount to the respondent No. 2 Saman Khan.

10. Therefore, the petition is **allowed**. The order related to granting the maintenance under Section 20 of the Act, 1985 to Saman Khan/ respondent No. 2 is set aside. Remaining order will be treated as unchanged.

Revision allowed

I.L.R. [2020] M.P. 724 (DB)
CRIMINAL REFERENCE

Before Mr. Justice Sheel Nagu & Mr. Justice Rajeev Kumar Shrivastava

Cr.Ref. No. 13/2019 (Gwalior) decided on 30 January, 2020

STATE OF M.P. …Applicant

Vs.

RAVI @ TOLI MALVIYA …Non-applicant

(Alongwith Cr.A. No. 9132/2019)

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 273 – Recording Evidence in Absence of Accused* – Held – Trial Court erred in recording evidence of witness in absence of accused without any specific reasoned order, overlooking the mandatory provisions of Section 273 Cr.P.C. – Matter remanded to trial Court for examination and cross examination of witness in presence of accused and adjudication afresh. (Para 18 & 20)**

***क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 273 – अभियुक्त की अनुपस्थिति में साक्ष्य अभिलिखित किया जाना* – अभिनिर्धारित – विचारण न्यायालय ने दं. प्र.सं. की धारा 273 के आज्ञापक उपबंधों को अनदेखा करते हुए, बिना किसी विनिर्दिष्ट सकारण आदेश के अभियुक्त की अनुपस्थिति में साक्षी के साक्ष्य अभिलिखित कर त्रुटि की है – मामला अभियुक्त की उपस्थिति में साक्षी के परीक्षण तथा प्रतिपरीक्षण किये जाने तथा नये सिरे से न्यायनिर्णयन हेतु विचारण न्यायालय को प्रतिप्रेषित।**

***B. Criminal Procedure Code, 1973 (2 of 1974), Sections 273, 299 & 317 – Examination of Witness in Absence of Accused* – Held – Apex Court concluded that section 273 opens with expression "Except as otherwise expressly provided…" and the only exception is that if accused remained absent for circumstances mentioned u/S 299 and 317 Cr.P.C., no examination or cross-examination of witnesses could be undertaken. (Para 19)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 273, 299 व 317 – अभियुक्त की अनुपस्थिति में साक्षी का परीक्षण – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि धारा 273 ''जैसा अन्यथा अभिव्यक्त रूप से उपबंधित है उसके सिवाय'' अभिव्यक्ति से आरंभ होती है तथा एकमात्र अपवाद यह है कि यदि अभियुक्त दं.प्र.सं. की धारा 299 एवं 317 के अंतर्गत उल्लिखित परिस्थितियों हेतु अनुपस्थित रहता है, तो साक्षीगण का कोई परीक्षण अथवा प्रतिपरीक्षण नहीं किया जा सकता।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 317 – Recording Evidence in Absence of Accused* – Held – Section 317 provides special provision for recording of evidence in absence of accused if he is represented by his pleader, but the condition precedent is, the reason for doing so should be recorded by the Judge. (Para 14)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 317 – अभियुक्त की अनुपस्थिति में साक्ष्य अभिलिखित किया जाना – अभिनिर्धारित – धारा 317 अभियुक्त की अनुपस्थिति में साक्ष्य अभिलिखित करने हेतु विनिर्दिष्ट उपबंध उपबंधित करता है यदि उसके अधिवक्ता द्वारा उसका प्रतिनिधित्व किया जाता है, परंतु पुरोभाव्य शर्त यह है, कि ऐसा करने हेतु कारण न्यायाधीश द्वारा अभिलिखित किया जाना चाहिए।

Cases referred:

2019 CrLR (SC) 633, 1996 CriLJ 46,

Kuber Boddh, Dy. A.G. for the State.

Vijay Dutt Sharma, for the respondent as *amicus curiae* in Cr.Ref. No. 13/2019.

Padam Singh, for the appellant in Cr.A. No. 9132/2019.

J U D G M E N T

The Judgment of the Court was delivered by :

RAJEEV KUMAR SHRIVASTAVA, J.:- This judgment shall govern the disposal of Criminal Reference Case No. 13/2019 as well as Criminal Appeal No. 9132/2019 as both arise out of judgment dated 26/30.9.2019 passed by Second Additional Sessions Judge & Special Judge (Protection of Children from Sexual Offences Act, 2012), Vidisha (MP) in Special Sessions Trial No. 300002/2016.

2. As per **Criminal Reference Case No. 13/2019,** Second Additional Sessions Judge & Special Judge (Protection of Children from Sexual Offences

Act, 2012), Vidisha (MP) vide judgment dated 26/30.9.2019 in Special Sessions Trial No. 300002/2016, having found the accused guilty under Sections 363, 366-A, 364, 376(2)(i), 376(2)(j), 376(2)(k), 302 and 201 IPC, has inflicted penalty of death sentence and has submitted the matter for confirmation.

3. **Criminal Appeal No.9132/2019** has been filed by the accused from jail against the aforesaid judgment, whereby he has been convicted and sentenced as under :-

Sections	Act	Imprisonment	Fine	Imprisonment in lieu of fine
363	IPC	Seven years RI	1000/-	one month additional RI)
366-A	IPC	Ten years RI	2000/-	two months additional RI
364	IPC	Ten years RI	2000/-	two months additional RI
376(2)(i)	IPC	Life Imprisonment	4000/-	three months additional RI
376(2)(j)	IPC	Life Imprisonment	4000/-	three months additional RI
376(2)(k)	IPC	Life Imprisonment	4000/-	three months additional RI
302	IPC	Penalty of Death Sentence	-	-
201	IPC	Seven years RI	1000/-	one month additional RI

It was also directed in the judgment that all the punishments of imprisonment shall run concurrently.

4. The short facts of the case are that on 24.10.2015 in between 2 pm to 7 pm the accused had kidnapped 7 years old prosecutrix from the temple situated outside platform No.6 from the custody of her lawful guardians, thereafter accused committed rape with the minor and killed her and knowingly disappeared the evidence of offence committed by him. According to the prosecution, on 25.10.2015 informant Rajkumar (PW-1) and Gajendra Sahu (PW-2) had seen deadbody in the well of Mallu Patel. They informed the Police Station Civil Line, Vidisha. ASI S.N.S. Solanki (PW-34) reached the spot and registered merg intimation (Ex.P/1). On the basis of merg intimation, Police Station Civil Line,

Vidisha registered Merg Case No. 80/2015 (Ex.P/38). S.N.S. Solanki (PW-34) prepared the spot map (Ex.P/5). Thereafter, body of the deceased was taken out from the well and Safina Form (Ex.P/50) was issued. Thereafter post-mortem of the deadbody was conducted. The post-mortem report Ex.P/29 and Ex.P/51 reveals as under :-

> "A necked dead body female child lying in supine position on pm table. Rigor mortis present over lower limb. Mouth semi open, eye closed. Conjunctival congestion present and swelling present over face and eye. Cynosis present over the lip and tip of nose. Tongue between the teeth and impression of upper teeth on anterior aspect of tongue and red colour secretion over both nostril region. Ecchymosis present on vertebral aspect of tongue and hypostasis present over the back. Both wrists were open and mud present over the body, more on right hand and peeling of skin over thigh (inner and medial aspect of thigh) and following injuries were present over the body :
>
> (i) Contusion 4cm x 4cm over right frontal region over headm ecchymosis present;
>
> (ii) Contusion 4cm x 4cm over left just above eyebrow;
>
> (iii) Contused abbrasion 3cm x 2cm over right side of neck below the angle of mandible;
>
> (iv) Multiple abbrasions present ove anterior and superior aspect of wound No.(iii), size varies 1cm x 1/4 cm and . 5cm x 1/4cm.
>
> (v) Multiple abbrasions (four) 1 and 1/4cm over right TM Joint (in front of right ear) and .5cm x 1/4cm.
>
> All injuries are anti-mortem in nature."

As per opinion of the doctor, cause of the death was cardiorespiratory arrest as a result of multiple causes like smothering, injury over the private part, vulva and rupture of vagina and uterus.

5. The investigating officer Sanjeev Kumar Chouksey (PW-31) investigated the matter, recorded the statements of the witnesses. After completion of necessary investigation, police filed the charge-sheet. The matter was committed for trial. The accused was charged for committing offence punishable under Sections 363, 366-A, 376, 302, 201 of IPC and Section 4 read with Section 3 of Protection of Children from Sexual Offences Act, 2012, and Sections 376 (2)(i)(j)(k) and 364 of IPC and Section 5( ) read with Section 6 of POCSO Act. The accused abjured his guilt. The matter was committed for trial. Prosecution examined 35 witnesses and exhibited 90 documents to bring home the charge.

Whereas, the accused person while confronting the prosecution witnesses exhibited 5 documents.

6. The Trial Court vide impugned judgment found the accused guilty of the offences as aforesaid and imposed the death penalty and has submitted the matter to the High Court under Section 366 Cr.P.C. for confirmation of death sentence. The accused has also preferred an appeal under Section 374 Cr.P.C.

7. This Court for proper assistance appointed Shri Vijay Dutt Sharma, Advocate as *amicus curiae*.

8. Learned *amicus curiae* submitted that on 13.3.2019 and 12.4.2019 when the accused was not produced from jail, remaining chief examination and cross-examination of PW-31 Sanjeev Kumar Chouksey was done in absence of the accused, therefore, the trial is vitiated which is *de hors* the mandatory provisions contained in Section 273 CrPC as the trial Court recorded prosecution evidence in absence of accused, As a result whereof, since the valuable right of the accused of having prosecution witnesses examined in his presence has been infringed, the entire proceedings got vitiated, and for that the judgment based on such proceedings is a nullity in the eyes of law, which deserves to be set aside, and the matter be relegated to the Trial Court for fresh trial. Reliance is placed on the decisions in *Atma Ram & Others vs. State of Rajasthan* [2019 CrLR (SC) 633] and *State of Madhya Pradesh vs. Budhram s/o Kunkuram Satnami* [1996 CriLJ 46].

9. Per Contra, learned State counsel submitted that the trial Court after appreciating and marshaling the evidence in proper perspective has rightly inflicted the death penalty and the appeal filed by the accused deserves to be dismissed.

10. Before entering into rival contentions, submissions which border around the provision contained under Section 273 Cr.P.C. are taken up first. Section 273 Cr.P.C. runs as under:-

> "273. Evidence to be taken in presence of accused. - Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:
>
> Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

> Explanation.- In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code."

11. Section 205 of CrPC provides that Magistrate may dispense with personal attendance of accused, which runs as under:-

> "205. Magistrate may dispense with personal attendance of accused.-- (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.
>
> (2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

12. However, in the present case the trial relates to sessions trial, hence the provision of Section 205 CrPC will not be attracted.

13. Section 317 of CrPC relevant in the case in hand reads as under:-

> "317. Provision for inquiries and trial being held in the absence of accused in certain cases.-- (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.
>
> (2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

14. If we analyze the provisions of Section 317 CrPC, then it is apparent that at any stage of an inquiry or trial, under this Code, if the Judge or Magistrate is satisfied, **for reasons to be recorded**, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused. Meaning

thereby, this section provides special provision for recording of evidence in absence of accused if the accused is represented by his pleader, but the condition precedent is, the reason for doing so should be recorded by the Judge.

15. In *Budhram* (supra), the Division Bench relied on earlier decision in *Daryav Singh Vs. State of M.P.* (Cr.A.345/88 decided on 05.05.1988) wherein, taking note of the fact that on 12.12.1987 one prosecution witness was examined in absence of accused, the matter was remanded back to the Trial Court for redeciding the matter after recording the evidence of said witness in presence of the accused. In the aforesaid judgment, the Division Bench took note of the fact that *when the trial commenced the accused was not defended by a lawyer. Opportunity was afforded to him to engage a lawyer as he had made a request to the Court in that behalf. Ultimately he engaged a lawyer. During the course of the trial on a number of occasions the accused was not produced before the Court and the trial had to be adjourned. On 31-1-95 the story was repeated and the appellant/accused was not produced before the Court. On that date Bhogilal (P. W. 14), Urmilabai (P.W. 15), Kamlabai (P.W. 16), Kiranbai (P.W. 17) and Nandram (P.W. 18), Awadesh Kumar (P.W.19) and Investigating Officer C.P. Jhariya (P. W.20) were present. The learned counsel representing the accused informed the Court that he had no objection if the witnesses in attendance were examined and, accordingly, the learned Judge recorded the evidence of all these witnesses in absence of the accused. Ultimately, the matter ended in conviction based mainly on the testimony of P. W. 10 Kotwar Patel Das who testified to the extra-judicial confession made by the accused to him.* Being convinced that the provision of Section 273 Cr.P.C. was violated appellants' conviction and sentence of death was set aside and the case was remitted to the Trial Court for recording of evidence of (PW-14) to (PW-20) afresh in presence of the appellant, who be given full opportunity to cross-examine them.

16. In *Atma Ram* (supra), in respect of the offences punishable under Sections 302, 307, 452, 447, 323, 147, 148 and 149 IPC, the Trial Court without ensuring the presence of the accused proceeded to examine PW/3, PW/4, PW/12, PW/13, PW/14, PW/15, PW/17, PW/18, PW/20 and PW/23, respectively on 13.02.2015, 13.08.2015, 03.09.2015, 09.10.2015, 05.11.2015, 08.03.2016, 12.05.2016, 20.06.2016, 14.02.2017, 22.11.2016 and 14.02.2017 and after recording conviction proceeded to impose the sentence of death penalty. The High Court of Rajasthan in reference under Section 366 Cr.P.C. taking note of the fact that despite objection of the defence counsel (raised at initial stage) the Trial Court proceeded to record the evidence of 12 witnesses. While posing the issue as to whether the entire trial should be declared vitiated or that the matter be remanded to the Trial Court for recording the statements of these witnesses afresh by exercising powers under Section 391 Cr.P.C. or that the impugned judgment should be set aside and the *de*

novo trial be directed by exercising power under Section 386(b) Cr.P.C., directed that to do complete justice to the accused as well as to the victims, directed:

> ".....It is hereby directed that Trial Court shall summon and record the statements of the witnesses PW-1 Chandu Ram, PW-2 Chandrakala, PW-3 Surendra Singh, PW-4 Dharam Pal, PW-12 Vikrant Sharma, PW-13 Prahlad, PW-14 Ram Kumar, PW-15 Sushila, PW-17 Dr. Aran Tungariya, PW-18 Ram Pratap, PW-20 Sahab Singh and PW-23 Ramesh Kumar afresh after securing presence of the accused in the Court. Upon remand, the Trial Court shall conduct the proceedings on a day to day basis and shall, after recording the statements of the witnesses afresh in the above terms, re-examine the accused under Section 313 Cr.P.C.; provide them a justifiable/proper opportunity of leading defence and decide the case afresh and as per law within four months from the date of receipt of copy of this judgment."

17. On its challenge before the Supreme Court, the order was upheld. Their Lordships were pleased to hold:

> "18. Section 273 opens with the expression "Except as otherwise expressly provided..." By its very nature, the exceptions to the application of Section 273 must be those which are expressly provided in the Code. Shri Hegde is right in his submission in that behalf. Sections 299 and 317 are such express exceptions provided in the Code. In the circumstances mentioned in said Sections 299 and 317, the contents of which need no further elaboration, the Courts would be justified in recording evidence in the absence of the accused. Under its latter part, Section 273 also provides for a situation in which evidence could be recorded in the absence of the accused, when it says "when his personal attendance is dispensed with, in the presence of his pleader". There was a debate during the course of hearing in the present matter whether such dispensation by the Court has to be express or could it be implied from the circumstances. We need not go into these questions as the record clearly indicates that an objection was raised by the Advocate appearing for the appellant's right at the initial stage that the evidence was being recorded without ensuring the presence of the appellants in Court. There was neither any willingness on the part of the appellants nor any order or direction by the Trial Court that the evidence be recorded in the absence of the appellants. The matter, therefore, would not come within the scope of the latter part of Section 273 and it cannot be said that there was any dispensation as contemplated by the said Section. We will, therefore, proceed on the footing that there was no

dispensation and yet the evidence was recorded without ensuring the presence of the accused. The High Court was, therefore, absolutely right in concluding that Section 273 stood violated in the present matter and that there was an infringement of the salutary principle under Section 273. The submissions advanced by Shri Sanjay Hegde, learned Senior Advocate, relying upon paragraphs in *Jayendra Vishnu Thakur Vs. State of Maharashtra and others*, (2009) 7 SCC 104 as quoted above, that the right of the accused to watch the prosecution witness is a valuable right, also need not detain us. We accept that such a right is a valuable one and there was an infringement in the present case. What is material to consider is the effect of such infringement? Would it vitiate the trial or such an infringement is a curable one?

19. The emphasis was laid by Dr. Manish Singhvi, learned Senior Advocate for the State on the articles relied upon by him to submit that the theory of "harmless error" which has been recognized in criminal jurisprudence and that there must be a remedial approach. Again, we need not go into these broader concepts as the provisions of the Code, in our considered view, are clearly indicative and lay down with clarity as to which infringements *per se*, would result in vitiation of proceedings. Chapter XXXV of the Code deals with "Irregular Proceedings", and Section 461 stipulates certain infringements or irregularities which vitiate proceedings. Barring those stipulated in Section 461, the thrust of the Chapter is that any infringement or irregularity would not vitiate the proceedings unless, as a result of such infringement or irregularity, great prejudice had occasioned to the accused. Shri Hegde, learned Senior Advocate was quick to rely on the passages in *Jayendra Vishnu Thakur* to submit that the prejudice in such cases would be inherent or *per se*. Paragraphs 57 and 58 of said decision were as under:-

> "57. Mr. Naphade would submit that the appellant did not suffer any prejudice. We do not agree. Infringement of such a valuable right itself causes prejudice. In *S.L. Kapoor v. Jagmohan,* (1980) 4 SCC 379, this Court clearly held: (SCC p. 395, para 24)
>
> "24... In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has

> denied justice that the person who has been denied justice is not prejudiced."
>
> 58. In *A.R. Antulay vs. R.S. Nayak*, (1988) 2 SCC 602, a seven-Judge Bench of this Court has also held that when an order has been passed in violation of a fundamental right or in breach of the principles of natural justice, the same would be a nullity. (See *also State of Haryana Vs. State of Punjab*, (2004) 12 SCC 673 and *Rajasthan SRTC Vs. Zakir Hussain*, (2005) 7 SCC 447."

20. The aforementioned observations in *Jayendra Vishnu Thakur* must be read in the peculiar factual context of the matter. The accused Jayendra Vishnu Thakur was tried in respect of certain offences in a Court in Delhi and at the same time he was also an accused in a trial under the provisions of TADA Act [Terrorists and Anti Disruptive Activities (Prevention) Act, 1987] in a Court in Pune. The trial in the Court in Pune proceeded on the basis that Jayendra Vishnu Thakur was an absconding accused. The evidence was thus led in the trial in Pune in his absence when he was not sent up for trial, at the end of which all the accused were acquitted. However, in an appeal arising therefrom, this Court convicted some of the accused for offences with which they were tried. In the meantime, Jayendra Vishnu Thakur was convicted by the Court in Delhi and was undergoing sentence imposed upon him. Later, he was produced before the Court in Pune with a supplementary charge-sheet and charges were framed against him along with certain other accused. A request was made by the Public Prosecutor that the evidence of some of the witnesses, which was led in the earlier trial be read in evidence in the fresh trial against Jayendra Vishnu Thakur as those witnesses were either dead or not available to be examined [Paras 8 and 9 of *Jayendra Vishnu Thakur Vs. State of Maharashtra* (supra)]. The request was allowed which order of the Court in Pune was under challenge before this Court. It was found by this Court that the basic premise for application of Section 299 of the Code was completely absent. The Accused had not absconded. He was very much in confinement and could have been produced in the earlier trial before the Court in Pune. Since the requirements of Section 299 were not satisfied, the evidence led on the earlier occasion could not be taken as evidence in the subsequent proceedings. The witnesses were not alive and could not be re-examined in the fresh trial nor could there be cross-examination on behalf of the accused. If the evidence in the earlier trial was to be read in the subsequent trial, the accused would be denied the

opportunity of cross-examination of the concerned witnesses. Thus, the prejudice was inherent. It is in this factual context that the observations of this Court have to be considered. Same is not the situation in the present matter. It is not the direction of the High Court to read the entire evidence on the earlier occasion as evidence in the *de novo* trial. The direction is to re-examine those witnesses who were not examined in the presence of the appellants. The direction now ensures the presence of the appellants in the Court, so that they have every opportunity to watch the witnesses deposing in the trial and cross-examine said witnesses. Since these basic requirements would be scrupulously observed and complied with, there is no prejudice at all.

21. The learned *Amicus Curiae* was right in relying upon the provisions of Chapter XXVIII (Sections 366 to 371 of The Code) and Chapter XXIX (Sections 372 to 394 of The Code). He was also right in saying that the Chapter XXVIII was more relevant in the present matter and the judgment of the High Court was supported more strongly by provisions of Chapter XXVIII. The provisions of Sections 366 to 368 and Sections 386 and 391 are quoted here for ready reference:-

" 366. Sentence of death to be submitted by Court of Session for confirmation - (1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

> *367. Power to direct further inquiry to be made or additional evidence to be taken* -
> (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.
>
> (2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.
>
> (3) When the inquiry or evidence (if any) is not made or taken by the High Court the result of such inquiry or evidence shall be certified to such Court.

368. *Power of High Court to confirm sentence or annual conviction* - In any case submitted under section 366, the High Court -

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order of a a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

386. *Powers of the Appellate Court.* -After perusing such record and hearing the appellant or his Pleader, if he appears, and in case of an appeal under Section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence -

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) Alter the finding maintaining the sentence, or

(iii) With or without altering the finding alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order alter or reverse such order;

(e) Make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which is in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

391. *Appellate Court may take further evidence or direct it to be taken* - (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his Pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

22. According to Section 366 when a Court of Sessions passes a sentence of death, the proceedings must be submitted to the High Court and the sentence of death is not to be executed unless it is confirmed by the High Court. Section 367 then proceeds to lay down the power of the High Court to direct further enquiry to be made or additional evidence to be taken.

Section 368, thereafter, lays down the power of the High Court to confirm the sentence so imposed or annul the conviction. One of the powers which the High Court can exercise is one under Section 368(c) of the Code and that is to "acquit the accused person". Pertinently, the power to acquit the person can be exercised by the High Court even without there being any substantive appeal on the part of the accused challenging his conviction. To that extent the proceedings under Chapter XXVIII which deals with "submission of death sentences for confirmation" is a proceeding in continuation of the trial. These provisions thus entitle the High Court to direct further enquiry or to take additional evidence and the High Court may, in a given case, even acquit the accused person. The scope of the chapter is wider. Chapter XXIX of the Code deals with "Appeals". Section 391 also entitles the Appellate Court to take further evidence or direct such further evidence to be taken. Section 386 then enumerates powers of the Appellate Court which *inter alia* includes the power to "reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial". The powers of Appellate Court are equally wide. The High Court in the present case was exercising powers both under Chapters XXVIII and XXIX of the Code. If the power can go to the extent of ordering a complete re-trial, the exercise of power to a lesser extent namely ordering *de novo* examination of twelve witnesses with further directions as the High Court has imposed in the present matter, was certainly within the powers of the High Court. There is, thus, no infraction or jurisdictional error on the part of the High Court.

23. It is true that as consistently laid down by this Court, an order of retrial of a criminal case is not to be taken resort to easily and must be made in exceptional cases. For example, it was observed by this Court in *Pandit Ukha Kolhe Vs. State of Maharashtra*, as under:-

> "15. An order for retrial of a criminal case is made in exceptional cases, and not unless the Appellate Court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the

> Appellate Court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons. Harries, C.J., in *Ramanlal Rathi Vs. The State*, AIR (1951) Cal. 305.

"If at the end of a criminal prosecution the evidence leaves the Court in doubt as to the guilt of the accused the latter is entitled to a verdict of not guilty. A retrial may be ordered when the original trial has not been satisfactory for particular reasons, for example, if evidence had been wrongly rejected which should have been admitted, or admitted when it should have been rejected, or the Court had refused to hear certain witness who should have been heard. But retrial cannot be ordered on the ground that the prosecution did not produce the proper evidence and did not know how to prove their case."

24. The order passed by the High Court in the present matter was not to enable the Prosecutor to rectify the defects or infirmities in the evidence or to enable him to lead evidence which he had not cared to lead on the earlier occasion. The evidence in the form of testimony of those twelve witnesses was led and those witnesses were cross-examined. There was no infirmity except the one that the evidence was not led in the presence of the appellants. The remedy proposed was only to rectify such infirmity, and not to enable the Prosecutor to rectify defects in the evidence.

25. We must also consider the matter from the stand point and perspective of the victims as suggested by the learned *Amicus Curiae*. Four persons of a family were done to death. It is certainly in the societal interest that the guilty must be punished and at the same time the procedural requirements which ensure fairness in trial must be adhered to. If there was an infraction, which otherwise does not vitiate the trial by itself, the attempt must be to remedy the situation to the extent possible, so that the interests of the accused as well as societal interest are adequately safeguarded. The very same witnesses were directed to be *de novo* examined which would ensure that the interest of the prosecution is sub-served and at the same time the accused

> will have every right and opportunity to watch the witnesses deposing against them, watch their demeanor and instruct their Counsel properly so that said witnesses can be effectively cross-examined. In the process, the interest of the accused would also stand protected. On the other hand, if we were to accept the submission that the proceedings stood vitiated and, therefore, the High Court was powerless to order *de novo* examination of the concerned witnesses, it would result in great miscarriage of justice. The persons who are accused of committing four murders would not effectively be tried. The evidence against them would not be read for a technical infraction resulting in great miscarriage. Viewed thus, the order and directions passed by the High Court completely ensure that a fair procedure is adopted and the depositions of the witnesses, after due distillation from their cross-examination can be read in evidence.
>
> 26. We, therefore, see no reason to interfere with the order passed and the directions issued by the High Court in the present matter. We affirm the view taken by the High Court and dismiss these appeals. The restraint which we had placed on the Trial Court not to pronounce the judgment hereby stands vacated. The Trial Court is now free to take the matter to its logical conclusion. Let a copy of this Order be immediately transmitted to the concerned Trial Court."

18. In the case at hand, it is borne out from the record that prosecution examined its witness Sanjeev Kumar Chouksey (PW-31) on 13.3.2019 and 12.4.2019 in absence of the accused and on these dates no specific reasoned order had been passed by the Trial Court under which the evidence of aforesaid witness could have been recorded. Apart from this, the pleader of the accused had not given any version or statement that he was authorised by the accused to cross-examine the said witness in absence of the accused.

19. In the light of the law laid down in the case of *Atma Ram & Ors.* (supra) wherein it has been held that Section 273 opens with the expression "Except as otherwise expressly provided. ..." and the only exception is that if accused remained absent for the circumstances mentioned in Sections 299 and 317 of Cr.P.C., no examination and cross-examination of the witnesses could have been undertaken. Therefore, learned Trial Court erred in proceedings with the witness Sanjeev Kumar Chouksey (PW-31) overlooking the mandatory provision contained in Section 273 Cr.P.C.

20. For these reasons, matter is remanded to the Second Additional Sessions Judge & Special Judge (Protection of Children from Sexual Offences Act, 2012), Vidisha (MP) to cause examination, cross-examination and re-examination of

prosecution witness, namely, Sanjeev Kumar Chouksey (PW-31) in presence of the accused and his pleader and then to record statement of accused under Section 313 Cr.P.C. and after completion of trial, the Trial Court shall pronounce the judgment afresh.

21. We hope and trust that the Trial Court shall complete the proceedings within a period of thirty days from the date of receipt of the judgment. Let a copy of judgment along with the record be transmitted forthwith to the Trial Court.

22. We record our gratitude for Shri V.D.Sharma for his able assistance as *amicus curiae* in this Court.

23. The reference and appeal are disposed of finally in above terms.

Order accordingly

I.L.R. [2020] M.P. 740
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Rajendra Kumar Srivastava
M.Cr.C. No. 36024/2019 (Jabalpur) decided on 6 March, 2020

SHIV PRASAD TIWARI & ors. ...Applicants

Vs.

STATE OF M.P. & anr. …Non-applicants

***A. Penal Code (45 of 1860), Sections 498-A, 506 & 34, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment* – Held – Complaint by wife against father, mother, brother and sister of husband, who are living separately from husband and wife – There is general allegations found against them – *Prima facie* material available only against husband – Proceedings against other family members quashed – Application partly allowed. (Paras 21 to 24)**

क. दण्ड संहिता (1860 का 45), धाराएँ 498–A, 506 व 34, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अभिखंडित किया जाना – अभिनिर्धारित – पत्नी द्वारा पति के पिता, माता, भाई एवं बहिन, जो कि पति–पत्नी से पृथक रूप से रह रहे है, के विरूद्ध परिवाद – उनके विरूद्ध सामान्य अभिकथन पाये गये – प्रथम दृष्ट्या केवल पति के विरूद्ध सामग्री उपलब्ध – कुटुंब के अन्य सदस्यों के विरूद्ध कार्यवाहियां अभिखंडित – आवेदन अंशतः मंजूर।

***B. Penal Code (45 of 1860), Sections 498-A, 506 & 34 and Dowry Prohibition Act (28 of 1961), Section 3/4 – Territorial Jurisdiction* – Held – Apex Court concluded that a women drove out of her matrimonial home can file a criminal case against her spouse and in-laws at a place where she took shelter – Husband wife were living at Mumbai – After disputes, wife living**

with her parents at Bhopal – Bhopal Court has jurisdiction to try the matter. (Para 6)

ख. दण्ड संहिता (1860 का 45), धाराएँ 498–A, 506 व 34 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – क्षेत्रीय अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि अपने दाम्पत्य निवास से बाहर निकाली गई एक महिला उसके पति एवं ससुराल वालों के विरूद्ध उस स्थान पर दाण्डिक प्रकरण प्रस्तुत कर सकती है जहां उसने आश्रय लिया – पति–पत्नी मुंबई में रहते थे – विवादों के पश्चात् पत्नी भोपाल में उसके माता–पिता के साथ रह रही है – भोपाल न्यायालय को मामले का विचारण करने की अधिकारिता है।

Cases referred:

(2019) 5 SCC 384, AIR 2017 S.C. 4019, (2000) 5 SCC 207, AIR 2010 SC 3363, 2014 (8) SCC 273, (2012) 10 SCC 741, 1992 SCC (Cri) 426, 2018 (1) MPWN 45,

Pramod Kumar Thakre, for the applicants.
Veerbahadur Singh, P.L. for the non-applicant No. 1/State.
Anand Chourasiya, for the non-applicant No. 2.

O R D E R

RAJENDRA KUMAR SRIVASTAVA, J.:- Petitioners-accused have filed this miscellaneous criminal case under Section 482 of Cr.P.C. to quash the proceeding pending before the Judicial Magistrate First Class Bhopal vide RCT No. 7481/2019 for the offence punishable under Sections 498-A, 506, 34 of IPC and Section 3/4 of the dowry Prohibition Act registered in Crime No. 21/2019.

2. Prosecution case in short is that on 06.01.2019, the respondent No. 2 lodged the FIR against the petitioners and one Nitin Sethi stating that on 18.04.2018, marriage of respondent No.2 was solemnized with petitioner/accused No.3 according to Hindu rites and ritual. Petitioner/accused No.1, 2, 4 and 5 are father-in-law, mother-in-law, brother-in-law and sister-in-law of respondent No.2 respectively. Petitioner No. 3 is working in JIO company at Mumbai. Petitioner No. 3 and his family members have tortured the respondent No. 2 on account of demand of dowry. Petitioner No. 3 told her parents to give Rs. 5 lakhs to him, otherwise he would give divorce to her. Petitioner No. 2 has also demanded the dowry from her. She further contended that even after providing some articles by her mother, the petitioners was continually demanding money and gold ornaments from respondent No. 2 and due to non fulfillment of said demand, they tortured her physically and mentally. Petitioner No. 3 and one Nitin Setthi threatened her to kill her parents. On 20.10.2018, petitioner No. 3 committed marpeet with respondent No.2 on Panvel Mumbai due to which she lodged the complaint against the petitioner No. 3 bearing Crime No. 1640/2018 for the offence under Sections 323,

504 and 506 of IPC. Thereafter, she left her matrimonial house and since than she is living with her parents at Bhopal.

3. Learned counsel for the petitioners submits that petitioner No.3 and respondent No. 2 were living happily at Mumbai whereas the petitioner No.1 was posted and had visited several places. The petitioners No. 1, 2, 4 and 5 are living separately from the petitioner No. 3 and respondent No.2 and they had no interference with personal life of respondent No. 2. The entire family have been roped into this frivolous case just to get monetary relief and compensation. She made general allegations against all the petitioners saying that the petitioners were ill-treating her and demanded dowry, so in the absence of specific allegation against the petitioners, they cannot be prosecuted further. He submits that initially the complainant has lodged the FIR against only petitioner No. 3 for the offence under Sections 323, 504, 506 of IPC and at later stage with the *mala fide* intention she roped all the family members of petitioner No. 3. He has also raised the issue of territorial jurisdiction saying that petitioner No. 3 and respondent No. 2 have not resided at Bhopal, thus, the cognizance taken by the Court below is without jurisdiction and deserves to be quashed. With the aforesaid, he prays for allowing of this petition.

4. On the other hand, the learned counsel for the State vehemently oppose the submission of petitioners' counsel and submits that there is a *prima facia* material available on the record against the petitioners/accused. All the facts will be investigated at the trial. Therefore, there is no scope to invoke the inherent jurisdiction under Section 482 of Cr.P.C to quash the proceeding. In addition to above said facts, the learned counsel for the respondent No. 2 argued that all the petitioner are involved in alleged crime and they are liable to be prosecuted in the case. He submits that the petitioner No. 1 and 2 are equally liable for the offence as when they used to come house of respondent No.2 and tortured her. The other petitioners were living at Mumbai and they have also tortured her. He submits that without recording the evidence, it cannot be concluded that the allegation are absurd or not ? Therefore, looking to the *prima facie* material and specific allegation, this petition may not be allowed. The defence of petitioners cannot be looked into at this stage.

5. Heard both the parties and perused the record.

6. The first objection raised by the petitioners' counsel is regarding territorial jurisdiction of the case. According to petitioner's counsel, no incident was taken place at Bhopal. On perusal of case diary, it appears that initially the respondent No. 2 has lodged the complaint at Mumbai against the petitioner No. 3 for the offence of Sections 323, 504, 506 on 20.10.2018 whereas the FIR pertains to present case is registered at Police Station Kolar Road Bhopal on 06.01.2019. It is true, in the FIR, it is mentioned by the respondent No. 2 that the petitioners No. 3

to 5 and she herself were residing at Mumbai and due to torture of the petitioners, she came to Bhopal at her parental home, she did not allege any incident which would have occurred at Bhopal. But in the recent pronouncement of the Hon'ble Apex Court in the case of *Rupali Devi Vs. State of Uttar Pradesh and others* reported in (2019) 5 SCC 384, the Higher Court held that a women drove out of her matrimonial home can file a criminal case against her spouse and in-laws at a place where she has taken shelter, the relevant portion of the judgment is quoted herein under:-

> *" 15. The protection of women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498-A, Indian Penal Code which defines cruelty. The provisions contained in Section 498-A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonal home. Such consequences, by itself, would amount to distinct offence committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on acount of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C. which would squarely be applicable to the present case as an answer to the question raised.*
>
> ***16.*** *We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Indian Penal Code. "*

7. Therefore, the ground of territorial jurisdiction is having no force and it is hereby discarded.

8. This is a case of matrimonial dispute, therefore, it has to be seen that how to deal with the petition under Section 482 of Cr.P.C. for quashing the FIR and subsequent criminal proceedings.

9. The Apex Court in the case of *Rakhi Mishra Vs. State of Bihar and others* reported in AIR 2017 S.C. 4019 has held as under:-

> *" This Court in Sonu Gupta Vs. Deepak Gupak Gupta and ors. (2015) 3 SCC 424, 426: (AIR 2015 SC (Supp) 684) held as follows:*
>
> *" At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not. "*

10. The Apex Court in the case of *Kans Raj Vs. State of Punjab and others* reported in (2000) 5 SCC 207 has held as under:-

> *" In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the ground of being close relations of respondent No.2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."*

11. The Apex Court in the case of *Preeti Gupta & anothers Vs. State of Jharkhand & another* reported in AIR 2010 SC 3363 has held as under :-

> *"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This*

clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from Section 498-A of the Indian Penal Code which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purposes of this section, ^cruelty' means:-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

12. The Apex Court in the case of *Arnesh Kumar Vs. State of Bihar reported* in 2014(8) SCC 273 has held as under:-

"4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out

of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P. C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

13. The Hon'ble Apex Court in the case of *Geeta Mehrotra and another v. State of Uttar Pradesh and another* reported in (2012) 10 SCC 741 has held as under:

" 20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded G.V. Rao vs. L.H.V. Prasad (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

" 12.There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts. "

14. The view taken by the judges in this matter was that the Courts would not encourage such disputes. "

15. It is an admitted fact that the marriage of respondent No.2 was solemnized with petitioner No. 3 on 18.04.2018 and the other petitioners are her matrimonial family members. The allegation against the petitioners are that due to non-fulfilment of their demand of dowry, they were torturing the respondent No.2 mentally and physically. Per contra the petitioners are defending themselves by saying that the respondent No.2 has falsely implicated all the family members just to grab the money. On behalf of the petitioners No. 1,2,4 and 5 the learned counsel says that they are living separately with the respondent No. 2 and petitioner No. 3 and they are not concerned with any demand of dowry or whatever said by the respondent No. 2. The petitioners are praying to this Court to exercise inherent jurisdiction under Section 482 of Cr.P.C., therefore, it is necessary to consider the legal aspect of exercise inherent jurisdiction under Section 482 of Cr.P.C.

16. In the case of *State of Harayana Vs. Bhajan Lal and others* reported in 1992 SCC (Cri) 426 the Hon'ble Apex court has 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 FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted 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 proceeding 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 malafide 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. The Hon'ble Apex Court has laid down seven guide lines for exercising the inherent power of High Court under Section 482 of Cr.P.C. for quashing the FIR and this Court will examine the facts of the case under the light of above said principles.

18. Having read the above said principles, it is manifest that High Court should use its inherent power under Section 482 of Cr.P.C. to secure the ends of justice or to prevent an abuse of the process of any Court, but while exercising its power the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

19. Further, in the case of *Hemant Pandey Vs. State of M.P.* reported in 2018(1) MPWN 45, Coordinate Bench of this High Court has held as under:-

" 8.At the stage of framing of charge, the contents of the F.I.R and the statement of the witnesses ought to be seen. It is to be seen that prima facie case is made out. In the case of C.B.I Vs. K.M. Sharan, (2008) 4 SCC 471wherein the Apex Court has held that the High Court in its jurisdiction under Section 482 Cr.P.C is not called upon to embark upon the inquiry whether the allegations in the F.I.R and the charge sheet are reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are the matters which can be examined only by the Court concerned after the entire material is produced before it on a thorough investigation and evidence is led.

9. It would not be proper for the High Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceeding ought to be quashed"

20. In the light of aforesaid legal position. I would proceed to decide this petition.

21. On perusal of statements of the complainant/ respondent No. 2 and other documents, it appears that there is no dispute regarding marriage of respondent No. 2 with the petitioner No. 3. On perusal of case diary, it also appears that respondent No. 2 was employed in Cognizant Technology Solutions India Private Ltd. At Mumbai and was residing with her husband i.e. petitioner No. 3 at 'House No. 204 Asht Vinayak Complex Sector 17 New Mumbai'. Further, it is also not in dispute that the petitioners No. 1 and 2 were not living with her at Mumbai as in the case diary on perusal of notices and other documents, the address of petitioners No. 1 and 2 is mentioned as '160, Mahabali Nagar, Kolar Raod Bhopal'. Hence, it is found that they are living separately from respondent No.2. Further according to respondent No. 2, the petitioners No. 3 to 5 were living with her in same flat at Mumbai whereas on perusal of their notices the address of petitioners No. 4 and 5 is mentioned as 'Flat No. 104, Plot No.10, Siddhivinayak Apartment Sector 21 Dhansoli New Mumbai'. Thus, it also appears that the address where the respondent No. 2 and petitioner No.3 were living is not similar to address of petitioner No. 4 and 5.

22. The petitioner No. 3 is husband of respondent No. 2 whereas petitioners No. 4 and 5 are brother-in-law and sister-in-law of her respectively. Further, it appears that the complaint has made specific allegation of demand of dowry against the petitioner No.2 and 3 saying that they were demanded dowry of Rs. 5 Lakh but looking to the fact that the petitioner No. 2 was not residing with the respondent No.2 at Mumbai, the allegation levelled against the petitioner no.2 by the respondent No. 2 is not found reliable. As far as allegation regarding threatening the respondent No.2 is concerned, on perusal of her statement, it appears that same is leveled against the petitioner No.3/husband and other co-accused Nitin Sethi who is not party in the present case. This fact is also to be considered that the respondent No.2 has filed a complaint for the offence under Sections 323, 504 and 506 IPC against the petitioner No. 3 at Police Station Khandeshwar, New Mumbai. There is nothing found against the petitioner No.1 (father-in-law of respondent No.2.). So far as petitioner No. 4 and 5 are concerned, *prima facie* it appears that, they were also living at different address at Mumbai and there is general allegation found against them. Now a days, in matrimonial dispute, it is a general tendency of bride/complainant to rope all the relatives of husband including parents of advanced age, sibling and other, just to create pressure upon them.

23. Further, as far as the petitioner No. 3 is concerned, it appears from the case diary that earlier the respondent No.2 lodged the complaint under Sections 323, 504 and 506 of IPC against him at Mumbai as well as in the present case, she specifically alleged against him for torturing and demand of dowry. Looking to the statements of other witnesses ans (sic: and) also considering the material available on the record I found *prima facie* sufficient material against the petitioner No. 3 to prosecute further. I find only general allegation against the petitioners No. 1, 2,4 and 5 and they can not be further prosecuted merely on the basis of their relation with the petitioner No.3.

24. Accordingly, this petition is **partly allowed** and the proceeding of RCT No. 7481/2019 for the offence punishable under Sections 498-A, 506, 34 of IPC and Section 3/4 of the dowry Prohibition Act arising out in Crime No. 21/2019 registered at Police Station Kolar Road Bhopal is hereby quashed against the petitioners No.1, 2, 4 and 5. As far as petitioner No. 3 is concerned, this petition is hereby dismissed and proceeding may go on continue against him, however, the learned Family Court is directed to decide the case on its own discretion without being influenced by any findings of this Court.

Application partly allowed