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***Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 – Simultaneous Criminal Prosecution* – Held – It is well settled that criminal prosecution cannot be quashed only on ground that civil suit is pending – Civil suit and criminal proceedings can go simultaneously – If co-operative society decides to launch criminal prosecution against petitioner, same cannot be quashed merely on ground that dispute u/S 64 is pending. [Vidhya Devi (Smt.) Vs. State of M.P.] …1552**

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***Criminal Procedure Code, 1973 (2 of 1974), Section 125 and Hindu Marriage Act (25 of 1955), Section 11 – Legally Wedded Wife – Caretaker – Entitlement* – Held – It is submitted that earlier husband of appellant is untraceable since 1999 and thus she married respondent in 2008 – Husband filed a case u/S 11 of Act of 1955 which was dismissed and order has attained finality – Parties have cohabited together for four years which would raise a presumption sufficient to sustain order of maintenance – Appellant entitled for maintenance – Impugned order set aside – Appeal allowed. [Jyoti (Smt.) Vs. Trilok Singh Chouhan]** **(SC)…1837**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 एवं हिन्दू विवाह अधिनियम (1955 का 25), धारा 11 – विधिक रूप से विवाहित पत्नी – अभिरक्षक – हकदारी – अभिनिर्धारित – यह निवेदन किया गया कि अपीलार्थी का पूर्व पति 1999 से लापता है और इसलिए उसने 2008 में प्रत्यर्थी से विवाह किया – पति ने 1955 के अधिनियम की धारा 11 के अंतर्गत एक प्रकरण प्रस्तुत किया जिसे खारिज किया गया तथा आदेश ने अंतिमता प्राप्त कर ली है – पक्षकारों ने चार वर्षों तक एक साथ सहवास किया है जिससे एक उपधारणा की जायेगी जो भरणपोषण के आदेश को कायम रखने के लिए पर्याप्त है – अपीलार्थी भरणपोषण हेतु हकदार है – आक्षेपित आदेश अपास्त – अपील मंजूर। (ज्योति (श्रीमती) वि. त्रिलोक सिंह चौहान) **(SC)…1837**

***Criminal Procedure Code, 1973 (2 of 1974), Section 125(1)(b) – Entitlement of Child – Paternity of Child – DNA Test* – Held – In respect of paternity of child, trial Court dismissed the application of husband for DNA test, although wife has not refused for the same – Wife's refusal for DNA test in another divorce matter cannot be considered in present case filed u/S 125 Cr.P.C. for drawing presumption against her – Adverse inference against wife cannot be drawn – DNA test is not mandatory in proceeding u/S 125 Cr.P.C. because u/S 125(1)(b), both legitimate and illegitimate children are entitled for maintenance – Revision dismissed. [Badri Prasad Jharia Vs. Ku. Vatsalya Jharia]** **…1755**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125(1)(b) – संतान की हकदारी – संतान का पितृत्व – डी एन ए परीक्षण – अभिनिर्धारित – संतान के पितृत्व के संबंध में न्यायालय ने डी एन ए परीक्षण हेतु पति का आवेदन खारिज किया यद्यपि पत्नी ने उक्त के लिए मना नहीं किया है – विवाह विच्छेद के अन्य मामले में पत्नी द्वारा डी एन ए परीक्षण हेतु

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भेजना या वकील की फीस का संदाय इत्यादि अब परेशान कर देने वाला अनुभव नहीं रहा अतः अस्थायी जमानत की पद्धति की कोई सुसंगतता नहीं है और कोई उपयोगिता नहीं रही – आवेदन पोषणीय नहीं एवं खारिज किया गया। (सौरभ संगल वि. म.प्र. राज्य) **...1786**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Penal Code (45 of 1860), Sections 420, 177, 181, 193, 200 & 120-B – Bail* – Held – Three bail applications rejected by High Court, appellant in custody for more than a year – Closure report was filed twice by police, still High Court declined bail only because trial Court was yet to accept the said report – Bail is rule and jail is exception – Bail should not be granted or rejected in mechanical manner as it concerns liberty of person – Considering nature of allegations and period spent in custody, appellant deserves to be enlarged on bail – Appeal allowed. [Jeetendra Vs. State of M.P.] (SC)...1530**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं दण्ड संहिता (1860 का 45), धाराएँ 420, 177, 181, 193, 200 व 120–B – जमानत – अभिनिर्धारित – उच्च न्यायालय द्वारा तीन जमानत आवेदनों को अस्वीकार किया गया, अपीलार्थी एक वर्ष से अधिक समय से अभिरक्षा में है – पुलिस द्वारा दो बार समाप्ति प्रतिवेदन प्रस्तुत किया गया था तब भी उच्च न्यायालय ने मात्र इसलिए कि विचारण न्यायालय द्वारा अभी तक उक्त प्रतिवेदन को स्वीकार नहीं किया था, जमानत से इंकार किया – जमानत एक नियम है और जेल एक अपवाद है – जमानत को यांत्रिक ढंग से प्रदान या अस्वीकार नहीं करना चाहिए क्योंकि यह व्यक्ति की स्वतंत्रता से संबंधित है – अभिकथनों के स्वरूप एवं अभिरक्षा में बिताई गयी अवधि को विचार में लेते हुए, अपीलार्थी जमानत पर छोड़े जाने योग्य है – अपील मंजूर। (जितेन्द्र वि. म.प्र. राज्य) **(SC)...1530**

***Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 – Custody of Seized Article – Perishable Goods* – Held – Wheat being perishable item cannot be kept in police station for long period – It would not be proper to handover the wheat to complainant or petitioner from whom it is seized – Trial Court directed to release the same for its disposal/sale at Krishi Upaj Mandi Samiti under supervision of an officer not below rank of Dy. Collector – Sale proceeds shall not be released until ownership is finally decided by trial Court – Application allowed to such extent. [Sumat Kumar Gupta Vs. State of M.P.] ...*20**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 व 457 – जब्तशुदा वस्तु की अभिरक्षा – विनश्वर माल – अभिनिर्धारित – गेहूं विनश्वर वस्तु होने के नाते, लंबी अवधि के लिए उसे पुलिस थाने में नहीं रखा जा सकता – परिवादी या याची, जिससे गेहूं जब्त किया गया था, उसे वह हस्तांतरित करना उचित नहीं होगा – विचारण न्यायालय को उसे कृषि उपज मंडी समिति में एक अधिकारी, जो डिप्टी कलेक्टर से निम्न श्रेणी का न हो, के पर्यवेक्षण के अधीन, निपटान/विक्रय हेतु निर्मुक्त करने के लिए निदेशित किया गया – विक्रय आगम को निर्मुक्त नहीं किया जायेगा जब तक कि विचारण न्यायालय द्वारा स्वामित्व को अंतिम रूप से विनिश्चित नहीं किया जाता – आवेदन को उक्त सीमा तक मंजूर किया गया। (सुमत कुमार गुप्ता वि. म.प्र. राज्य) **...*20**

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जारी किया गया था, पूर्णतः गायब हो गई – अनिवार्यता प्रमाणपत्र उचित रूप से प्रत्याहृत – अपील खारिज। (सुख सागर मेडिकल कॉलेज एण्ड हॉस्पिटल वि. म.प्र. राज्य)
(SC)…1969

Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – Essentiality Certificate – Cancellation **– Held – This Court has earlier concluded that State Government can cancel/revoke/ withdraw Essentiality Certificate in exceptional cases where if it is obtained by fraud or any circumstances where the very substratum on which essentiality certificate was granted, disappears or such like ground where no enquiry is called for on part of State Government. [Sukh Sagar Medical College & Hospital Vs. State of M.P.]** **(SC)…1969**

भारतीय चिकित्सा परिषद चिकित्सा महाविद्यालय की स्थापना विनियम, 1999, विनियमन 3 – अनिवार्यता प्रमाणपत्र – रद्दकरण – अभिनिर्धारित – इस न्यायालय ने पूर्व में निष्कर्षित किया है कि राज्य सरकार अपवादात्मक प्रकरणों में अनिवार्यता प्रमाणपत्र रद्द/प्रतिसंहृत/प्रत्याहृत कर सकती है जहां उसे कपट द्वारा अभिप्राप्त किया गया या ऐसी कोई परिस्थितियां जहां पर बुनियाद ही गायब हो जाए जिस पर अनिवार्यता प्रमाणपत्र प्रदान किया गया था अथवा उक्त जैसा आधार जहां राज्य सरकार की ओर से किसी जांच की आवश्यकता नहीं। (सुख सागर मेडिकल कॉलेज एण्ड हॉस्पिटल वि. म.प्र. राज्य)
(SC)…1969

Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – See – General Clauses Act, 1897, Section 21 **[Sukh Sagar Medical College & Hospital Vs. State of M.P.]** **(SC)…1969**

भारतीय चिकित्सा परिषद चिकित्सा महाविद्यालय की स्थापना विनियम, 1999, विनियमन 3 – देखें – साधारण खण्ड अधिनियम, 1897, धारा 21 (सुख सागर मेडिकल कॉलेज एण्ड हॉस्पिटल वि. म.प्र. राज्य) **(SC)…1969**

Medical Education (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 4 & 13 and Swashasi Chikitsa Mahavidhyalayein Shekshanik Adarsh Seva Niyam, M.P., 2018, Rules 5.1 – Period of Deputation – Curtailment **– Held – Order of appointment issued by the autonomous medical college cannot be treated as an order of State Government – Petitioner was on deputation in capacity of a Professor – It cannot be said that State Government has curtailed the period of deputation. [Bharat Jain (Dr.) Vs. State of M.P.]**
…1541

चिकित्सा शिक्षा (राजपत्रित) सेवा भरती नियम, म.प्र., 1987, नियम 4 व 13 एवं स्वशासी चिकित्सा महाविद्यालयीन शैक्षणिक आदर्श सेवा नियम, म.प्र., 2018, नियम 5.1 – प्रतिनियुक्ति की अवधि – कम की जाना – अभिनिर्धारित – स्वायत्त चिकित्सा महाविद्यालय द्वारा जारी किये गये नियुक्ति आदेश को राज्य सरकार का एक आदेश नहीं माना जा सकता – याची, एक प्रोफेसर की हैसियत में प्रतिनियुक्ति पर था – यह नहीं कहा जा

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लिए निश्चित किये गये क्षेत्र/भूमि को आवासीय भूखंडों में संपरिवर्तित नहीं किया जाएगा – अपील मंजूर। (एम.पी. हाउसिंग एण्ड इन्फ्रास्ट्रक्चर डव्हेलपमेन्ट बोर्ड वि. विजय बोदाना) **(SC)…1522**

***Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Appreciation of Evidence* – Held – Appellant identified the house and was panch witness to breaking of lock and recovery of contraband – As per normal human prudence, why he would identify his own erstwhile house as that of co-accused to implicate himself – No explanation by prosecution why they have not investigated the agreement of sale of house – Prosecution failed to establish conscious possession. [Gangadhar @ Gangaram Vs. State of M.P.] (SC)…1989**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(C) व 20(b)(ii)(c) – मानपूर्वक कब्जा – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अपीलार्थी ने मकान की पहचान की और ताला तोड़ने एवं विनिषिद्ध की बरामदगी का पंच साक्षी था – सामान्य मानव प्रज्ञा के अनुसार, वह स्वयं को आलिप्त करने के लिए, स्वयं के पूर्व मकान को सह अभियुक्त का होने की पहचान क्यों करेगा – अभियोजन द्वारा कोई स्पष्टीकरण नहीं कि उन्होनें मकान के विक्रय के करार का अन्वेषण क्यों नहीं किया – अभियोजन भानपूर्वक कब्जा स्थापित करने में असफल रहा। (गंगाधर उर्फ गंगाराम वि. म.प्र. राज्य) **(SC)…1989**

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Presumption* – Held – Appellant held guilty being owner of house (as per voter list of 2008) from where Ganja recovered – Witness (Investigation Officer) admitted that on very next day, appellant produced sale agreement showing that in 2009 (before registration of offence) he sold the said house to co-accused but neither agreement nor panchayat records were ever investigated – Prosecution failed to establish conscious possession of house with appellant to attribute presumption against him – Poor investigation by police and gross mis-appreciation of evidence by Courts below – Conviction being unsustainable is set aside – Appeal allowed. [Gangadhar @ Gangaram Vs. State of M.P.] (SC)…1989**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(C) व 20(b)(ii)(c) – मानपूर्वक कब्जा – उपधारणा – अभिनिर्धारित – अपीलार्थी को उस मकान का स्वामी होने के नाते (2008 की मतदाता सूची के अनुसार) दोषी ठहराया गया, जहां से गांजा बरामद किया गया था – साक्षी (अन्वेषण अधिकारी) ने स्वीकार किया कि ठीक अगले दिन अपीलार्थी ने यह दर्शाते हुए कि 2009 में (अपराध पंजीबद्ध होने से पूर्व) उसने उक्त मकान सहअभियुक्त को विक्रय किया था, विक्रय करार प्रस्तुत किया परंतु, न तो करार और न ही पंचायत अभिलेखों का कभी अन्वेषण किया गया था – अभियोजन, अपीलार्थी के विरूद्ध उपधारणा किये जाने हेतु, मकान पर उसका भानपूर्वक कब्जा स्थापित करने में विफल रहा – पुलिस द्वारा खराब अन्वेषण तथा निचले न्यायालयों द्वारा साक्ष्य का घोर गलत मूल्यांकन – दोषसिद्धि कायम रखने योग्य न होने के नाते अपास्त की गई – अपील मंजूर। (गंगाधर उर्फ गंगाराम वि. म.प्र. राज्य) **(SC)…1989**

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जबकि अभियुक्त दरांते के साथ सुसज्जित थी और मृतक की ओर से अभियुक्त को कोई क्षति कारित करने के लिए कोई प्रयत्न नहीं किया गया था, अतः, अभियुक्त द्वारा स्थिति का अनुचित लाभ उठाया गया – अभियुक्त को चौथे अपवाद के अंतर्गत बचाव उपलब्ध नहीं है। (शैतानबाई वि. म.प्र. राज्य) **(DB)…1720**

***Penal Code (45 of 1860), Section 300, Thirdly & Fourthly – Applicability* – Held – Doctor stated that injuries were such as would cause death in ordinary course of nature – Such statement attracts clause thirdly of Section 300 – "In the ordinary course of nature" would mean that injury is of such nature that death would result without medical intervention – If death results even after medical intervention, then fourthly clause of Section 300 would be applicable. [Shaitanbai Vs. State of M.P.] (DB)…1720**

दण्ड संहिता (1860 का 45), धारा 300, तीसरा व चौथा – प्रयोज्यता – अभिनिर्धारित – चिकित्सक ने कथन किया कि चोटें ऐसी थी जो कि प्रकृति के मामूली अनुक्रम में मृत्यु कारित करती – उक्त कथन, धारा 300 के तीसरे खण्ड को आकर्षित करता है – ''प्रकृति के मामूली अनुक्रम में'' का अर्थ होगा कि क्षतियां ऐसी प्रकृति की है कि चिकित्सीय हस्तक्षेप के बिना मृत्यु परिणामित होगी – यदि चिकित्सीय हस्तक्षेप के पश्चात् भी मृत्यु परिणामित होती है, तब धारा 300 का चौथा खंड लागू होगा। (शैतानबाई वि. म.प्र. राज्य) **(DB)…1720**

***Penal Code (45 of 1860), Section 302/149 – Appreciation of Evidence – Contradictions & Omissions* – Held – There are material contradictions, omissions and improvements in statement of sole eye witness recorded u/S 161 as well as in deposition before Court qua the appellants – Not safe to convict them on basis of such evidence – There was a prior enmity – No other independent witness supported the prosecution case – Appellants entitled for benefit of doubt – Conviction set aside – Appeal allowed. [Parvat Singh Vs. State of M.P.] (SC)…1515**

दण्ड संहिता (1860 का 45), धारा 302/149 – साक्ष्य का मूल्यांकन – विरोधाभास व लोप – अभिनिर्धारित – एकमात्र चक्षुदर्शी साक्षी के धारा 161 के अंतर्गत अभिलिखित किये गये कथन के साथ–साथ न्यायालय के समक्ष अभिसाक्ष्य में, जहां तक अपीलार्थीगण का संबंध है, तात्विक विरोधाभास, लोप और अभिवृद्धि है – उक्त साक्ष्य के आधार पर उन्हें दोषसिद्ध करना सुरक्षित नहीं – पूर्व वैमनस्यता थी – अन्य किसी स्वतंत्र साक्षी ने अभियोजन प्रकरण का समर्थन नहीं किया – अपीलार्थीगण संदेह के लाभ के हकदार हैं – दोषसिद्धि अपास्त – अपील मंजूर। (पर्वत सिंह वि. म.प्र. राज्य) **(SC)…1515**

***Penal Code (45 of 1860), Section 302/149 – Sole Witness* – Held – There can be a conviction relying upon the evidence/deposition of sole witness, provided it is found to be trustworthy and reliable and there are no material contradictions, omissions or improvements in case of prosecution. [Parvat Singh Vs. State of M.P.] (SC)…1515**

Penal Code (45 of 1860), Sections 302, 450 & 34 – Eye Witness – Injury **– Held – Minor inconsistencies in statement of eye witness (daughter of deceased) – It is established that she was present in the room at the time of incident, accused came to the house of deceased and was quarreling with deceased and dead bodies of deceased was found in the house of deceased which proves that accused attacked the deceased – Eye witness is reliable – Further, it is also established that injuries were sufficient in ordinary course of nature to cause death – Apex Court concluded that even one injury on vital part of body may result in conviction u/S 302 – Conviction and sentence upheld – Appeal dismissed. [Shaitanbai Vs. State of M.P.] (DB)…1720**

दण्ड संहिता (1860 का 45), धाराएँ 302, 450 व 34 – प्रत्यक्षदर्शी साक्षी – क्षति – अभिनिर्धारित – प्रत्यक्षदर्शी साक्षी (मृतिका की पुत्री) के कथन में गौण असंगतियां – यह स्थापित है कि वह घटना के समय कमरे में उपस्थित थी, अभियुक्त, मृतिका के घर आयी और मृतिका से झगड़ा कर रही थी तथा मृतिकाओं के शव, मृतिका के मकान में पाये गये थे जो साबित करता है कि अभियुक्त ने मृतकाओं पर हमला किया – प्रत्यक्षदर्शी साक्षी विश्वसनीय है – इसके अतिरिक्त, यह भी स्थापित किया गया है कि चोटें, प्रकृति के मामूली अनुक्रम में मृत्यु कारित करने के लिए पर्याप्त थी – सर्वोच्च न्यायालय ने निष्कर्षित किया कि शरीर के महत्वपूर्ण भाग पर एक चोट भी, धारा 302 के अंतर्गत दोषसिद्धि में परिणामित हो सकती है – दोषसिद्धि एवं दण्डादेश कायम रखा गया – अपील खारिज। (शैतानबाई वि. म.प्र. राज्य) **(DB)…1720**

Penal Code (45 of 1860), Section 379 & 392 – Theft & Robbery – Chain Snatching **– Appellant No. 1 convicted u/S 392 for chain snatching – Held – Section 392 is an aggravated form of theft – To charge the accused u/S 392, prosecution required to establish that while committing theft, offender has voluntarily caused hurt or attempted to cause death or hurt or wrongful restrain or fear of instant death etc. – No such allegation against appellant No. 1, thus wrongly convicted u/S 392 – Conviction altered from Section 392 to Section 379 IPC – Appeal partly allowed. [Mohd. Firoz Vs. State of M.P.] …1716**

दण्ड संहिता (1860 का 45), धारा 379 व 392 – चोरी व लूट – चेन छीनना – अपीलार्थी क्र. 1 को चेन छीनने हेतु धारा 392 के अंतर्गत दोषसिद्ध किया गया – अभिनिर्धारित – धारा 392, चोरी का एक गुरूतर स्वरूप है – अभियुक्त को धारा 392 के अंतर्गत आरोपित करने के लिए अभियोजन को स्थापित करना अपेक्षित है कि चोरी कारित करते समय अपराधी ने स्वेच्छापूर्वक उपहति कारित की है अथवा मृत्यु या उपहति या सदोष अवरोध या तत्काल मृत्यु का भय इत्यादि कारित करने का प्रयास किया है – अपीलार्थी क्र. 1 के विरूद्ध ऐसा कोई अभिकथन नहीं, अतः, गलत रूप से धारा 392 के अंतर्गत दोषसिद्ध किया गया – दोषसिद्धि को धारा 392 से धारा 379 भा.दं.सं. में परिवर्तित किया गया – अपील अंशतः मंजूर। (मोहम्मद फिरोज वि. म.प्र. राज्य) **…1716**

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दण्ड संहिता (1860 का 45), धाराएँ 396, 398 व 412 – पहचान परेड – अभिनिर्धारित – यद्यपि पहचान ज्ञापन में पहचान की रीति वर्णित नहीं, यह एक बड़ी कमी नहीं है जिससे कि संपूर्ण पहचान कार्यवाहियां अविश्वसनीय हो जाएं। (अरूण वि. म.प्र. राज्य) **(DB)…1921**

***Penal Code (45 of 1860), Sections 396, 398 & 412 and Arms Act (54 of 1959), Section 25(1)(a) & (b) – Seizure Memo – Delay* – Seizure memo prepared after 3 weeks from registration of offence – Held – Case involved number of accused persons, where dozens of piece of evidence were required to be collected – No unusual delay. [Arun Vs. State of M.P.] (DB)…1921**

दण्ड संहिता (1860 का 45), धाराएँ 396, 398 व 412 एवं आयुध अधिनियम (1959 का 54), धारा 25(1)(a) व (b) – जब्ती मेमो – विलंब – जब्ती मेमो को अपराध के पंजीयन से 3 सप्ताह पश्चात् तैयार किया गया – अभिनिर्धारित – प्रकरण में कई अभियुक्तगण शामिल हैं जहां दर्जनों साक्ष्य के टुकड़े एकत्रित करना अपेक्षित था – कोई असामान्य विलंब नहीं। (अरूण वि. म.प्र. राज्य) **(DB)…1921**

***Penal Code (45 of 1860), Sections 396, 398 & 412, Arms Act (54 of 1959), Section 25(1)(a) & (b) and Evidence Act (1 of 1872), Section 7 – Dacoity – Circumstantial Evidence* – Bank cash looted while it was being transported to other branch – Accused failed to explain the possession of such huge cash, where currency notes were wrapped by bank slip carrying seal of bank – Seizure of cash box, firearm and vehicle used in crime, from accused, duly proved – Presumption u/S 412 IPC not rebutted by accused – As per call records, accused persons were in touch with each other during the concerned period of crime and even thereafter – Offence proved beyond reasonable doubt – Conviction affirmed – Appeals dismissed. [Arun Vs. State of M.P.] (DB)…1921**

दण्ड संहिता (1860 का 45), धाराएँ 396, 398 व 412, आयुध अधिनियम (1959 का 54), धारा 25(1)(a) व (b) एवं साक्ष्य अधिनियम (1872 का 1), धारा 7 – डकैती – परिस्थितिजन्य साक्ष्य – बैंक के रोकड़ को लूटा गया जब उसका अन्य शाखा में परिवहन किया जा रहा था – अभियुक्त, उक्त भारी मात्रा में रोकड़ का कब्जा स्पष्ट करने में असफल रहा जहां करेंसी नोटों को, बैंक की मुद्रा वाली बैंक पर्ची में लपेटा गया था – अभियुक्त से रोकड़ के बक्से, अग्न्यायुध एवं अपराध में प्रयुक्त वाहन की जब्ती सम्यक् रूप से साबित की गई – अभियुक्त द्वारा भा.दं.सं. की धारा 412 के अंतर्गत उपधारणा का खंडन नहीं किया गया – कॉल रिकार्ड्स के अनुसार अभियुक्तगण, संबंधित अपराध की अवधि के दौरान और यहां तक कि उसके पश्चात् भी एक दूसरे के संपर्क में थे – अपराध, युक्तियुक्त संदेह से परे साबित – दोषसिद्धि अभिपुष्ट – अपीलें खारिज। (अरूण वि. म.प्र. राज्य) **(DB)…1921**

***Penal Code (45 of 1860), Section 411 & 412 – Ingredients – Appreciation of Evidence* – Held – Regarding possession of cash in respect of 4 accused persons, there is no evidence to show that they knew that the cash is looted property as a result of dacoity – Memorandum statements also not**

recorded – At the same time, it can safely be presumed that they knew that it was a stolen property – These accused persons liable to be convicted u/S 411 and not u/S 412 IPC – Sentence reduced from 7 years to 3 years – Appeals partly allowed. [Arun Vs. State of M.P.] (DB)…1921

दण्ड संहिता (1860 का 45), धारा 411 व 412 – घटक – साक्ष्य का मूल्यांकन – अभिनिर्धारित – रोकड़ के कब्जे के संबंध में, चार अभियुक्तों के बारे में यह दर्शाने के लिए कोई साक्ष्य नहीं कि उन्हें ज्ञात था कि रोकड़, डकैती के परिणामस्वरूप लूटी गई संपत्ति है – कथनों के ज्ञापन भी अभिलिखित नहीं किये गये – तत्समय, यह सुरक्षित रूप से उपधारणा की जा सकती है कि उन्हें ज्ञात था कि वह एक चुराई गई संपत्ति थी – ये अभियुक्तगण धारा 411 के अंतर्गत दोषसिद्ध किये जाने योग्य हैं और न कि धारा 412 भा. दं.सं. के अंतर्गत – दण्डादेश को 7 वर्ष से घटाकर 3 वर्ष किया गया – अपीलें अंशतः मंजूर। (अरूण वि. म.प्र. राज्य) **(DB)…1921**

Penal Code (45 of 1860), Section 411 & 412 and Evidence Act (1 of 1872), Section 114-A – Presumption **– Held – Recovery made barely after 4 days of incident – Provisions of Section 114-A of Evidence Act gets attracted, where Court may presume that a person in possession of stolen goods soon after theft, is either thief or has received goods knowing them to be stolen, unless he can account for his possession. [Arun Vs. State of M.P.] (DB)…1921**

दण्ड संहिता (1860 का 45), धारा 411 व 412 एवं साक्ष्य अधिनियम (1872 का 1), धारा 114–A – उपधारणा – अभिनिर्धारित – बरामदगी, घटना के मुश्किल से 4 दिन पश्चात् की गई – साक्ष्य अधिनियम की धारा 114–A के उपबंध आकर्षित होते हैं जहां न्यायालय यह उपधारणा कर सकता है कि चोरी के तुरंत पश्चात् चुराया गया माल जिस व्यक्ति के कब्जे में है वह या तो चोर है या उसने माल को चोरी का माल होने का ज्ञान होते हुए प्राप्त किया है, जब तक कि वह उसके कब्जे का कारण नहीं दे सकता। (अरूण वि. म.प्र. राज्य) **(DB)…1921**

Penal Code (45 of 1860), Sections 420, 177, 181, 193, 200 & 120-B – See – Criminal Procedure Code, 1973, Section 439 **[Jeetendra Vs. State of M.P.] (SC)…1530**

दण्ड संहिता (1860 का 45), धाराएँ 420, 177, 181, 193, 200 व 120–B – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 439 (जितेन्द्र वि. म.प्र. राज्य) **(SC)…1530**

Practice – Date of Hearings – Discretion of Court **– Held – Presiding Officer is the guardian of judicial time and has complete discretion to fix dates of hearing/proceedings. [Aarti Sahu (Smt.) Vs. Ankit Sahu] …2171**

पद्धति – सुनवाई की तिथि – न्यायालय का विवेकाधिकार – अभिनिर्धारित – पीठासीन अधिकारी न्यायिक समय का संरक्षक है तथा उसे सुनवाई / कार्यवाहियों की तिथि तय करने का संपूर्ण विवेकाधिकार होता है। (आरती साहू (श्रीमती) वि. अंकित साहू) **…2171**

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सेवा विधि – स्थानांतरण – सिद्धांत – अभिनिर्धारित – स्थानांतरण, सेवा की एक आवश्यकता है और कर्मचारी को पसंद की पदस्थापना नहीं मिल सकती – प्रशासनिक परिपत्र अपने आप में एक निहित अधिकार प्रदत्त नहीं कर सकता जिसे एक परमादेश की रिट द्वारा प्रवर्तनीय किया जा सकता हो जब तक कि स्थानांतरण आदेश, असद्भावपूर्ण या कानूनी उपबंधों के विपरीत या अक्षम प्राधिकारी द्वारा जारी किया गया है, स्थापित नहीं किया जाता। (पंजाब एण्ड सिंध बैंक वि. श्रीमती दुर्गेश कुवर) **(SC)…1503**

***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (14 of 2013), Section 4(2)(c) – Constitution of Committee – Independent Member* – Held – It was established that a lawyer, who has been appointed as a member of Committee as independent member was the panel lawyer of bank itself – Request of respondent for replacing such member with a truly independent third party, should have been considered – No reason or justification on part of bank not to accede to such request of respondent. [Punjab & Sind Bank Vs. Mrs. Durgesh Kuwar] (SC)…1503**

महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध और प्रतितोष) अधिनियम (2013 का 14), धारा 4(2)(c) – समिति का गठन – स्वतंत्र सदस्य – अभिनिर्धारित – यह स्थापित किया गया था कि एक वकील जिसे स्वतंत्र सदस्य के रूप में समिति का एक सदस्य नियुक्त किया गया है, बैंक का ही पैनल वकील था – ऐसे सदस्य को एक वास्तविक स्वतंत्र तृतीय पक्षकार से प्रतिस्थापित करने हेतु प्रत्यर्थी के निवेदन पर विचार किया जाना चाहिए था – प्रत्यर्थी का उक्त निवेदन मान्य न करने हेतु, बैंक की ओर से कोई कारण या न्यायोचित्य नहीं। (पंजाब एण्ड सिंध बैंक वि. श्रीमती दुर्गेश कुवर) **(SC)…1503**

***Specific Relief Act (47 of 1963), Section 34 – Consequential Relief* – Held – In absence of consequential relief of declaration of election of Respondent-4 as void, election petition is hit/barred by Section 34 of the Act of 1963. [Vishnu Kant Sharma Vs. Chief Election Commissioner] …2130**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – परिणामिक अनुतोष – अभिनिर्धारित – प्रत्यर्थी क्र. 4 के निर्वाचन को शून्य घोषित करने के परिणामिक अनुतोष के अभाव में, निर्वाचन याचिका 1963 के अधिनियम की धारा 34 द्वारा प्रभावित/वर्जित है। (विष्णु कांत शर्मा वि. चीफ इलेक्शन कमिश्नर) **…2130**

***Specific Relief Act (47 of 1963), Section 34 – See – Representation of the People Act, 1951, Section 81 & 126*[Vishnu Kant Sharma Vs. Chief Election Commissioner] …2130**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धारा 81 व 126 (विष्णु कांत शर्मा वि. चीफ इलेक्शन कमिश्नर) **…2130**

***Stamp Act, Indian (2 of 1899), Section 40 – Penalty – Aims & Objects* – Held – Purpose of penalty generally is a deterrence and not retribution –**

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THE INDIAN LAW REPORTS M.P. SERIES, 2020
(Vol.-3)

JOURNAL SECTION

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

AMENDMENTS IN THE MADHYA PRADESH BHUMI VIKAS NIYAM, 2012

[Published in Madhya Pradesh Gazette, Part 4(Ga), dated 28 August 2020, page No. 890]

No. F-3-112/18/18-5 :: In exercise of the powers conferred by sub-section (1) of Section 85 read with sub-section (3) of Section 24 of Madhya Pradesh Town and Country Planning Act, 1973. The State Government hereby makes the following amendments in Madhya Pradesh Bhumi Vikas Niyam, 2012 rules the same having been previously published in the Madhya Pradesh Gazette (Extra Ordinary) dated 10 January 2020 as required by sub-section (1) of Section 85 of the said Act.

AMENDMENT

In the said rules, in rule 16, in sub-rule (11), in clause (c), for the first proviso, the following proviso shall be substituted, namely: —

"Provided that if the land applied is registered in the name of applicant in revenue records, then the Authority shall write and send email also to the Nazul Officer within 7 days of receipt of application, to issue Nazul NOC within a period of 30 days. If Nazul NOC/Objection is not received within the above said period, then further action shall be taken after ensuring the receipt of the office of Nazul Officer, assuming the Nazul NOC has been issued, but for the above reason, the time period fixed for granting the approval shall not be exclude."

By order and in the name of the Governor of Madhya Pradesh,
SHUBHASHISH BANERJEE, Dy. Secy.

AMENDMENTS IN THE MADHYA PRADESH CO-OPERATIVE SOCIETIES RULES, 1962

[Published in Madhya Pradesh Gazette (Extra-ordinary), dated 28 August 2020, page Nos. 534(1) to 534(2)]

J/122

No. F-5-3-2020-XV-One. — In exercise of the powers conferred by sub-section (1) and (2) of Section 95 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961), the State Government, hereby, makes the following further amendments in the Madhya Pradesh Co-operative Societies Rules, 1962, namely: —

AMENDMENT

In the said rules, —

1. For rule 4, the following rule shall be substituted, namely: —

"4. Application for Registration.-

(1) Every application for the registration of a society under sub-section (1) of Section 7, shall be made in Form A or an online application in the prescribed format on the portal.

(2) Where any member of a society to be registered is a registered society, a member of the Board of Directors of such society shall be authorised by such board of directors by a resolution to sign the application for registration on its behalf and a copy of such resolution shall be appended to the application. In the case of an online application for registration, all the documents shall be digitally verified by the first signatory of the society seeking registration.

(3) The application shall be sent to the Registrar by registered post or delivered by hand or submitted online through the portal. However, once all the arrangements for online registration have been made, the hand-delivered or registered post applications shall not be entertained from such date as directed by the Registrar and after which applications shall be accepted only through online mode.

(4) For the submission of online application, it shall be mandatory for the applicant to upload all the required documents as per the checklist mentioned on the portal and to pay online the requisite registration fee, if any. The Registrar shall not ask the applicant to furnish the physical copies of those required documents separately. On uploading the application and required documents on the portal, the applicant shall be issued a reference number.".

2. For rule 5, the following rule shall be substituted, namely: —

"5. Procedure on receipt of application. —

(1) Upon receipt of an application under sub-section (3) of rule 4, the Registrar shall examine the facts mentioned in the application along with the documents and the bye-laws and if necessary, may order for further enquiry.

(2) If on examination, any defects are found, the Registrar shall inform the applicant by appropriate mode to rectify those defects within a maximum period of 15 days.

(3) The required rectifications, if done by the applicant within the prescribed time limit and the Registrar is satisfied with the rectifications done and also that the proposed society has complied with the provisions of the Act and Rules, he shall register the society in a register to be called register of societies to be kept for this purpose. Every such entry shall be attested by the seal and signature of the Registrar. He shall also forward to the society a copy of the order of registration, a certificate of registration and a certified copy of the bye-laws as finally approved and registered by him.

(4) If the applicant does not make the required rectifications within prescribed time-limit or the Registrar is not satisfied with the rectifications done or the Registrar is of the opinion that the proposal is contrary to the provisions of the Act and Rules, he shall pass an order of refusal together with the reasons therefor and communicate it to the applicant by appropriate mode.

(5) In case of online application, the Registrar shall upload the copies of the registration order, certificate of registration and registered bye-laws on the portal, which can be downloaded by the applicant.

(6) In case of online application, every correspondence/ communication shall be made through online mode only.

(7) It shall be mandatory for the Registrar to dispose of the application as per the provision of MADHYA PRADESH LOK SEWAON KE PRADAN KI GUARANTEE ADHINIYAM, 2010 within a period of 45 days from the date of its receipt.".

3. In rule 66, in sub-rule (2), in clause (f), in sub-clause (ii), at the end of the first paragraph after omitting the colon, the following words shall be inserted, namely: —

"or the property shall be sold out through e-Auction (Electronic Auction).".

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
मनोज सिन्हा, उपसचिव.

AMENDMENT IN THE MADHYA PRADESH FUNDAMENTAL RULES

[Published in Madhya Pradesh Gazette (Extra-ordinary), dated 27 July 2020, page Nos. 471 to 472]

No.-F-8-3-2020-Rule-IV.- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh, hereby makes the following further amendment in the Madhya Pradesh Fundamental Rules, namely:-

AMENDMENT

In the said rules,

1. After rule 24 the following proviso shall be added,

Provided that, in case of any disaster that occurres in the State and if the own tax and non-tax revenues of the State Government are severely and adversely affected, the Government may with-hold the said increment on a non-cumulative basis for such period as may be prescribe by a special order of the State Government.

2. This Notification shall be effictive from lst April 2020.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
गुलशन बामरा, सचिव.

AMENDMENTS IN THE MADHYA PRADESH GOODS AND SERVICES TAX RULES, 2017

[Published in Madhya Pradesh Gazette (Extra-ordinary), dated 10 July 2020, page No. 442]

No. F A-3-15-2020-1-V(34). — In exercise of the powers conferred by Section 164 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, hereby, makes the following amendments in the Madhya Pradesh Goods and Services Tax Rules, 2017, namely : —

AMENDMENTS

In the said rules, —

1. In rule 3, in sub-rule (3), for the full stop, the colon shall be substituted and thereafter the following proviso shall be inserted, namely: —

"Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-2021 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020.".

2. In rule 36, in sub-rule (4), for the full stop, the colon shall be substituted and thereafter the following new proviso shall be inserted, namely: —

"Provided the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GST-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the conditions mentioned above.".

3. Save as otherwise provided, this notification shall be deemed to have come into force from 3rd April, 2020.

By order and in the name of the Governor of Madhya Pradesh,
RATNAKAR JHA, Dy. Secy.

AMENDMENT IN THE MADHYA PRADESH GOODS AND SERVICES TAX RULES, 2017

[Published in Madhya Pradesh Gazette (Extra-ordinary), dated 31 August 2020, page No. 546]

No. F-A-3-06-2020-1-V(46). — In exercise of the powers conferred by section 164 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby, makes the following further amendment in the Madhya Pradesh Goods and Services Tax Rules, 2017, namely:-

AMENDMENT

In the said rules, in rule 31A, for sub rule (2), the following sub-rule shall be substituted, namely :-

"(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.".

2. This amendment shall be deemed to have come into force from 1st March, 2020.

By order and in the name of the Governor of Madhya Pradesh,
RATNAKAR JHA, Dy. Secy.

Short Note
****(19)***
Before Mr. Justice G.S. Ahluwalia
W.P. No. 178/2020 (Gwalior) decided on 14 January, 2020

CHANDRAPAL SINGH SENGAR …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

Constitution – Article 226 – Delay & Laches – Maintainability **– Held – Successive representations would not give a fresh cause of action – Petitioner was sleeping over his rights – No explanation for delay – Stale cases cannot be re-opened – Respondents cannot be directed to decide representations made in respect of stale cases – Petition suffers from delay and laches and is thus dismissed.**

संविधान – अनुच्छेद 226 – विलंब व अतिविलंब – पोषणीयता – अभिनिर्धारित – बारंबार अभ्यावेदनों से नया वाद हेतुक नहीं मिलेगा – याची अपने अधिकारों पर सोता रहा था – विलंब के लिए कोई स्पष्टीकरण नहीं – पुराने प्रकरणों को पुनः खोला नहीं जा सकता – पुराने प्रकरणों के संबंध में दिये गये अभ्यावेदनों को विनिश्चित करने के लिए प्रत्यर्थीगण को निदेशित नहीं किया जा सकता – याचिका विलंब व अतिविलंब से ग्रसित है और इसलिए खारिज।

Cases referred :

C.A. No. 1577/2019 order passed on 13.02.2019 (Supreme Court), (2006) 4 SCC 322, (2007) 9 SCC 78, (2007) 9 SCC 274, (2007) 12 SCC 779, (2006) 11 SCC 464, (1997) 6 SCC 538, (2007) 9 SCC 278.

D.P. Singh, for the petitioner.
S.N. Seth, G.A. for the respondent Nos. 1 to 4/State.

Short Note
****(20)***
Before Mr. Justice S.A. Dharmadhikari
M.Cr.C. No. 27868/2020 (Gwalior) decided on 29 August, 2020

SUMAT KUMAR GUPTA …Applicant

Vs.

STATE OF M.P. & anr. …Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 – Custody of Seized Article – Perishable Goods **– Held – Wheat being perishable item cannot be kept in police station for long period – It would not be proper**

to handover the wheat to complainant or petitioner from whom it is seized – Trial Court directed to release the same for its disposal/sale at Krishi Upaj Mandi Samiti under supervision of an officer not below rank of Dy. Collector – Sale proceeds shall not be released until ownership is finally decided by trial Court – Application allowed to such extent.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 व 457 – जब्तशुदा वस्तु की अभिरक्षा – विनश्वर माल – अभिनिर्धारित – गेहूं विनश्वर वस्तु होने के नाते, लंबी अवधि के लिए उसे पुलिस थाने में नहीं रखा जा सकता – परिवादी या याची, जिससे गेहूं जब्त किया गया था, उसे वह हस्तांतरित करना उचित नहीं होगा – विचारण न्यायालय को उसे कृषि उपज मंडी समिति में एक अधिकारी, जो डिप्टी कलेक्टर से निम्न श्रेणी का न हो, के पर्यवेक्षण के अधीन, निपटान/विक्रय हेतु निर्मुक्त करने के लिए निदेशित किया गया – विक्रय आगम को निर्मुक्त नहीं किया जायेगा जब तक कि विचारण न्यायालय द्वारा स्वामित्व को अंतिम रूप से विनिश्चित नहीं किया जाता – आवेदन को उक्त सीमा तक मंजूर किया गया।

Case referred:

(2002) 10 SCC 283.

R.K. Upadhyay, for the applicant.
Rohit Mishra, Addl. A.G. for the non-applicants-State.

I.L.R. [2020] M.P. 1969 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice A.M. Khanwilkar, Mr. Justice Dinesh Maheshwari & Mr. Justice Sanjiv Khanna

C.A. No. 2843/2020 decided on 31 July, 2020

SUKH SAGAR MEDICAL COLLEGE & HOSPITAL …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

A. Medical Council Act, (102 of 1956) and Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – Essentiality Certificate – Cancellation/Withdrawal – Grounds **– Held – Assessment report of MCI and inspection report of Committee shows that appellant college failed to fulfill minimum standards of infrastructure/Staff as per norms of MCI despite repeated opportunities given – Not even first batch could persue or complete medical course in college for 3 successive academic session – Even after lapse of about 5 years appellant failed/ neglected to discharge its commitment given to State – It is a case of constructive fraud – Substratum on basis of which Essentiality Certificate was issued, totally disappeared – Essentiality Certificate rightly withdrawn – Appeal dismissed. (Paras 15 to 19 & 27)**

क. आयुर्विज्ञान परिषद् अधिनियम, (1956 का 102) एवं भारतीय चिकित्सा परिषद चिकित्सा महाविद्यालय की स्थापना विनियम, 1999, विनियमन 3 – अनिवार्यता प्रमाणपत्र – रद्दकरण/प्रत्याहरण – आधार – अभिनिर्धारित – भारतीय चिकित्सा परिषद् का निर्धारण प्रतिवेदन एवं समिति का निरीक्षण प्रतिवेदन दर्शाते हैं कि अपीलार्थी महाविद्यालय, बारंबार अवसर देने के बावजूद, भारतीय चिकित्सा परिषद् के सन्नियमों के अनुसार, अवसंरचना/कर्मचारीवृंद के न्यूनतम मानकों को पूरा करने में असफल रहा – यहां तक कि महाविद्यालय में प्रथम बैच भी लगातार 3 शैक्षणिक सत्रों तक चिकित्सा पाठ्यक्रम जारी नहीं रख सका या पूर्ण नहीं कर सका – अपीलार्थी, लगभग 5 वर्ष व्यपगत हो जाने के पश्चात् भी राज्य को दी गई उसकी प्रतिबद्धता का निर्वहन करने में असफल रहा/उपेक्षा की – यह आन्वयिक कपट का एक प्रकरण है – बुनियाद, जिसके आधार पर अनिवार्यता प्रमाणपत्र जारी किया गया था, पूर्णतः गायब हो गई – अनिवार्यता प्रमाणपत्र उचित रूप से प्रत्याहृत – अपील खारिज।

B. Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – Essentiality Certificate – Cancellation **– Held – This Court has earlier concluded that State Government can cancel/revoke/withdraw Essentiality Certificate in exceptional cases where if it is obtained by fraud or any circumstances where the very substratum on**

which essentiality certificate was granted, disappears or such like ground where no enquiry is called for on part of State Government. (Para 13)

ख. भारतीय चिकित्सा परिषद चिकित्सा महाविद्यालय की स्थापना विनियम, 1999, विनियमन 3 – अनिवार्यता प्रमाणपत्र – रद्दकरण – अभिनिर्धारित – इस न्यायालय ने पूर्व में निष्कर्षित किया है कि राज्य सरकार अपवादात्मक प्रकरणों में अनिवार्यता प्रमाणपत्र रद्द / प्रतिसंहृत / प्रत्याहृत कर सकती है जहां उसे कपट द्वारा अभिप्राप्त किया गया या ऐसी कोई परिस्थितियां जहां पर बुनियाद ही गायब हो जाए जिस पर अनिवार्यता प्रमाणपत्र प्रदान किया गया था अथवा उक्त जैसा आधार जहां राज्य सरकार की ओर से किसी जांच की आवश्यकता नहीं।

***C. General Clauses Act (10 of 1897), Section 21 and Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – Essentiality Certificate – Act of State* – Held – Act of State in issuing Essentiality Certificate is a *quasi-judicial* function and any fraud vitiates the act or order passed by any *quasi-judicial* authority – Provision of Section 21 of Act of 1897 cannot be extended to *quasi-judicial* authorities. (Para 13 & 14)**

ग. साधारण खण्ड अधिनियम (1897 का 10), धारा 21 एवं भारतीय चिकित्सा परिषद चिकित्सा महाविद्यालय की स्थापना विनियम, 1999, विनियमन 3 – अनिवार्यता प्रमाणपत्र – राज्य का कार्य – अभिनिर्धारित – अनिवार्यता प्रमाणपत्र जारी करने में राज्य का कार्य एक न्यायिककल्प कार्य है और कोई कपट, किसी न्यायिककल्प प्राधिकारी द्वारा किये गये कार्य या पारित किये गये आदेश को दूषित करता है – 1897 के अधिनियम की धारा 21 का उपबंध, न्यायिककल्प प्राधिकारी को लागू नहीं किया जा सकता।

***D. Words & Phrases – Term "Constructive Fraud", "Actual Fraud" & "Actionable Fraud* – Discussed and explained. (Para 14)**

घ. शब्द एवं वाक्यांश – शब्द ''आन्वयिक कपट'', ''वास्तविक कपट'' व ''अनुयोज्य कपट'' – विवेचित एवं स्पष्ट किया गया।

Cases referred:

(2018) 15 SCC 1, (2015) 2 SCC 336, (2016) 7 SCC 353, (2002) 5 SCC 685, (2018) 4 SCC 494, AIR 1967 SC 107, (2001) 8 SCC 233, AIR 1995 AP 1, (1996) 4 SCC 37.

J U D G M E N T

The Judgment of the Court was delivered by : **A.M. KHANWILKAR, J:-** Leave granted.

2. The seminal question in this appeal is: whether the State Government had unjustly revoked the Essentiality Certificate granted to Gyanjeet Sewa Mission

Trust[1] for establishing a medical college at Jabalpur in the State of Madhya Pradesh, being contrary to the decision of a two-Judge Bench of this Court in *Chintpurni Medical College and Hospital & Anr. Vs. State of Punjab & Ors.*[2]?

3. Shorn of unnecessary details, the Government of Madhya Pradesh, on an application made by the appellant-Trust, issued the stated Essentiality Certificate as prescribed in Form-2 appended to the Medical Council of India Establishment of Medical College Regulations, 1999[3]. The same reads thus: -

"Government of Madhya Pradesh
Medical Education Department, Bhopal

F.No. F-5-56/2014/1/55 Date: 27.08.2014

To,
The Chairman,
GhyanjeetSewa Mission Trust,
SukhSagar Medical College & Hospital Jabalpur
Jabalpur

Sir,

The desired certificate is as follows: -

1.	No. of institutions already existing in the State.	6 Autonomous Medical Colleges 7 Private Medical Colleges
2.	No. of seats available or No. of doctors being produced annually.	1770 MBBS Seats
3.	No. of doctors registered with the State Medical Council.	Not Updated
4.	No. of doctors in Government service.	Not Updated
5.	No. of Government posts vacant and those in rural/difficult areas.	Not Updated
6.	No. of doctors registered with Employment Exchange.	Not Updated
7.	Doctor population ratio in the State.	The population of State is 7,26,27000 as per 2011 census. The population of Jabalpur Division, where the Medical College is proposed is 24,63,289
8.	How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.	By increasing qualified Medical Doctors in the state of Madhya Pradesh.

[1] For short, "the appellant-Trust" or "the appellant-College"
[2] (2018) 15 SCC 1
[3] For short, "the 1999 Regulations"

9.	The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State, be specified.	No restrictions. The admission will be made through M.P. Professional Examinations Board.
10.	Full justification for opening of the proposed college.	For opening of the proposed Medical College, the applicant is a Registered Trust, possessing 27.27 acres of land with 300 bedded **running hospital and adequate planning & time bound programme.** The Applicant is developing Staff Quarters, Nurses Quarters, Boys & Girls Hostel along with ample Administrative Block, Parking Space, Sports Ground and **having well managed funds to run the Medical College & Hospital.** The Hospital would serve the growing population of Jabalpur. People will get modern health treatment under one roof. **The opening of medical college will give 150 trained & educated Medical Professionals to the society every year, who will contribute in serving the public at large. Thus, opening up of a Medical College and Hospital in Jabalpur would not only bridge the huge gap but will definitely contribute on its part for the service of needy patients of Jabalpur, in particular and the state at large.**
11.	Doctor-patient ratio proposed to be achieved	Marginally increased

The Ghyanjeet Sewa Mission Trust, has applied for establishment of a new Medical College at Jabalpur. On careful consideration of the proposal, the Government of Madhya Pradesh has decided to issue an essentiality certificate to the [*sic*] applicant for the establishment of a Sukh Sagar Medical College & Hospital Jabalpur with 150 seats in MBBS Programme under **following conditions**: -

1. **Institute will fulfil the norms of MCI before inspection of Medical Council of India.**

2. **Institute will appoint the staff as per norms of MCI.**

3. Government will neither bear any financial burden nor provide grant to the institute.

4. **Institute will follow all the rules/conditions of MCI and State/Central Government.**

5. Institute will admit the student only after written permission from Central Government, MCI and State Government.

6. Institute will admit the students by adopting transparent procedure as decided by admission and fee regulatory committee appointed by the State Government.

7. Institute will charge the fee as decided by the State Government (admission and fee regulatory committee). No other fee will be admissible.

It is certified that: -

i. The applicant owns and manages a 300 bedded hospital.

j. It is desirable to establish a Medical College in the public interest.

k. Adequate clinical material as per the Medical Council of India norms is available.

It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government.

By order in the name of Governor of Madhya Pradesh.

Sd/-
27.08.2014
(Sanjeev Shrivastava)
Deputy Secretary
Govt. of Madhya Pradesh
Medical Education Deptt.
Date /08/2014"

(emphasis supplied)

4. After issuance of the aforementioned Essentiality Certificate, the appellant-Trust submitted a scheme to the Medical Council of India[4], for establishment of a new medical college at Jabalpur in the name and style of Sukh Sagar Medical College & Hospital with annual intake of 150 students in MBBS course for the academic year 2016-17. The MCI after due inspection had

[4] For short, "the MCI"

submitted a negative report to the Central Government due to gross deficiencies, including fake records regarding the patients and resident staff, as a result of which the Ministry of Health and Family Welfare, Government of India vide letter dated 10.6.2016, rejected the proposed scheme. However, in light of the directions dated 13.6.2016 issued by the Supreme Court Mandated Oversight Committee (OC)[5], the Ministry of Health and Family Welfare issued a letter on 20.8.2016 in supersession of its earlier letter, according permission to the appellant-Trust for establishing a medical college on certain conditions mentioned therein. This permission was valid for a period of one year, to be renewed on yearly basis subject to the verification of the achievement of annual targets as indicated in the scheme submitted by the Trust and revalidation of performance Bank Guarantee. It was made clear that the process of renewal of permission will continue till such time the establishment of medical college and expansion of hospital facilities were to be completed and a formal recognition of the medical college is granted in furtherance thereof. It was also made clear to the Trust that the next batch of students in MBBS course for the academic year 2017-18 be admitted in the college only after obtaining prior permission of Central Government and fulfilling conditions stipulated by the SCMOC referred to in paragraph 2 of the Letter of Permission (LoP). The MCI inspected the college and found that the undertaking given by the management was breached and violated, as a result of which the Central Government debarred the college for academic years 2017-18 and 2018-19.

5. It is an admitted position that for the subsequent academic years i.e. 2017-18, 2018-19 and 2019-20, no renewal of permission was accorded to the appellant-College. The latest assessment report of the MCI dated 3rd and 4th January, 2019, would indicate that the appellant-College was unable to rectify the deficiencies pointed out by the Inspecting Committee of the MCI. The deficiencies noted in the assessment report read thus: -

> "...
>
> 1. No orientation & basic course undergone by MEU.
> 2. One Lecture theatre for college lacking, hospital Lecture Theatre not gallery type.
> 3. In Central Library:
>
> - Number of books less by 798
> - Indian Journals less by 14
> - Foreign Journals less by 06
>
> 4. **Hostel accommodation less by 176 (Required 360 -available 224).**

[5] For short, "the SCMOC"

5. Biometric device not yet installed.
6. **Bed Occupancy 3.65% (15 patients on 410 beds).**
7. **Minor surgeries, normal deliveries, caesarean section -Nil**
8. Ba, IVP - Nil, CT Scan not installed.
9. Number of admissions only 2, casualty attendance one (01).
10. Cytopathology Nil, Static X-ray in casualty - Nil
11. Separate casualty for OBGY not available.-
12. Defibrillators total 04 in OT block and are being shared between various theatres.
13. **No patients in ICCU, ICU, SICU, NICU and PICU.**
14. 01 mobile 60 mA, 01 Static 800 mA, CT not available in Radiology department.
15. No mannequins available in Pharma department.
16. **No accommodation available for students in RHTC, Students go to RHTC but not in UHTC.**
17. **Deficiency of Faculty 88.03% (103/117)**
18. **Deficiency of Residents 90.9% (60-66)**

..."

(emphasis supplied)

Resultantly, the Board of Governors in Supersession of MCI, vide letter dated 30.5.2019, declined to accept the request for renewal of permission for admission to 150 students in MBBS course for the academic year 2019-20.

6. In this backdrop, the Additional Secretary, Medical Education Department of Government of Madhya Pradesh, issued a show-cause notice dated 7.8.2019, calling upon the appellant to show cause as to why the Essentiality Certificate issued in favour of the appellant-Trust should not be cancelled.

7. The appellant assailed the said show-cause notice by filing a writ petition before the High Court of Madhya Pradesh, Principal Seat at Jabalpur[6], being Writ Petition No. 17946/2019. During the pendency of the said writ petition, the appellant submitted response to the show-cause notice and questioned the authority of the State Government to revoke the Essentiality Certificate, mainly relying on the decision of this Court in *Chintpurni Medical College* (supra).

8. Additional Secretary, Medical Education Department, Government of Madhya Pradesh, after giving due opportunity to the appellant and considering its response to the show-cause notice, eventually proceeded to pass an order directing cancellation/revocation/withdrawal of the Essentiality Certificate dated

[6] For short, "the High Court"

27.8.2014. It is apposite to advert to the reasons that weighed with the authority in cancelling the Essentiality Certificate. The authority has taken into account that the appellant had failed to remove the deficiencies pointed out by the MCI from time to time and no renewal of permission was granted for academic years 2017-18, 2018-19 and 2019-20 on that count. Thus, the appellant had failed to provide even the minimum clinical material for running of a medical college, contrary to the conditions specified in clause numbers 1, 2 and 4 of the Essentiality Certificate. In substance, the college had failed and neglected to provide for the minimum standards specified by the MCI for running of a medical college, despite several opportunities given in that regard since academic year 2016 -17. The deficiencies (as noted in the assessment report of the MCI), were gross and had even jeopardised the academic career of the first batch of 150 students admitted in the college during academic year 2016-17. It had also come to the notice of the State authorities that the College had declined to impart education to those students who had not deposited fees, which was again in violation of the conditions specified in the Essentiality Certificate. During a joint meeting between the Collector, Jabalpur, management of the College and students, convened on 19.7.2019, the grievances of the students were considered and direction was issued to the management to take corrective measures within ten days and provide the basic minimum facilities to the students and resume the classes. However, that did not happen. In the concluding part of the order dated 5.9.2019, therefore, it is noted as follows:-

> "....
>
> (xvii) Also regarding the Sukh Sagar Medical College & Hospital, the acts of not providing proper infrastructure facilities for the study of medical students, lack of necessary academic staff for teaching the course, non-availability of clinical material due to the very less numbers of patients to be admitted in the hospital, and the fact of not granting recognition by the MCI for the Sessions 2017-18, 2018-19 and 2019-20 due to the different deficiencies, misbehaving with the students, are the **gross violation of the conditions and basis conditions of grant of Essentiality Certificate** issued by the State Government**. In this regard, due to the failure of College Management in taking necessary action continuously for a period of 3 years, it is itself clear that they have been completely failed in serving the main objective of issuance of Essentiality Certificate i.e. providing better medical facility to the patients and increasing the numbers of medical professionals. On the other hand, in the lack of necessary facilities required for the medical training of the students admitted in the session 2016-17, their future has gone in dark.** Therefore, Show Cause Notice (SCN) issued by the State Government to the Sukh Sagar College, is in accordance with law.

(xviii) In W.P. No. 17946/2019, Sukhsagar Medical College & Hospital vs. State of M.P. & Ors., the Hon'ble High Court has directed the Competent Authority to decide the present case after taking into cognizance all the aspects related to the present case. In this continuation, the Report of Collector, Jabalpur and the different objections submitted by the Sukh- Sagar Medical College Management, were examined in detail and pointwise examination was made in compliance of the directions issued by the Hon'ble Supreme Court in the matter of Chintpurni Medical College & Hospital (supra). On the basis of detailed examination of all the points, the decision to be taken by the Government is in accordance with the interim order passed by the Hon'ble High Court in W.P. No. 17946/2019.

Therefore, after due consideration, the State Government has decided that the Essentiality Certificate (Desirability & Feasibility Certificate) issued to the Sukh Sagar Medical College & Hospital, Jabalpur vide Letter No. F 5-56/2014/1/55 dated 27th August, 2014 of the Department, is hereby cancelled with immediate effect.

This order, shall subject to the final order passed by the Hon'ble High Court, Jabalpur, in W.P. No. 17946/2019 titled as Sukhsagar Medical College & Hospital vs. State of M.P. & Ors.

..."

(emphasis supplied)

9. The appellant, therefore, amended the pending writ petition and challenged the order dated 5.9.2019 passed by the Additional Secretary, cancelling the Essentiality Certificate (dated 27.8.2014). Before we advert to the impugned decision of the High Court, in passing, it is relevant to note that the students who were admitted in the first batch for academic year 2016-17, had filed a writ petition before the High Court being Writ Petition No. 12682/2019 for issuing direction to the State Government to accommodate the students of appellant-College in some other recognised Government/private colleges in the State, in light of the conditions specified in the Essentiality Certificate, which was still in vogue. The High Court had disposed of the said writ petition on 9.7.2019 with direction to the State authorities to consider the representation of the concerned students and take necessary measures as per law. Eventually, after the Essentiality Certificate was cancelled by the State Government vide order dated 5.9.2019, the concerned students belonging to the first batch of 2016-17 came to be adjusted/reallocated in six recognised private colleges within the State of Madhya Pradesh as per the permission granted by the Ministry of Health and Family Welfare, Government of India vide letter dated 25.11.2019.

10. Reverting to the impugned judgment, summarily rejecting the subject writ petition filed by the appellant, by a speaking order, the High Court proceeded to hold that the decision in *Chintpurni Medical College* (supra) does not completely forbid the State Government from exercising power to revoke the Essentiality Certificate. The High Court also held that the State Government acted within the excepted categories referred to in the reported decision of this Court. Inasmuch as, the State Government has taken into account the fraud played by the college in securing the Essentiality Certificate, the inability of the college to provide for the minimum standards of infrastructure and other facilities specified by the MCI for running of a medical college and also complete loss of substratum and larger public interest, as reasons for revocation of Essentiality Certificate by the State. While rejecting the writ petition, however, the High Court gave liberty to the appellant to remove the deficiencies pointed out by the MCI in its order dated 30.5.2019 and apply afresh for the Essentiality Certificate to the State Government and if the same is refused thereafter, the appellant was free to question such decision being a fresh cause of action. The writ petition has been disposed of by the High Court with these observations.

11. We have heard Mr. Dushyant Dave, learned senior counsel for the appellant, Mr. Vikas Singh, learned senior counsel for the Medical Council of India and Mr. Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh.

12. At the outset, we deem it apposite to closely analyse the two-Judge Bench decision of this Court in *Chintpurni Medical College* (supra). For, much emphasis has been placed on the said decision as involving similar fact situation. Even in that case, the medical college had started in the year 2011 in the State of Punjab. The permission for the first batch was granted in the year 2011-12. For subsequent academic years i.e. 2012-13 and 2013-14, no renewal of permission was granted to the college, as it was found to be deficient during the inspection carried out by the MCI. For the academic year 2014-15, however, a Letter of Permission (LoP) was granted in terms of order of this Court in *Hind Charitable Trust Shekhar Hospital Private Limited vs. Union of India & Ors.*[7]. Thereafter, no renewal of permission was granted to the petitioner for the academic year 2015-16. The college had applied for grant of recognition under Section 11 of the Indian Medical Council Act, 1956[8] in the year 2015. During the inspection carried out by the MCI, deficiencies to the extent of 100% came to be noted. Despite that, in terms of the decision of this Court in *Modern Dental College & Research Centre vs. State of Madhya Pradesh*[9], the scheme submitted by the college was processed further. The SCMOC directed the MCI to conduct inspection and in case the

[7] (2015) 2 SCC 336
[8] For short, "the IMC Act"
[9] (2016) 7 SCC 353

college was found deficient, it was to be banned for a period of two years. The MCI conducted inspection of the concerned college on 7.3.2017 and found it deficient, thus recommended to the Central Government to debar the college from admitting students against the allowed intake for two academic years i.e. 2017-18 and 2018-19. The above decision was unsuccessfully challenged by the concerned college by way of a writ petition. In the meantime, the State Government decided to withdraw the Essentiality Certificate issued to the concerned college. That decision was challenged by way of a separate writ petition before this Court. While considering that challenge, the Court examined the scheme of the provisions of the IMC Act and the purpose for which Essentiality Certificate was required to be issued by the State Government. It noted that the same has been made condition precedent at the time of submitting the scheme for grant of Letter of Intent (Lol)/Letter of Permission (LoP) to start a new medical college. It noted that the State Government is required to certify by way of Essentiality Certificate, its approval for establishment of a medical college with a specified number of seats in public interest, and further that such establishment is feasible. Thus, an Essentiality Certificate from the State Government mentioning therein that it is essential to have a medical college, as proposed by the applicant, is to prevent the establishment of a college where none is required or to prevent unhealthy competition between too many medical colleges. Further, the only purpose of the Essentiality Certificate is to enable the Central Government acting under Section 10-A of the IMC Act to facilitate the competent authority to take an informed decision for permitting the opening or establishment of a new medical college and once the college is established, its functioning and performance and even the derecognition of its courses is governed by the provisions of the IMC Act and not any other law. Having said that, in paragraph 17, the Court observed as follows: -

> "17. It would be impermissible to allow any authority including a State Government which merely issues an essentiality certificate, to exercise any power which could have the effect of terminating the existence of a medical college permitted to be established by the Central Government. This the State Government may not do either directly or indirectly. Moreover, the purpose of the essentiality certificate is limited to certifying to the Central Government that it is essential to establish a medical college. It does not go beyond this. **In other words, once the State Government has certified that the establishment of a medical college is justified, it cannot at a later stage say that there was no justification for the establishment of the college.** Surely, a person who establishes a medical college upon an assurance of a State Government that such establishment is justified cannot be told at a later stage that there was no justification for allowing him to do so. **Moreover, it appears that the power to issue an essentiality certificate is a**

> **power that must be treated as exhausted once it is exercised, except of course in cases of fraud.** The rules of equity and fairness and promissory estoppel do not permit this Court to take a contrary view."
>
> (emphasis supplied)

The Court then went on to hold that the State Government is designated by the 1999 Regulations only for the purpose of Essentiality Certificate to justify the establishment of a medical college within its territories and that too when approached by a person seeking to establish a medical college. There is no direct conferral of any power of general inspection on the State and neither can such a power be read into the Regulations nor be implied as necessary to carry out an expressly conferred power which does not exist. While rejecting the argument of the State about the inherent right of the State to withdraw the Essentiality Certificate, in paragraph 24, the Court observed thus: -

> "24. The learned counsel for the State of Punjab submitted that since the essentiality certificate certifies the availability of adequate clinical material for the proposed medical college, as per the Regulations, the State has the necessary power of inspection of the college even after its establishment to ensure that there is adequate clinical material. **This submission must also be rejected since the State is enjoined to certify adequate clinical material only at the time of proposal of the medical college and not after it is established**. But we find from the submissions that the State has misinterpreted the term "adequate clinical material" completely. According to the State, "adequate clinical material" means "people" i.e. doctors, patients, staff, etc. Whereas, the term is understood in the field of medical education to mean data about number of admissions, number of discharges, number of deaths, number of surgeries, number of procedures, X-rays and laboratories investigations. Thus, what the State is required to certify is the data available in the region to justify the establishment of the proposed medical college. Obviously, for the purpose of justifying the existence of a medical college, the State's claim that it must have the right to inspect a college after it is established to see whether there are adequate numbers of doctors, patients, etc. to justify its continued existence is completely hollow and unfounded."
>
> (emphasis supplied)

The Court then noted the argument of the State about the existence of its power ascribable to Section 21 of the General Clauses Act, 1897[10]. In that regard, the

[10] For short, " the 1897 Act"

Court noted that the certificate is neither a notification nor an order or rule or bye-law as contemplated by Section 21 of the 1897 Act. Further, the act of issuance of Essentiality Certificate by the State is a *quasi-judicial* function. It is neither a legislative nor an executive function as such, so as to attract Section 21 of the 1897 Act. Further, advisedly, there is no provision in the IMC Act or the 1999 Regulations empowering the State to revoke or cancel the Essentiality Certificate once granted by it in respect of an established medical college. In absence of an express provision in that regard and issuance of an Essentiality Certificate being a *quasi-judicial* function, Section 21 of the 1897 Act will be of no avail. In other words, the State had no power to withdraw the Essentiality Certificate once granted in respect of an established college. At the same time, the Court following earlier decisions of this Court observed that even in such a situation, the State would be competent to withdraw the certificate, where it is obtained by fraud or in circumstances where the very substratum on which the Essentiality Certificate was granted disappears or any other reason of the like nature. For that, the Court has referred to the decisions of this Court in *Indian National Congress (I) vs. Institute of Social Welfare &* Ors.[11], *Industrial Infrastructure Development Corporation (Gwalior) Madhya Pradesh Limited vs. Commissioner of Income Tax, Gwalior, Madhya Pradesh*[12], *Ghaurul Hasan & Ors. vs. State of Rajasthan & Anr.*[13] and *Hari Shankar Jain vs. Sonia Gandhi*[14] and of the High Court of Andhra Pradesh in *Government of Andhra Pradesh & Anr. vs. Y.S. Vivekananda Reddy &* Ors.[15].

13. At the outset, we may straightaway agree with the dictum in *Chintpurni Medical College* (supra) that the act of the State in issuing Essentiality Certificate is a *quasi-judicial* function, which view is supported by the analogy deduced from the reported decisions referred to above. Having said that, it must follow that Section 21 of the 1897 Act cannot be invoked and in absence of an express provision in the IMC Act or the 1999 Regulations empowering the State Government to revoke or cancel the Essentiality Certificate, such a power cannot be arrogated by the State relying on Section 21. That, however, does not deprive the State Government to revoke or withdraw the Essentiality Certificate in case where (a) it is secured by playing fraud on the State Government, (b) the substratum for issuing the certificate has been lost or disappears and (c) such like ground, where no enquiry is called for on the part of the State Government. In *Indian National Congress (I)* (supra), the Court while dealing with similar

[11] (2002) 5 SCC 685
[12] (2018) 4 SCC 494
[13] AIR 1967 SC 107
[14] (2001) 8 SCC 233
[15] AIR 1995 AP 1

argument to assail the decision of the Election Commission to review its order registering the political party, observed as follows: -

> "33. However, t**here are three exceptions** where the Commission can review its order registering a political party. **One is where a political party obtained its registration by playing fraud on the Commission, secondly, it arises out of sub-section (9) of Section 29-A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law."**
>
> (emphasis supplied)

And again, in paragraphs 41(3) and 41(4), while summing up the judgment, the Court held as follows: -

> "41. To sum up, what we have held in the foregoing paragraph is as under:
>
> 1. xxx xxx xxx
> 2. xxx xxx xxx
>
> 3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:
>
> ***(a)* where a political party has obtained registration by practising fraud or forgery;**
>
> ***(b)* where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and**
>
> ***(c)* any like ground where no enquiry is called for on the part of the Commission.**
>
> 4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act have no application."
>
> (emphasis supplied)

As noted earlier, even in *Chintpurni Medical College* (supra), the Court has clarified that the State Government can cancel/revoke/withdraw Essentiality Certificate in exceptional cases, by observing thus: -

> "36. We may not be understood to be laying down that under no circumstances can an essentiality certificate be withdrawn. **The State Government would be entitled to withdraw such certificate where it is obtained by playing fraud on it or any circumstances where the very substratum on which the essentiality certificate was granted disappears or any other reason of like nature.**"
>
> (emphasis supplied)

In other words, we hold that *Chintpurni Medical College* (supra) does not lay down in absolute terms that the State cannot revoke the Essentiality Certificate once granted for opening of a new medical college within the State. The observations in paragraph 36 of the reported decision also reiterate this position and make it amply clear that in exceptional circumstances referred to therein, the State is free to do so.

14. The core issue in the present appeal, therefore, is whether the decision of the State Government, dated 5.9.2019, falls within one of the excepted categories. The first excepted category is where the appellant had obtained the Essentiality Certificate by playing fraud on the State Government. It is well-settled that fraud vitiates any act or order passed by any *quasi-judicial* authority, even if no power of review is conferred upon it, as held in paragraph 34 of the decision in *Indian National Congress (I)* (supra) in the following words :-

> "34. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In *Smith v. East Elloe Rural Distt. Council* [(1956) 1 All ER 855], it was stated that the effect of fraud would normally be to vitiate all acts and orders. In *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.* [(1996) 5 SCC 550] it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also to statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to deregister such a political party."

As to when it would be a case of fraud played on the State Government, would depend on whether it was an attempt by the appellant to present facts, so as to misrepresent the State. The fraud can either be actual or constructive fraud. The

actual fraud is a concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting, whereas the constructive fraud is unintentional deception or misrepresentation that causes injury to another. The actual or constructive fraud as predicated in Black's Law Dictionary[16] is as follows: -

> **"actual fraud.** A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting. - Also termed *fraud in fact; positive fraud; moral fraud."*
>
> **"constructive fraud. 1.** Unintentional deception or misrepresentation that causes injury to another. **2.** *Fraud in law.* Fraud that is presumed under the circumstances, without regard to intent, usu. through statutorily created inference. • Fraud may be presumed, for example, when a debtor transfers assets and thereby impairs creditors' efforts to collect sums due. This type of fraud arises by operation of law, from conduct that, if sanctioned, would (either in the particular circumstance or in common experience) secure an unconscionable advantage, irrespective of evidence of an actual intent to defraud. - Also termed *legal fraud; fraud in contemplation of law; equitable fraud; fraud in equity."*

It may be also useful to advert to the meaning of "actionable fraud" in the Sixth Edition of the same Law dictionary, as follows: -

> **"Actionable fraud**. Deception practiced in order to induce another to part with property or surrender some legal right. A false representation made with an intention to deceive; such may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false; that when he made it he knew it was false, or made it recklessly without any knowledge of its truth and as a positive assertion; that he made it with intention that it should be acted on by plaintiff; that plaintiff acted in reliance on it; and that plaintiff thereby suffered injury.... Essential elements are representation, falsity, scienter, deception, reliance and injury."

15. Indeed, in the present case, the State Government in its order dated 5.9.2019, has adverted to several aspects including the assessment report of the MCI and inspection report of the Committee. The substance of the reason weighed with the State Government, as can be culled out from the stated order, is

[16] Black's Law Dictionary 11th Edition

that the appellant had failed to fulfil the commitment given to the State at the relevant time - of providing minimum infrastructure and fulfilment of the norms of MCI and appointing the staff as per norms of MCI - for all this period and was incapable in doing so despite repeated opportunities given since 2016 by the MCI. Further, even though the appellant was granted conditional Letter of Permission (LoP) for academic year 2016-17, it had failed to remove the deficiencies, as a result of which not even the first batch could pursue or complete the medical course in the appellant-College. The concerned students kept on making earnest representation to the State authorities to rescue them from the hiatus situation in which they were trapped. Indisputably, the concerned students (admitted in the first batch of 2016-17) were eventually reallocated to another recognised college after November, 2019, as no renewal of permission to the appellant-College was forthcoming for three successive academic sessions i.e. 2017-18, 2018-19 and 2019-20.

16. Such circumstances reckoned by the State, by no stretch of imagination. can be disregarded as irrelevant, intangible or imaginary. Rather, the totality of the situation reinforces the fact that the appellant-College had failed and neglected to discharge its commitment given to the State at the relevant time; and is incapable of fulfilling the minimum norms specified by the MCI for starting and running a medical college. It had thus misrepresented the State Government at the relevant time by giving a sanguine hope of ensuring installation of minimum infrastructure and setting up of a robust organisational structure for running of a medical college "in a time bound programme". Therefore, it can be safely deduced that it is a case of constructive fraud played upon the State Government. For, even after lapse of over five years from the date of issuance of Essentiality Certificate (27.8.2014), the appellant-College is not in a position to secure the requisite permission(s) from the MCI and the Central Government to run a medical college as per the scheme.

17. The State Government whilst discharging its role of *parens patriae* of the student community cannot remain a mute spectator and expose them to a college, which is deficient in many respects. The fact that no renewal permission has been granted by the MCI for three successive academic sessions due to gross deficiencies in the appellant-College, is itself indicative of the state of affairs in the appellant-College, warranting a legal inference that the substratum on the basis of which Essentiality Certificate was issued to the appellant-College had completely disappeared. For, even the first batch of students admitted in the appellant-College could not pursue their medical course and were eventually reallocated by the State Government to other recognised private medical colleges within the State as per the obligation specified in the Essentiality Certificate, after obtaining permission of the Central Government in that behalf in November, 2019.

18. The Essentiality Certificate was issued on the representation of the appellant-College that it would give 150 fully trained and qualified doctors each year to the State, thereby improving the doctor-patient ratio and provide healthcare to the nearby population in the attached hospital. All this has become a mirage due to the failure of the appellant-College to get permission of Central Government for four successive academic sessions starting from 2016-17 till 2019-20. Not even one doctor has been produced by the appellant-College after issuance of the Essentiality Certificate nor the hospital attached to the college is provided with minimum standards specified by the MCI and is found to be grossly deficient. On a comprehensive view of the state of affairs, the fulfilment of MCI norms and other allied conditions must be understood as an implied imperative for the consideration/continuation of Essentiality Certificate. For, there can be no deviation from the standards. This being a clear case of a non-functioning college, warranted immediate intervention of the State Government in larger public interest and also because the substratum had disappeared. It would certainly come within the excepted category, where the power of withdrawal of Essentiality Certificate ought to be exercised by the State and more particularly not being a case of an established college *per se.*

19. The term "established" is not defined in the IMC Act or the 1999 Regulations. The common parlance meaning of this expression, as predicated in the Black's Law Dictionary 11th Edition, reads thus: -

> **"established, 1**. Having been brought about or into existence. **2.** Having existed for a long period; already in long-term use. **3.** Proven; demonstrated beyond doubt. **4.** Known to do a particular job well because of long experience with good results. **5.** (Of a church or religion) officially recognised and sponsored by the government."

In the present case, however, the appellant-College was at the threshold stage of only opening and starting first year course for academic year 2016-17. It failed and neglected to fulfil even the minimum benchmark of standards specified by the MCI allowing it to run the medical college. Admittedly, no renewal permissions from the Central Government were issued for the successive academic years. In that sense, it is not a case of withdrawal of the Essentiality Certificate of an "established" medical college as such. Had it been a case of well-established and a running medical college having basic minimum infrastructure as per the specifications of the MCI and State Government was to withdraw its Essentiality Certificate, that matter would stand on a different footing than the case at hand, where the college has miserably failed to ensure completion of medical course even of the first batch for three successive academic sessions from 2016-17 due to non-renewal of permission by the MCI.

20. Be that as it may, there would be legitimate expectation amongst the stakeholders, after issuance of Essentiality Certificate by the State Government, that the applicant-college shall fulfil the basic norms specified by the MCI in a time bound manner, so as to open the medical college and operate it as per the norms. That, however, has not happened in the present case since August, 2014 until the issuance of subject show-cause notice in August, 2019 and passing of the impugned order of withdrawal of Essentiality Certificate. The fact that the applicant has made certain investments for starting the medical college, by itself, cannot be the basis to undermine power of the State Government coupled with duty to ensure that the medical college is established in terms of the Essentiality Certificate within a reasonable time.

21. While dealing with the case of maintaining standards in a professional college, a strict approach must be adopted because these colleges engage in imparting training and education to prospective medical professionals and impact their academic prospects. Thus, the future of the student community pursuing medical course in such deficient colleges would get compromised besides producing inefficient and incompetent doctors from such colleges. That would be posing a bigger risk to the society at large and defeat the sanguine hope entrenched in the Essentiality Certificate issued by the State.

22. Indeed, the fact that the Essentiality Certificate given to the appellant-College stands withdrawn, it does not follow that the need to have a new medical college in the concerned locality or the State ceases to exist. For, the *raison d'etre* behind Essentiality Certificate, amongst others, is likely improvement of doctor-patient ratio and access to healthcare for the population in the attached hospital. As a matter of fact, the need would get bigger due to the failure of the new medical college to fulfil the scheme in a time bound manner in right earnest. That entails in enhancing the mismatch of demand and supply ratio of doctors required to achieve the medical manpower of the State. It would not be in public interest nor appropriate for the State Government to remain a mute spectator and not move into action when the college miserably fails to translate the spirit behind the Essentiality Certificate within a reasonable time. By no stretch of imagination, five years period, to fulfil the minimum requirement and standards specified by the MCI, can be countenanced.

23. Article 47 of the Constitution of India encompassed in Directive Principles of State Policy, enjoins the State with a duty to provide for and ensure good public health and a constant endeavour to improve the same to effectuate the fundamental right to life guaranteed by the Constitution to all. Thus understood, the State's duty under Article 47 is to act as an *"enabler"* for the wholesome exercise of right to life. A right to have access to proper public health care would be of little value if the State does not create the requisite conditions for proper

exercise of such right. Access to medical college and hospital is, no doubt, a part of the said conditions. In *Paschim Banga Khet Mazdoor Samity & Ors. vs. State of West Bengal & Anr.*[17], this Court observed that it is the *"Constitutional obligation of the State to provide adequate medical services to the people.* ***Whatever is necessary for this purpose has to be done."***

24. What is necessary in the present factual matrix, as discussed above, is for the State to assess the dire need of medical infrastructure within the State or the locality, as the case may be. The very fact that an Essentiality Certificate is issued in the first place, in itself, is a testimony of the *"essentiality"* of such infrastructure. The authority of the State to grant Essentiality Certificate is both power coupled with a duty to ensure that the substratum of the spirit behind the Certificate does not disappear or is defeated. The exercise of power and performance of duty with responsibility and in right earnest must co-exist. Notably, the duty under Article 47 is, in the constitutional sense, *fundamental* in the governance of the State. This duty does not end with mere grant of a certificate, rather, it continues upto the point when *essentiality* of basic medical infrastructure is properly taken care of within a reasonable time frame. Any future application for such certificate, be it by the present appellant (in terms of directions in this judgment) or by a different applicant, must be dealt with accordingly, and supervision of the State must continue to ensure that the purpose and substratum for grant of such certificate does not and has not disappeared.

25. We are conscious of the view taken and conclusion recorded in *Chintpurni Medical College* (supra). Even though the fact situation in that case may appear to be similar, however, in our opinion, in a case such as the present one, where the spirit behind the Essentiality Certificate issued as back as on 27.8.2014 has remained unfulfilled by the appellant-College for all this period (almost six years), despite repeated opportunities given by the MCI, as noticed from the summary/observation in the assessment report, it can be safely assumed that the substratum for issuing the Essentiality Certificate had completely disappeared. The State Government cannot be expected to wait indefinitely, much less beyond period of five years, thereby impacting the interests of the student community in the region and the increased doctor-patient ratio and denial of healthcare facility in the attached hospital due to gross deficiencies. Such a situation, in our view, must come within the excepted category, where the State Government ought to act upon and must take corrective measures to undo the hiatus situation and provide a window to some other institute capable of fulfilling the minimum standards/ norms specified by the MCI for establishment of a new medical college in the concerned locality or within the State. Without any further ado, we are of the view that the appellant-College is a failed institute thus far and is unable to deliver the

[17] (1996) 4 SCC 37

aspirations of the student community and the public at large to produce more medical personnel on year to year basis as per the spirit behind issuance of the subject Essentiality Certificate dated 27.08.2014. To this extent, we respectfully depart from the view taken in *Chintpurni Medical College* (supra).

26. To complete the record, we may mention the argument of the appellant that the attached hospital of the appellant has now been taken over by the State Government recently for providing treatment to Covid patients. That, however, will be of no avail to answer the matter in issue. We do not intend to dilate on this argument any further.

27. Taking overall view of the matter, in the facts of the present case, we uphold the order of the High Court rejecting the subject writ petition filed by the appellant-College, whereby it had assailed the order of the State Government dated 5.9.2019, withdrawing the Essentiality Certificate dated 27.8.2014. At the same time, we reiterate the liberty given by the High Court to the appellant-College to forthwith remove all the deficiencies pointed out by the MCI in its order dated 30.5.2019 and apply afresh for the Essentiality Certificate to the State Government and if that request is refused, to pursue appropriate remedy as per law being a fresh cause of action.

28. The appeal is accordingly dismissed being devoid of merits. No order as to costs. Pending applications, if any, are also disposed of.

Appeal dismissed

I.L.R. [2020] M.P. 1989 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice R.F. Nariman & Mr. Justice Navin Sinha

Cr.A. No. 504/2020 decided on 5 August, 2020

GANGADHAR @ GANGARAM …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Presumption* – Held – Appellant held guilty being owner of house (as per voter list of 2008) from where Ganja recovered – Witness (Investigation Officer) admitted that on very next day, appellant produced sale agreement showing that in 2009 (before registration of offence) he sold the said house to co-accused but neither agreement nor panchayat records were ever investigated – Prosecution failed to establish conscious possession of house with appellant to attribute presumption against him – Poor investigation by police and gross**

mis-appreciation of evidence by Courts below – Conviction being unsustainable is set aside – Appeal allowed. (Paras 6, 12, 13 &17)

क. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(C) व 20(b)(ii)(c) – भानपूर्वक कब्जा – उपधारणा – अभिनिर्धारित – अपीलार्थी को उस मकान का स्वामी होने के नाते (2008 की मतदाता सूची के अनुसार) दोषी ठहराया गया, जहां से गांजा बरामद किया गया था – साक्षी (अन्वेषण अधिकारी) ने स्वीकार किया कि ठीक अगले दिन अपीलार्थी ने यह दर्शाते हुए कि 2009 में (अपराध पंजीबद्ध होने से पूर्व) उसने उक्त मकान सहअभियुक्त को विक्रय किया था, विक्रय करार प्रस्तुत किया परंतु, न तो करार और न ही पंचायत अभिलेखों का कभी अन्वेषण किया गया था – अभियोजन, अपीलार्थी के विरूद्ध उपधारणा किये जाने हेतु, मकान पर उसका भानपूर्वक कब्जा स्थापित करने में विफल रहा – पुलिस द्वारा खराब अन्वेषण तथा निचले न्यायालयों द्वारा साक्ष्य का घोर गलत मूल्यांकन – दोषसिद्धि कायम रखने योग्य न होने के नाते अपास्त की गई – अपील मंजूर।

B. Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Appreciation of Evidence **– Held – Appellant identified the house and was panch witness to breaking of lock and recovery of contraband – As per normal human prudence, why he would identify his own erstwhile house as that of co-accused to implicate himself – No explanation by prosecution why they have not investigated the agreement of sale of house – Prosecution failed to establish conscious possession. (Para 6 & 11)**

ख. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(C) व 20(b)(ii)(c) – भानपूर्वक कब्जा – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अपीलार्थी ने मकान की पहचान की और ताला तोड़ने एवं विनिषिद्ध की बरामदगी का पंच साक्षी था – सामान्य मानव प्रज्ञा के अनुसार, वह स्वयं को आलिप्त करने के लिए, स्वयं के पूर्व मकान को सह अभियुक्त का होने की पहचान क्यों करेगा – अभियोजन द्वारा कोई स्पष्टीकरण नहीं कि उन्होनें मकान के विक्रय के करार का अन्वेषण क्यों नहीं किया – अभियोजन भानपूर्वक कब्जा स्थापित करने में असफल रहा।

C. Criminal Practice – Conviction – Grounds **– Held – Conviction cannot be based on conjectures and surmises to conclude on preponderance of probabilities, the guilt of appellant without establishing the same beyond reasonable doubt. (Para 14)**

ग. दाण्डिक पद्धति – दोषसिद्धि – आधार – अभिनिर्धारित – अपीलार्थी की दोषिता को युक्तियुक्त संदेह से परे स्थापित किये बिना अधिसंभाव्यताओं की प्रबलता पर निष्कर्षित करने के लिए दोषसिद्धि को, अनुमानों एवं अटकलों पर आधारित नहीं किया जा सकता।

D. Constitution – Article 136 – Scope & Jurisdiction **– Held – If this Court is satisfied that prosecution failed to establish *prima facie* case,**

evidence led was wholly insufficient and there has been gross mis-appreciation of evidence by Courts below bordering on perversity, it shall not be inhibited in protecting the liberty of individual. (Para 16)

घ. संविधान – अनुच्छेद 136 – व्याप्ति व अधिकारिता – अभिनिर्धारित – यदि इस न्यायालय की संतुष्टि होती है कि अभियोजन, प्रथम दृष्ट्या प्रकरण स्थापित करने में असफल रहा, प्रस्तुत किया गया साक्ष्य संपूर्ण रूप से अपर्याप्त था और विपर्यस्तता की सीमा तक निचले न्यायालयों द्वारा साक्ष्य का घोर गलत मूल्यांकन हुआ है, तब वह व्यक्ति की स्वतंत्रता की रक्षा करने में संकोच नहीं करेगा।

Cases referred:

(2002) 9 SCC 595, (2008) 16 SCC 417.

J U D G M E N T

The Judgment of the Court was delivered by : **NAVIN SINHA, J. :-** Leave granted.

2. The appellant assails his conviction under Section 8C read with Section 20(b)(ii)(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the NDPS Act") for recovery of 48 Kgs 200 gms. cannabis (*ganja),* sentencing him to 10 years of rigorous imprisonment with a default stipulation.

3. The appellant was held to be the owner of the House in question from which the *ganja* was recovered, relying upon the voters list of 2008 rejecting his defence that he had sold the house to co-accused Gokul Dangi on 12.06.2009. Gokul Dangi has been acquitted in trial.

4. Shri Puneet Jain, learned counsel for the appellant submitted that the conviction based on a mere presumption of ownership of the house, without any finding of conscious possession was unsustainable. Reliance was placed on *Gopal vs. State of Madhya Pradesh,* (2002) 9 SCC 595. The police had received information that Gokul Dangi had kept contraband in his house. The appellant and Ghasiram, the village chowkidar had identified the house of the accused to the police when it came to the village for search and seizure. Both of them were witness to the *panchnama* for breaking open the lock to the house when the contraband was recovered. It stands to reason why the appellant would take the police to his own house, have the lock broken to recover the contraband and implicate himself. Ghasiram and P.W.11, were both witnesses to the sale agreement dated 12.06.2009, Exhibit P-28 executed by the appellant in favour of Gokul Dangi. It was produced before the police by the appellant the very next day but was never investigated, Ghasiram has not been examined for no explicable reasons. The entries in the village panchayat records with regard to ownership of the house had not been investigated. The appellant was subsequently made an

accused during investigation because of the failure of the police to investigate properly.

5. Ms. Swarupama Chaturvedi, learned Addl. Advocate General for the State, submitted that P.W.11 had denied being a witness to the sale agreement alleging that his thumb impression had been impersonated. The deed was therefore rightly held to be a forged and fabricated document confirmed by the voter list entry of 2008 that the house belonged to the appellant. The village panchayat records also mentioned the ownership of the appellant.

6. We have considered the submissions on behalf of the parties and have carefully perused the evidence on record also. P.W. 6, the first investigation officer deposed that secret information had been received of Gokul Dangi having stored contraband in his house. The appellant and Ghasiram along with other villagers identified the house as belonging to Gokul Dangi on 11.08.2009 leading to recovery after the lock was broken open. The witness admitted that on 12.08.2009 itself the appellant had submitted the sale agreement dated 12.06.2009 Ex. P-28 to him but that it was never investigated by him. Acknowledging that ownership details are mentioned in the gram panchayat records, the witness stated that he did not investigate the same. P.W. 16, who took over the investigation after transfer of the former recorded the statements of Ghasiram and P.W. 11 as also of other witnesses. The appellant was then made an accused on basis of his name being entered in the voters list of 2008. Contrary to the evidence of P.W.6, the witness stated that the gram panchayat records had been looked into by the former. No explanation was offered for not investigating the sale agreement. The appellant was acknowledged not to be living in the house from where the contraband was recovered, but was alleged to be using it as a store room on basis of no evidence whatsoever.

7. P.W. 3 and P.W.7, the police constable who had accompanied P.W. 6, deposed that the appellant and Ghasiram had identified the house as belonging to Gokul Dangi which was corroborated by the panchayat records.

8. Ghasiram, as the village chowkidar was the best person in the know of the ownership and possession of the house. He was one of the two witnesses to the sale agreement Exhibit P-28. The prosecution for inexplicable reasons has not examined him. P.W. 11 denied his thumb impression on the sale document contending that it was a fabricated document. No forensic report was obtained by the prosecution. The witness acknowledged that the appellant did not visit his own house and lived in his new house for the last 15 years denying any knowledge who the owner was. Yet his statement was accepted as gospel truth without any further investigation.

9. The presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It

does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in *Noor Aga vs. State of Punjab,* (2008) 16 SCC 417 observing:

> "58. ... An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.
>
> 59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt."

10. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of 10 years, absence of any provision for remission do not dispense with the requirements of prosecution to establish a prima facie case beyond reasonable doubt after investigation, only where after which the burden of proof shall shift to the accused. The gravity of the sentence and the stringency of the provisions will therefore call for a heightened scrutiny of the evidence for establishment of foundational facts by the prosecution.

11. It is apparent that the police being in a quandary with regard to the ownership and possession of the house in question due to a flawed, defective and incomplete investigation found it convenient to implicate the appellant also, sanguine that at least one of the two would be convicted. Sri Jain is right in the submission that according to normal human prudence, it stands to reason why the appellant who was residing in his new house for the last 15 years would identify his own erstwhile house as that of the accused Gokul Dangi, be a witness to the breaking of the lock and recovery to implicate himself.

12. The appellant had produced the sale agreement, Exhibit P.28 with promptness the very next day. It was never investigated for its genuineness by the

police and neither were the panchayat records verified. The panchayat records are public documents and would have been the best evidence to establish the ownership and possession of the house. Despite the best evidence being available the police considered it sufficient to obtain a certificate Exhibit P-37 signed by P.W. 14 who acknowledged her signature but denied knowledge of the contents of the certificate. The voters list entry of 2008 being prior to the sale is of no consequence. It is not without reason that the co-accused had absconded.

13. The appellant was held guilty and convicted in view of his name being recorded as the owner of the house in the voters list 2008, ignoring the fact that sale agreement was subsequent to the same on 12.06.2009. The prosecution cannot be held to have proved that Exhibit P-18 was a fabricated and fictitious document. No appeal has been preferred by the prosecution against the acquittal of the co accused.

14. In view of the nature of evidence available it is not possible to hold that the prosecution had established conscious possession of the house with the appellant so as to attribute the presumption under the NDPS Act against him with regard to recovery of the contraband. Conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities, the guilt of the appellant without establishing the same beyond reasonable doubt.

15. The police investigation was very extremely casual, perfunctory and shoddy in nature. The appellant has been denied the right to a fair investigation, which is but a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution. The consideration of evidence by the Trial Court, affirmed by the High Court, borders on perversity to arrive at conclusions for which there was no evidence. Gross misappreciation of evidence by two courts, let alone poor investigation by the police, has resulted in the appellant having to suffer incarceration for an offence he had never committed.

16. Normally this Court in exercise of its jurisdiction under Article 136 of the Constitution does not interfere with concurrent findings of facts delving into appreciation of evidence. But in a given case, concerning the liberty of the individual, if the Court is satisfied that the prosecution had failed to establish a prima facie case, the evidence led was wholly insufficient and there has been gross misappreciation of evidence by the courts below bordering on perversity, this Court shall not be inhibited in protecting the liberty of the individual.

17. The conviction of the appellant is held to be unsustainable and is set aside. The appellant is acquitted. He is directed to be set at liberty forthwith unless wanted in any other case.

18. The appeal is allowed.

Appeal allowed

I.L.R. [2020] M.P. 1995(SC)
SUPREME COURT OF INDIA

Before Mr. Justice L. Nageswara Rao & Mr. Justice S. Ravindra Bhat

C.A. No. 7074/2008 decided on 26 August, 2020

STATE OF M.P. & ors. …Appellants

Vs.

RAKESH SETHI & anr. …Respondents

A. Motor Vehicles Rules, M.P. 1994, Rule 55-A and Motor Vehicles Act (59 of 1988), Section 41(6) & 211 – Registration Numbers to Motor Vehicles – Prescribed Fee – Validity **– Held – Assignment of "distinctive Marks" i.e. registration number to motor vehicle, which includes power to reserve and allocate them for a specific fee, is a distinct service for which State or their authorities (Registering Authority) are entitled to charge a prescribed fee – Rule 55-A is not in excess of powers conferred upon State by the Act of 1988 or Central Rules – Rule is not *ultra vires* – Appeal allowed. (Paras 39 & 40)**

क. मोटर यान नियम, म.प्र. 1994, नियम 55–A एवं मोटर यान अधिनियम (1988 का 59), धारा 41(6) व 211 – मोटरयानों के लिए पंजीयन क्रमांक – विहित शुल्क – विधिमान्यता – अभिनिर्धारित – ''सुभिन्न चिन्ह'' का समनुदेशन, अर्थात, मोटरयान का पंजीयन क्रमांक, जिसमें एक विनिर्दिष्ट शुल्क पर उन्हें आरक्षित एवं आबंटित करने की शक्ति समाविष्ट है, एक सुभिन्न सेवा है जिसके लिए राज्य या उसके प्राधिकारीगण (पंजीयन प्राधिकारी) एक विहित शुल्क प्रभारित करने के लिए हकदार हैं – नियम 55–A, 1988 के अधिनियम या केंद्रीय नियमों द्वारा राज्य को प्रदत्त शक्तियों के अधिक्य में नहीं है – नियम अधिकारातीत नहीं – अपील मंजूर।

B. Motor Vehicles Rules, M.P. 1994, Rule 55-A and Motor Vehicles Act (59 of 1988), Section 41(6) – Powers of State **– Held – Rule 55-A is within the ambit of powers delegated to State and directly related to performance of its functions u/S 41(6) for which it could legitimately claim a fee, as was done through Rule 55-A. (Para 40)**

ख. मोटर यान नियम, म.प्र. 1994, नियम 55–A एवं मोटर यान अधिनियम (1988 का 59), धारा 41(6) – राज्य की शक्तियां – अभिनिर्धारित – नियम 55–A, राज्य को प्रत्यायोजित शक्तियों की परिधि के भीतर है और धारा 41(6) के अंतर्गत उसके कर्तव्यों के पालन से प्रत्यक्ष रूप से संबंधित है, जिसके लिए वह विधिसम्मत रूप से शुल्क का दावा कर सकता है जैसा कि नियम 55–A के जरिए किया गया था।

C. Motor Vehicles Rules, M.P. 1994, Rule 55-A and Motor Vehicles Act (59 of 1988), Section 65(1) & 211 – Power to frame Rules **– Held – Generality of the power u/S 65(1) to frame Rules is sufficient alongwith Section 211 to conclude that State Government has the authority to prescribe**

a fee for reserving certain numbers or distinguishing marks to be assigned as registration numbers. (Paras 29, 30 & 33)

ग. मोटर यान नियम, म.प्र. 1994, नियम 55–A एवं मोटर यान अधिनियम (1988 का 59), धारा 65(1) व 211 – नियम विरचित करने की शक्ति – अभिनिर्धारित – नियम विरचित करने के लिए धारा 65(1) के अंतर्गत शक्ति की व्यापकता के साथ–साथ धारा 211 यह निष्कर्षित करने हेतु पर्याप्त है कि राज्य सरकार को पंजीयन क्रमांकों के रूप से समनुदेशित किये जाने के लिए कतिपय क्रमांकों या सुभिन्न चिन्हों को आरक्षित करने हेतु शुल्क विहित करने का प्राधिकार है।

Cases referred:

(2011) 3 SCC 139, (1977) 2 SCC 670, (2002) 8 SCC 228, (2011) 3 SCC 1, (1981) 4 SCC 471, (2011) 8 SCC 274, (1971) 3 SCC 708, (2011) 7 SCC 179, (2009) 8 SCC 492, (1964) 4 SCR 991, (1986) Supp. SCC 20, 1961 (1) SCR 750, (1986) 4 SCC 667.

J U D G M E N T

The Judgment of the Court was delivered by :

S. RAVINDRA BHAT, J. :- This appeal challenges a judgment of the Madhya Pradesh High Court which quashed Rule 55A of the Motor Vehicles Rules, 1994 (hereafter "the State Rules") framed by the Madhya Pradesh State (hereafter "the state") and published by it. The respondent (hereafter "the vehicle owner") had approached the High Court, contending that the said rule was *ultra vires* the state's power under the Motor Vehicles Act, 1988 (hereafter "the Act"), and the Central Motor Vehicle Rules, 1989 (hereafter "the Central Rules"). The High Court accepted his contentions.

2. The vehicle owner purchased the motorcycle in May, 2004 and applied for its registration on 25-05-2004 before the concerned registering authority, through the prescribed application in Form No. 20. By an order (of 27-05-2004), the registering authority rejected the application, stating that the vehicle owner's claim for allotment of registration number 'MP-KL-4646' could not be accepted, as the petitioner had not paid the required fee prescribed for allotment of that number. The motorcycle was allotted another number (MP20-KL-5100) which the petitioner did not want. He therefore, approached the High Court in writ proceedings, contending that allotment of a particular number on payment of a fee (provided in Rule 55A) was contrary to and inconsistent with the provisions of Section 41 and the powers conferred on the State Government to frame rules under Section 65 of the Act of 1988. He challenged the amendment incorporated in the State Rules of 1994 by a notification dated 15.02.2001. He also sought a direction to the registration authority that he should be assigned the number 4646 for his motorcycle. Under Rule 55A, this number was reserved by the State to be

assigned by a separate procedure. The Rules, particularly Rule 55A prescribed not only the procedure but also a special fee for assigning such reserved numbers (which included 4646, which the vehicle owner insisted should be allotted to him). He contended that Rule 55A, was *ultra vires* the provisions of the Act.

3. Mr. Saurabh Mishra, learned counsel for the State relied upon the scheme of the Act, and highlighted that while Section 41(2) undoubtedly conferred the power to prescribe rules and also a fee to allot registration numbers, yet Section 41(6) was specific in that even while the Central Government was authorized to allot certain numbers to the State, the further or onward registration or assignment of those numbers as registration numbers was left to the State.

4. Learned counsel argued that the State Rules were framed by virtue of the powers conferred under section 65 of the Act, which empowers the State to *inter alia,* make rules with regard to issue or renewal of certificate of registration, as well as amounts to be charged for such registration. It was also argued that under Section 211 of the Act, the State is entitled to levy a fee with respect to applications submitted for issuing certificates, licenses or registrations and as the State fixed the procedure for allotment of registration mark by reservation exercising powers under Section 211, such procedure is in accordance with the law. It was argued by Mr. Mishra, that by virtue of Section 41 (6), the registering authority can assign to any vehicle for display on it, a distinguishing mark known as the registration mark. It is submitted that in this instance, since Rule 55A merely empowers the registering authority to assign a specific registration mark, on demand to the concerned person, the power exercised is relatable to Section 41(6), and the High Court's conclusions are erroneous.

5. It was pointed out by Mr. Mishra that the responsibility of assigning registration mark to motor vehicles is that of the State Government. He emphasized that Section 64 (d) of the Act empowers the Central Government to *"prescribe the manner and the form in which the registration mark of the vehicles is to be displayed"*. The Central Government has in fact, specified the form and the manner of display of registration marks on motor vehicles, under Rules 50 and 51 of the Central Rules. The issue raised by the petitioner relates to allocation of a particular registration series, which is within the exclusive domain of the concerned registering authority of the State. The Central Government is not concerned with the allocation of distinguished registration marks.

6. Learned counsel argued that the powers of the central government and the states were clearly delineated; no doubt, the Central Government had exclusive domain over the allocation of particular numbers or series of numbers to the states, and could prescribe the fee to be paid when applications are made for registration. However, under Section 41(6), once a series of numbers (or alpha numeric series) is *allotted* to a state, the procedure to be followed and the fee to be

prescribed for assigning the concerned numbers as registration of individual vehicles is that of the state. The registering authority is none other than a state designated official or agency.

7. Reliance was placed on *Offshore Holdings (P.) Ltd. v. Bangalore Development Authority*[1] by Mr. Mishra, who drew the attention of this court to observations that when two laws, one by the Centre and the other by the state, are alleged to be in conflict (or repugnant to each other) the court should not readily infer repugnancy, but should:

> *"ignore an encroachment which is merely incidental in order to reconcile the provisions and harmoniously implement them. If ultimately, the provisions of both the Acts can coexist without conflict, then it is not expected of the courts to invalidate the law in question. "*

8. This court had also observed that the doctrine of supremacy of federal laws under Article 254 should:

> *"normally be resorted to only when the conflict is so patent and irreconcilable that coexistence of the two laws is not feasible. Such conflict must be an actual one and not a mere seeming conflict between the entries in the two lists. While entries have to be construed liberally, their irreconcilability and impossibility of coexistence should be patent."*

9. Mr. Mishra also relied on other decisions of this court, highlighting that conflict of laws or repugnancy between state and central laws should not be readily inferred, under the Constitution, but rather, the courts should first attempt at harmonizing the two sets of apparently conflicting norms.[2] Counsel also relied on *Sarkari Sasta Anaj Vikreta Sangh v. State of M.P*[3] and urged that the course adopted by the state to assign specific registration numbers through a separate procedure, was in fact a result of popular demand, since many people wanted such specific registration numbers for numerological, astrological and religious reasons. He submitted that the state could have even resorted to its executive powers without framing a rule, since the task of assigning numbers fell within its domain, under the scheme of the Act.

10. It was argued that a reading of Section 211 along with Section 65(2)(d) and (k) clearly indicates that the State Government can make rules with regard to the subjects on which it is specifically empowered to do so. As far as the registration

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[1] (2011) 3 SCC 139

[2] *Fatehchand Himmatlal v. State of Maharashtra* [(1977) 2 SCC 670]*; Union of India v. Shah Goverdhan L. Kabra Teachers' College* [(2002) 8 SCC 228] *and Girnar Traders v. State of Maharashtra* [(2011) 3 SCC 1].

[3] (1981) 4 SCC 471.

of motor vehicles and prescribing fees for registration are concerned, the power is of the State Government to prescribe rules for providing the procedure for assigning or renewing registration numbers, through the registering authority. Stressing that Section 211 was erroneously interpreted by the High Court, learned counsel submitted that it clearly empowered the state to prescribe a fee not otherwise provided, in respect of a service provided by it. Counsel argued that the state provided a separate service, i.e. allocating specific desired numbers to vehicle owners, for which it could well claim a fee, over and above the registration fee prescribed by the Central Government, under Section 41(2).

11. Learned counsel lastly submitted that the generality of the provisions of Section 65(1) and the deployment of the expression *"without prejudice to the generality of provisions of sub-section (1)"* in Section 65(2), together with Section 65(2)(p) were meant to clothe the state government with the power to impose a fee for the kind of services involved in the present dispute. He relied on the judgment in *Academy of Nutrition Improvement v. Union of India*[4] where this court had interpreted a *pari materia* expression (*"in particular and without the generality of the foregoing power, such rules may provide for all or any of the following matters"*[5]). This court had observed, in that judgment, as follows:

> *"Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words 'to carry out the provisions of this Act' or 'to carry out the purposes of this Act'. This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words 'in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters." Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularization of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in section 23(1A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the Rule can be justified with reference to the general power conferred on the central government under section 23 (1), provided the rule does not travel beyond the scope of the Act."*

[4] (2011) 8 SCC 274.
[5] Section 2(1), The Prevention of Food Adulteration Act, 1954.

12. Service of notice of the present proceedings was complete, upon the respondent vehicle owner. He has however chosen to remain absent. Having regard to the public importance of issues involved in the present case, Mr. Manoj Swaroop, learned senior counsel, was asked to assist this court as *amicus curiae* which he did, with much industry and ardor. The *amicus* urged this court not to disturb or interfere with the judgment under appeal. He outlined the scheme of the Act, and underlined Sections 41(1), (2), (3), (6) and (the now deleted[6] s. 41(13)), and contended that there was a clear demarcation of powers of the state and central governments. Highlighting the delineation of rule making powers under Section 64 (by the central government) and under Section 65 (by the state government) it was submitted that the subject of prescription of fee for allotment of registration was exhausted; the central government had exclusive authority to prescribe the particulars required, the form to be used for applying[7] and the form of registration certificates for various kinds of vehicles[8]. Thus, the state had no power to prescribe fees, much less prescribe by-rules for a procedure for assigning specific numbers to various applicants. It was argued that even the power of allocation of a sequence of numbers to individual states was reserved to the central government alone. These ruled out prescription of any further fee, or creation of a separate procedure for assigning specific numbers, and charging higher amounts from desirous applicants/ vehicle owners.

13. Mr. Swaroop argued that Section 211 states that if by any rule, the Central or the State Government is empowered to make under the Motor Vehicles Act, then the Central Government or the State Governments, *notwithstanding the absence of any express provision, are empowered to provide for levy of such fees in respect of various items like applications, applications for amendment to the issue of certificates and other matters provided therein.* It was argued that to levy a fee under Section 211, a provision should exist empowering the Central Government or the State Government to make such a rule. Such power cannot be exercised in regard to matters for which the Act does not give power to the State Government to make Rules. Since the power to prescribe a fee for registration of a motor vehicle is vested in the Central Government under Section 41(2), the power to levy a fee under section 211 can be exercised by the State Government only if it is empowered under the Act to prescribe fees for the purpose of registration of a motor vehicle. The Act does not empower the State Government to levy fees for registration of a vehicle; therefore, no fees can be prescribed for allotment of a registration mark for a motor vehicle, exercising powers under Section 211. It was submitted that the so called right of assigning the registration number is only the

[6] By virtue of amendment through Act 32 of 2019, by Parliament.
[7] Form 20, attached to the Central Rules.
[8] Form 23 and 23A, attached to the Central Rules.

last step in the process of allotment, for which the Central Government levies a fee under Section 41(2).

14. Mr. Swaroop argued that the state is conferred with power only to make rules providing the procedure for issue or renewal of certificate or recovery of amount or amounts under sub-section (13) of Section 14 i.e., to prescribe the amount to be paid for delay on the part of the owner to file an application for registration of motor vehicle under sub-section (1) of Section 41 or under sub-section (8) of Section 41 for renewal of motor vehicles registration. These provisions do not empower the state to make a rule fixing the fee to be charged for registration of a motor vehicle. It is, therefore, clear that under the Act, the power to prescribe a fee for registration of motor vehicles is only conferred on the Central Government, and in exercise of the such power, the Central Government has already fixed the fee under Rule 81 of the Central Motor Vehicle Rules, 1989.

15. Next, reliance was also placed on Sections 47(7), 49(4) and 50(5) of the Act. The *amicus* contended that these provisions specifically conferred powers upon the state to prescribe amounts as fee for transfer of registration of vehicles on their removal from one state to another; for obtaining no objection certificate from the registering authority, and upon transfer of ownership. He therefore, urged that the splitting up of an indivisible process, by drawing a distinction between "allotment" of numbers by the Centre and their onward assignment by the state registering authority and the charging of a separate fee for the latter, was impermissible. The absence of specific provisions enabling the state to prescribe amounts as fees, for particular enumerated services, showed Parliamentary intent to exclude the state from levying a fee for "assigning" a registered number, for an act for which the Central government had prescribed a fee under Section 41(2). Counsel also urged that the provision of Section 41(2) had the effect of excluding the power of prescribing any fee in relation to registration of vehicles, including the state's powers under Section 65 and 211.

16. Mr. Swaroop sought to contrast the provisions of the now repealed Motor Vehicles Act, 1939, with the Act. He contended that Section 41(2) manifested Parliamentary intent to exclude state power in respect of a subject matter, where such power had previously existed. He highlighted that under the old law, individual states were free to prescribe fees according to varying standards. The Act however, was an improvement, because a single power of one fee, could be prescribed under Section 41(2).

17. The *amicus* lastly relied on a notification issued by the Central Government[9] which had assigned specified groups of letters *"for use as registration mark for each State and Union Territory to be followed by the code*

[9] S.O. 444(E) date 12 June, 1989.

number of the Registering Authority to be allotted by the State Government or, as the case may be the Administrator, not exceeding four figures, to be used as registration mark." It was urged that the notification, after setting out in tabular form, the letters assigned to various states and union territories, further directed that whenever the four figures referred to earlier *"reached 9999, the next series shall begin with the alphabet 'A' followed by not more than four figures and thereafter with alphabet 'B' followed by not more than four figures and so on..."*

18. Counsel asserted that this exercise exhaustively resulted in allotment of letters and numbers to the concerned states, which then merely had to follow a procedure of assigning them, on the basis of a pre-determined sequence. Under no circumstances could the state or the registering authority pick out a few or some numbers for special assignment, and charge a separate, higher fee.

19. Learned counsel relied on *Distt. Council of United Khasi and Jaintia Hills v. Sitimon Sawian*[10] where, this court construed the term "allot" and held that

> *"The word "allot" according to standard dictionaries means, distribute by lot, or in such a way that the recipients have no choice; to assign as a lot or apportion to; and the word "allotment" means, apportioning; the action of allotting; share allotted to one; small portion of land let out for cultivation."*

20. It was submitted that allotment of a registration, and prescribing a fee, for that purpose, under Section 41(2) similarly enfolds within the term, the entire process, including the kind of application, payment of fee, the form to be used, etc. All these are within the domain of the Central Government; the state cannot segregate the last limb and seek to recover a fee for "assigning" the actual number to individuals. Learned counsel also relied on the judgment in *Indian Medical Assn. v. Union of India*[11], where it was held that

> *"66. The word "allot", in its verb form, is defined by Concise Oxford Dictionary [8th Edn., Oxford University Press (1990)] to include the meaning of the act to give or apportion to, distribute officially to. Allotment is what results from such an act i.e. an apportionment. The word "reserve" is defined to also include the meaning of "order to be specifically retained or allocated for a particular person", and the word "reservation" is the act or an instance of reserving or being reserved. The word "allocate" is defined to include the meanings of an act to assign or devote something for a purpose or to a person. "*

[10] (1971) 3 SCC 708 at p. 712.
[11] (2011) 7 SCC 179 at p. 217

Mr. Swaroop lastly relied on the decision of this court in *Jantia Hill Truck Owners Assn. v. Shailang Area Coal Dealer & Truck Owner Assn.*[12]

21. The learned Additional Solicitor General, Mr. Vikramjit Banerjee, appearing for the Union, supported the state's position. He urged that under Section 39 of the Act, every motor vehicle plying on roads should be registered. Section 40 of the Act, prescribes that such registration is made by the concerned registering authority of the State Government under whose jurisdiction the owner of the vehicle resides or has a place of business. It is the duty of the concerned registering authority of the State Government to assign a registration mark to the vehicle as per Section 41(6) of the Act. Every application for registration of motor vehicles should be accompanied with the fees as specified by the Central Government. The Central Government has already specified fees for registration of vehicles under Rule 81 of the Central Rules.

22. The ASG urged that Section 64(d) of the Act empowers the Central Government to prescribe the manner and the form in which the registration mark of the vehicles is to be displayed. Accordingly, the Central Government has specified the form and the manner of display of registration marks on the motor vehicles under Rules 50 and 51 of the Central Rules. The issue in this case, i.e. relating to the allocation of a particular registration number concerns the registering authority of the State Government, and not the Union. It was argued that under Section 65 of the Motor Vehicles Act, 1988, the State Governments are vested with the power to frame rules on issues pertaining to registration of motor vehicles, which are not covered under Section 64 of the Act. Under 65(2)(b) of the Act, the appointment, functions and jurisdiction of registering and other prescribed authorities fall under the purview of the State Government. Moreover, under Section 65(2)(b) of the Act, the States are vested with power to make rules on any other matter relating to registration of motor vehicles, which need to be specified. Allocation of a registration mark is the responsibility of the concerned State Government. The States are competent to make rules for this purpose.

Provisions of the Act

23. The relevant provisions of the Act are reproduced below:

> ***"39. Necessity for registration.***—*No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:*

[12] (2009) 8 SCC 492 at p. 500.

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

40. Registration, where to be made. *— Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept.*

41. Registration, how to be made. *— (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government: Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.*

(2) An application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government.

(3)The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.

(4)In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify.

(5) The registering authority shall enter the particulars of the certificate referred to in sub-section (3) in a register to be maintained in such form and manner as may be prescribed by the Central Government.

(6) The registering authority shall assign to the vehicle, for display thereon, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government.

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64. Power of Central Government to make rules. *— The Central Government may make rules to provide for all or any of the following matters, namely:*

(a) the period within which and the form in which an application shall be made and the documents, particulars and information it shall accompany under sub-section (1) of section 41;

(b) the form in which the certificate of registration shall be made and the particulars and information it shall contain and the manner in which it shall be issued under sub-section (3) of section 41;

(c) the form and manner in which the particulars of the certificate of registration shall be entered in the records of the registering authority under sub-section (5) of section 41;

(d) the manner in which and the form in which the registration mark, the letters and figures and other particulars referred to in sub-section (6) of section 41 shall be displayed and shown; 1. Ins. by Act 54 of 1994, s. 19 (w.e.f. 14-11-1994).

(e) the period within which and the form in which the application shall be made and the particulars and information it shall contain under sub-section (8) of section 41;

(f) the form in which the application referred to in sub-section (14) of section 41 shall be made, the particulars and information it shall contain and the fee to be charged;

(g) the form in which the period within which the application referred to in sub-section (1) of section 47 shall be made and the particulars it shall contain;

(h) the form in which and the manner in which the application for "No Objection Certificate" shall be made under sub-section (1) of section 48 and the form of receipt to be issued under sub-section (2) of section 48;

(i) the matters that are to be complied with by an applicant before no objection certificate may be issued under section 48;

(j) the form in which the intimation of change of address shall be made under sub-section (1) of section 49 and the documents to be submitted along with the application;

(k) the form in which and the manner in which the intimation of transfer of ownership shall be made under sub-section (1) of section 50 or under sub-section (2) of section 50 and the document to be submitted along with the application;

(l) the form in which the application under sub-section (2) or sub-section (3) of section 51 shall be made;

(m) the form in which the certificate of fitness shall be issued under sub-section (1) of section 56 and the particulars and information it shall contain;

(n) the period for which the certificate of fitness granted or renewed under section 56 shall be effective;

(o) the fees to be charged for the issue or renewal or alteration of certificates of registration, for making an entry regarding transfer of ownership on a certificate of registration, for making or cancelling an endorsement in respect of agreement of hire-purchase or lease or hypothecation on a certificate of registration, for certificates of fitness for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees.

(p) any other matter which is to be, or may be, prescribed by the Central Government.

65. Power of State Government to make rules. — *(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 64.*

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred under this Chapter (the fees to be paid in respect of such appeals and the refund of such fees);

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

(c) the exemption of road-rollers, graders and other vehicles designed and used solely for the construction, repair and cleaning of roads from all or any of the provisions of this Chapter and the rules made thereunder and the conditions governing such exemption;

(d) the issue or renewal of certificates of registration and fitness and duplicates of such certificates to replace the certificates lost, destroyed or mutilated;

(e) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the gross vehicle weight;

(f) the temporary registration of motor vehicles, and the issue of temporary certificate of registration and marks;

(g) the manner in which the particulars referred to in sub-section (2) of section 58 and other prescribed particulars shall be exhibited;

(h) the exemption of prescribed persons or prescribed classes of persons from payment of all or any portion of the fees payable under this Chapter;

(i) the forms, other than those prescribed by the Central Government, to be used for the purpose of this Chapter;

(j) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the State of particulars of such vehicles and of their registration;

(k) the amount or amounts under sub-section (13) of section 41 or sub-section (7) of section 47 or sub-section (4) of section 49 or sub-section (5) of section 50;

(l) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;

(m) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;

(n) the form in which and the period within which the return under section 62 shall be sent;

(o) the manner in which the State Register of Motor Vehicles shall be maintained under section 63;

(p) any other matter which is to be or may be prescribed. "

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211. Power to levy fee. *— Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:*

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special

order, exempt any class of persons from the payment of any such fee either in part or in full. "

Analysis and Conclusions

24. As is evident from the relevant extracts of the Act, Section 39 obliges every vehicle owner to secure a registration; every owner has to register his vehicle by approaching the registering authority (designated by the State by virtue of Section 65(2)(b)[13] of the Act).

25. Section 41(1), the next in sequence, enables the Central Government to prescribe the form for application for such registration. There are two provisos to this; the second proviso added in 2019 states that in case of a new motor vehicle, the application for registration in that State shall be made by the dealer of such motor vehicle, if the new motor vehicle is registered in the same State. By Section 41(2), the application for registration has to be accompanied by "such fee as may be prescribed by the Central Government." By Section 41(3), the registering authority has to issue the certificate of registration in the name of the owner in such form containing the relevant particulars as prescribed by the Central Government.

26. Section 41(6) the interplay of which, with Section 41(2), is directly in issue -enacts that the registering authority *"shall assign to the vehicle for display thereon a distinguishing mark consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time"*. Now, this provision is divided into two parts. Although the duty of the registering authority to assign the *"distinguishing mark"* has been enacted as the first event, in reality, in sequence, the allotment of groups of letters followed by such letters and figures (which find mention in the latter part of the provision), that are allotted to the State by the Central Government would be an event that occurs prior to the assignment of such distinguishing mark and number. The notification of 12.06.1989 issued by the Central Government in exercise of this power to allocate numbers under Section 41(6) has allocated distinguished groups of letters to each individual State and UT. According to the notification, this group of letters is to be followed by the code number of the registering authority *"to be allocated by the State Government or the Administrator of the UT"*. The notification, after setting out the groups of letters, goes on to state that where four figures referred to earlier in it, (i.e. the notification) reaches 9999, the next series shall begin with the alphabet A followed by not more than four figures and thereafter with alphabet B, and so on.

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[13] Section 65(2)(b) of the Act reads as follows:

(2) without prejudice to the generality of the foregoing power, such rules may provide for :

xxxx xxxx xxxx

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities.

This notification from its facial reading clothes the state government or the UT administration, with the distinct task of allotting the code number and thereafter assigning the numerics (the four numbers in question).

27. The reasoning of the High Court, in its impugned judgment is that the field of prescribing the fee for an application for registration has been exclusively conferred upon the Union Government, thus excluding from its sweep any State power to claim any manner of fee or amount as part of that task. The *amicus* characterized the impugned Rule 55A as segregating and separating the last step in one indivisible process of allotment of a registration mark.

28. The High Court, in addition, also concluded that Section 211 was of no consequence and could not be pressed into service by the State Government inasmuch as the field of charging fees for allotment of registration numbers was fully occupied by Section 41(2). It also held that by the same logic, the state had no power to make rules under Section 65(2) to charge any fee in this regard. The *amicus* had made reference to Section 65(2)(k) which explicitly talks of the power of the State to prescribe the amount or amounts payable under Section 41(13); Section 47(7), Section 49(4) or Section 50(5). Each of these provisions was also relied upon to state that whenever Parliament intended to empower the State Government to charge fee or amounts, it did so expressly and that the rule of *expressio unius est exclusio alterius* applied in the circumstances.

29. This Court is of the opinion that the High Court, in its impugned judgement, lost sight of the true import of Section 211. The existence of specific provisions empowering the State (such as Sections 41(13), 47(7), 49(4) and 50(5)), means that the power of the State to claim or charge amounts is specifically recognized by express provisions. Further, there are certain services and functions for which the State is empowered to levy fees. It is precisely to cover these contingencies, i.e. where the service is rendered or some function performed, that the State is empowered by a residual provision (much like the Central Government with which it shares the power concurrently) to levy fees. In this respect, it would be useful to note that Section 211 is cast in wide terms and that any rule which the Central Government or the State Government is empowered to make under this Act may, *notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service.* Clearly, therefore, the Parliament intended that contingencies not covered by a specific power to levy fees or amounts, which entailed some activity on the part of the State, including rendering of any service could be legitimately charged or subjected to the levy of fee or amounts.

30. The assignment of numbers by the registering authority, as seen earlier, through an official/agency or department notified by the State Government, cannot be seen as a mere step - albeit at the fag-end of the registration allotment process. In fact, though it is the culmination of the allotment process, it is nevertheless an important step. The state, in the opinion of this Court, is entitled to indicate its choice or manner of assigning by prescribing a particular set of procedures for the assignment of numbers. Thus, for instance, the assignment of the concerned "code" - to the individual registering authorities followed by the assignment of numerics may follow a predetermined pattern which may be district wise, state government department wise (in the case of publicly owned vehicles), different sequences for buses and heavy vehicles and so on. If such a predetermined choice can be made by prescribing the mode of assignment, it is both regulatory and at the same time indicative of State policy. *Per se,* the Court cannot brush aside the element of service which may be involved - especially if the general public or a sub-section of it, wishes to choose particular numbers for various considerations. Such "fancy" numbers or "auspicious" numbers may well therefore have to be set apart having regard to the peculiar socio-cultural needs of the people of the state. It is in such an event that the availability of such numbers and their reservation as a choice and the power of their assignment assumes importance. In the impugned Rule 55A[14] in the present instance, introduced in 2001 through amendment by the State of M.P., prescribes four different fees -

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[14] ***55A. Allotment of registration mark.*** *- (1) On receipt of an application made in writing by any person to the registering authority for reservation of registration mark, the registering authority shall reserve the registration mark in the following manner:-*

(a) Registration marks from 1 to 9 in any series prevalent within the jurisdiction of Registering Authority, shall be reserved on payment of fee of Rs. 15,000/- (Rupees Fifteen Thousand) for each registration mark.

(b) For reservation of registration mark from number 10 to 100 in any series prevalent within the jurisdiction of the Registering Authority, on payment of fee of Rs. 12,000/- (Rupees Twelve Thousand) for each registration mark.

(c) For reservation of registration mark number, 101, 111, 123, 200, 202, 222, 234, 300, 303, 333, 345, 400, 404, 444, 456, 500, 505, 555, 567, 600, 606, 678, 700, 707, 777, 786, 789, 800, 808, 888, 900, 909, 999, 1000, 1001, 1010, 1111, 1112, 1212, 1213, 1221, 1234, 1313, 1314, 1331, 1414, 1415, 1515, 1516, 1616, 1617, 1661, 1717, 1718, 1771, 1818, 1819, 1881, 1919, 1929, 1991, 2000, 2002, 2020, 2021, 2112, 2121, 2122, 2222, 2223, 2323, 2324, 2332, 2345, 2424, 2425, 2442, 2525, 2526, 2552, 2626, 2627, 2662, 2727, 2728, 2772, 2828, 2829, 2882, 2929, 2930, 2992, 3000, 3003, 3030, 3113, 3131, 3132, 3223, 3232, 3233, 3333, 3334, 3434, 3435, 3443, 3456, 3535, 3536, 3553, 3636, 3637, 3663, 3737, 3738, 3773, 3838, 3839, 3883, 3939, 3940, 3994, 4000, 4004, 4040, 4041, 4114, 4141, 4142, 4224, 4242, 4243, 4334, 4343, 4344, 4444, 4445, 4545, 4546, 4554, 4567, 4646, 4647, 4664, 4747, 4748, 4774, 4848, 4849, 4884, 4949, 4950, 4994, 5000, 5005, 5050, 5051, 5115, 5151, 5152, 5225, 5252, 5253, 5335, 5353, 5354, 5445, 5454, 5455, 5555, 5556, 5656, 5657, 5665, 5678, 5757, 5758, 5775, 5858, 5859, 5885, 5959, 5960, 5995, 6000, 6006, 6060, 6061, 6116, 6161, 6162, 6226, 6262, 6263, 6336, 6363, 6364, 6446, 6464, 6465, 6558, 6565, 6666, 6667, 6767, 6768, 6776, 6789, 6869, 6886, 6969, 6970, 6996, 7000, 7007, 7070, 7071, 7117, 7171, 7172, 7227, 7272, 7273, 7337, 7373, 7374, 7447, 7474, 7475, 7557, 7575, 7576, 7667, 7676, 7677, 7777, 7778, 7878, 7887, 7979, 7980, 7997, 8000, 8008, 8080, 8081, 8181, 8182, 8228, 8282, 8283, 8338, 8383, 8384, 8448, 8484, 8558, 8585, 8586, 8668, 8686, 8687, 8778, 8787, 8788, 8888, 8889, 8989, 8998, 9(X)0, 9009, 9090, 9091, 9119, 9191, 9192, 9229, 9292, 9293, 9339, 9393, 9394, 9449, 9494, 9495, 9559, 9595, 9596, 9669, 9696, 9697, 9779, 9797, 9798, 9889, 9898, 9899, 9999, on payment of fee of Rupees 10,000/- (Rupees Ten Thousand) for each registration mark.

₹ 15000/- for the registration marks 1 to 9 in any series prevalent within the jurisdiction of the registering authority; and ₹ 12000/- for reservation of marks from 10 to 100 in any series within the jurisdiction of the registering authority. For reservation of large series of numbers indicated in Rule 55A(c), ₹ 10000/- and ₹ 2000/- for reservation of any other number or numbers within 1000 from the last number assigned in the serial order.

31. In addition to charging such fees, the registering authority is enjoined by Rule 55A(2) to follow the principle of first-come-first-serve in reserving particular numbers; and to allot the registration mark reserved upon production of the vehicle along with the application in Form-20 (of the Central Rules), provided the vehicle is compliant with the provisions of the Act and Rules. By Rule 55A(d), the reservation of the mark would be cancelled if the vehicle is not produced for allotment within three months from the date of allotment. Obviously, this is meant to avoid abuse of the reservation process by trafficking in numbers, by providing finite time within which such numbers can be used.

32. Quite like in the case of fees for assignment of particular numbers, certain other services too are contemplated under the Act. Section 56(1)[15] directs that no transport vehicle would be deemed to be validly registered unless it carries a

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(d) For reservation of any other number not specified in subclauses (a), (b) and (c) of this rule within thousand numbers from the last number assigned in serial order on payment of a fee of Rs. 2000/- (Rupees Two Thousand) for each registration mark.

(2) The Registering Authority while reserving the registration mark on the application of any person shall strictly adhere to the following guidelines :-

(a) The Registering Authority shall reserve the registration mark on the basis of 'first come first served' principle.

(b) If there is more than one application on a day for particular registration mark as specified above the reservation of registration mark shall be done in accordance with the serial number on the cash receipt regarding payment of the amount of fee.

(c) The registration mark reserved shall be allotted on production of the vehicle alongwith the application in Form-20 of the Central Motor Vehicles Rules, 1989 and when the vehicle is found complying with the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder for registration of a motor, vehicle.

(d) The reservation of registration mark shall stand automatically cancelled if the vehicle is not produced for allotment of registration number within three months from the date of reservation of registration mark.

(e) The amount of the fee paid for reservation of registration mark shall not be refundable.

(f) The registration mark cancelled under clause (d) can be re-reserved by the Registering Authority in accordance with the above procedure.

[15] ***56. Re-assignment of registration number under certain condition.*** *- (1) State Government may, by general or special order, direct all Registering Authority of the State, to reassign the new number under the Act, in place of number allotted under the Motor Vehicles Act, 1939 (No. 4 of 1939) in respect of all or any class of vehicles and also prescribe the manner and condition thereof, and the provision of sub-section (6) of Section 41 of the Act shall apply in this respect.*

(2) State Government while issuing order under sub-rule (1), shall provide a reasonable time which shall not be less than six months within which the owner of such vehicle shall obtain new number.

(3) No fee shall be charged for the assignment of new number under sub-rule (1), if the owner applies within the prescribed time. Where the application is received after the expiry of prescribed period, a late fee of Rs. 100/- shall be payable.

certificate of fitness. Such fitness certificate is to be issued by authorized testing stations [by Section 56(2)]. Section 43 enables the owner of a motor vehicle to apply to any registering authority or other authority which may be prescribed by the State Government to have the vehicle temporarily registered. This provision contains a *non-obstante* clause. Various provisions of the Act deal with orders of higher authorities and appellate authorities. Implicit with this is the power to issue copies of such decisions. Further, in cases where individuals or parties interested seek to duplicate or acquire extra copies of such orders, a separate category of service is provided. Likewise, wherever duplicates of documents such as Registration Certificates etc. are issued, necessarily, a service is performed. Rule 62 of the M.P. Rules of 1994 provided for fees to be charged in respect of various such services (temporary registration or extension thereof in different classes of vehicles); copies of miscellaneous applications, duplicate certificate of fitness for different classes of vehicles and so on. An overall reading of the M.P. Rules and the Act therefore clearly establishes that besides the express authorization to levy fees or collect amounts, both the Central Government and the State Government are empowered - in fact duty bound to extend certain services in the performance of such duties. Both these bodies, i.e. the Central and State Governments would therefore, be acting within their authority to charge or levy fees.

33. If there are any further doubts on this issue, the generality of the power under Section 65(1) to frame rules, in the opinion of this Court is sufficient along with Section 211, to conclude that the State Government has the authority to prescribe a fee for reserving certain numbers or distinguishing marks to be assigned as registration numbers. It has not been shown how the setting apart of or reservation of some numbers - here, a fraction of the large potential batch of numbers which the registering authority can otherwise assign to vehicles, is *per se* arbitrary or unreasonable. Neither were any such arguments urged before this Court.

34. This Court has in the past observed that whenever a State confers rule making power or empowers delegated legislation, i.e. and where or wherever the statute first lays out a general provision authorizing subordinate legislation or the framing of separate legislation to carry out the purposes of that Act, and uses the expression *"in particular and without generality of the foregoing powers"* , followed by another delegation which enumerates specific powers preceded by expressions such as *"in particular and without the generality of the foregoing powers,"* the particularization is only illustrative and does not subsume the

general power. The State had relied upon the decision in *Academy of Nutrition* (supra) which was to that effect. There are other decisions as well on this issue.[16]

35. This court has, in the past, held that when a central enactment clothes the state with the power, or tasks it to do a thing such as grant of lease of minor minerals, an implicit power to charge lease rent or royalty must be read into the state's power. In *D.K. Trivedi & Sons v. State of Gujarat,* the court held:[17]

> *"40. the grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under Section 15(1), therefore, the State Governments have the power to make rules providing for payment of surface rent, dead rent and royalty by the lessee to the government."*

36. In *Jaintia Hill Truck Owners Assn*[18]*,* this court had pertinently observed in the context of services rendered by weighment, through third party, agencies, where the state enabled charging of fee, that:

> *"**28.** Where the State or the State-controlled agencies render services for the purpose of effectuation of the provisions of a Central Act, it, in our opinion, is entitled to charge a reasonable amount in respect thereof. We may, in this behalf, refer to a*

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[16] See *Afzal Ullah* v. *State of U.P.* (1964) 4 SCR 991 which held that:

"It *is now well settled that the specific provisions such as are contained in the several clauses of Section 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by Section 298(1) (vide King Emperor* v. *Sibnath Banerji* (AIR 1945 PC 156] *). If the powers specified by Section 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under Section 298(2) control the general words used by Section 298(1)."*

Refer also: *Rohtak & Hissar District Electric Supply Co Ltd v State of UP* 1966 (2) SCR 863; *Bharat Sanchar Nigam Ltd v. Telecom Regulatory Authority of India* and (2014) 3 SCC 222; *K. Ramanathan* v. *State of Tamil Nadu* (1985) 2 SCC 116.

[17] (1986) Supp. SCC 20, at p. 54.

[18] *Supra,* fn. 12.

decision of this Court in T. Cajee v. U. Jormanik Siem [AIR 1961 SC 276 : (1961) 1 SCR 750] . The question which arose for consideration therein was as to whether in absence of any law regulating the appointment and succession of chiefs and headmen, a notice issued to the respondent therein to show cause as to why he should not be removed from his office, was valid."

37. The decision cited in *Jaintia Hill (supra)* - i.e., *T. Cajee v U. Jormanik Siem*[19] considered the validity of appointment of a village headman by an autonomous district council, under provisions of the Sixth Schedule to the Constitution of India. The High Court upheld the argument that a conferment of legislative power (conferred upon the District Council) if not exercised, did not empower the council to issue appointment in the absence of rules. This court disapproved the High Court's reasoning and held that:

"With respect, it seems to us that the High Court has read far more into Para 3(1)(g) than is justified by its language. Para 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under Para 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Articles 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subjects enumerated in Para 3(1). Now Para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district... "

38. The other decision, cited in *Jaintia Hill (supra),* i.e., *Surinder Singh v. Central Government*[20] states the proposition in the following terms:

"Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression 'subject to the rules' only

[19] 1961 (1) SCR 750.
[20] (1986) 4 SCC 667.

> *means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."*

39. This court therefore, holds that the assignment of "distinctive marks" i.e. registration numbers to motor vehicles (which includes the power to reserve and allocate them, for a specific fee) is a distinct service for which states or their authorities (such as the registering authorities, in this case) are entitled to charge a prescribed fee. Rule 55A of the MP Rules is not therefore, in excess of the powers conferred upon the state, by the Act or the Central Rules.

40. This court notices that the impugned judgment proceeded on the assumption that the state was not *competent* to make the legislation. The use of that expression, at best can be characterized as misconceived. In the present case, the state of M.P. derived its powers to frame the concerned rules, through the provisions of the Motor Vehicles Act itself. The question, therefore, of *repugnance* as properly understood, did not arise; rather it was a case whether the state government, as one of the delegated authorities, was empowered through Parliamentary law to frame the rule that it did. At best, the issue that arose was whether the offending rule (Rule 55A) was *ultra vires* the Act or the Central Rules. In the opinion of this court, the impugned rule was within the ambit of the powers delegated to the state, and directly related to performance of its functions under Section 41(6), for which it could legitimately claim a fee, as was done through Rule 55A.

41. Before parting with this judgment, the court records its gratitude to Mr. Manoj Swaroop, Senior Advocate for acting as *amicus* and ably marshalling all arguments that could be mustered to assist this court.

42. The appeal has to succeed, in view of the above reasoning. The impugned judgment is therefore set aside. The appeal is accordingly allowed, but without an order as to costs.

Appeal allowed

I.L.R. [2020] M.P. 2016 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Ashok Bhushan, Mr. Justice R. Subhash Reddy & Mr. Justice M.R. Shah

C.A. No. 3195-3196/2020 decided on 17 September, 2020

TRUSTEES OF H.C. DHANDA TRUST …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

A. Stamp Act, Indian (2 of 1899), Section 40(1)(b) – Deficit Stamp Duty – Penalty – Quantum **– Held – Imposition of extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on mere factum of evasion of duty – It is not the case of Collector that conduct of appellant was dishonest or contumacious – This Court earlier concluded that it is only in the extreme situation, penalty needs to be imposed to the extent of ten times – Penalty reduced to five times – Appeals partly allowed.**

(Paras 21, 23, 25 & 26)

क. स्टाम्प अधिनियम, भारतीय (1899 का 2), धारा 40(1)(b) – स्टाम्प शुल्क की कमी – शास्ति – मात्रा – अभिनिर्धारित – आत्यंतिक शास्ति अर्थात्, शुल्क अथवा उसके कमी वाले भाग का दस गुना का अधिरोपण, मात्र शुल्क से बचने के तथ्य पर आधारित नहीं किया जा सकता – कलेक्टर का प्रकरण यह नहीं है कि अपीलार्थी का आचरण, बेईमान या धृष्टतापूर्ण था – इस न्यायालय ने पूर्व में निष्कर्षित किया था कि केवल आत्यंतिक स्थिति में ही दस गुना तक की शास्ति अधिरोपित किये जाने की आवश्यकता है – शास्ति को घटाकर पांच गुना किया गया – अपीलें अंशतः मंजूर।

B. Stamp Act, Indian (2 of 1899), Section 40 – Penalty – Aims & Objects **– Held – Purpose of penalty generally is a deterrence and not retribution – Public authority should exercise the discretion reasonably and not in oppressive manner.** **(Para 21)**

ख. स्टाम्प अधिनियम, भारतीय (1899 का 2), धारा 40 – शास्ति – लक्ष्य एवं उद्देश्य – अभिनिर्धारित – शास्ति का प्रयोजन सामान्यतः भयोपरत है और न कि दण्डात्मक – लोक प्राधिकारी को विवेकाधिकार का प्रयोग, युक्तियुक्त रूप से करना चाहिए और न कि अन्यायपूर्ण रीति से।

Cases referred:

2019 (3) SCC 788, 2002 (10) SCC 427.

J U D G M E N T

The Judgment of the Court was delivered by : **ASHOK BHUSHAN, J. :-** Leave granted.

2. The appellant by these appeals challenges the judgment of learned Single Judge of the High Court of Madhya Pradesh, Bench at Indore in Writ Petition No.8888 of 2011 dated 30.03.2017 dismissing the Writ Petition of the appellant as well as the judgment dated 04.09.2017 of the Division Bench dismissing the Writ Appeal filed by the appellant against the judgment of the learned Single Judge. The Division Bench has dismissed the writ appeal vide its judgment dated 04.09.2017 holding it as not maintainable.

3. Brief facts of the case giving rise to these appeals are:

Late Shri Harish Chand Dhanda, a Minister in erstwhile Government of Maharaja Holkar of Indore received the free gift of land measuring 108,900 sq.ft. (one lac eight thousand nine hundred) situate at Yeshwant Niwas Road, Indore by Order No.58 of 22.04.1946. Late Shri H.C. Dhanda got constructed in the above piece of land, a building known as 'Hotel Lantern'. Another piece of land situate at 5, Ravindra Nath Tagore Marg, Indore was gifted to Late Shri H.C. Dhanda by his father-in-law late Col. V.B. Jadhav on 05.10.1948. Late Shri H.C. Dhanda possessed various other movable and immovable properties in the city of Indore with which we are not concerned in the present appeals. Late Shri H.C. Dhanda executed his last Will dated 26.10.2002. In his Will he mentioned his movable and immovable properties apart from the above two immovable properties and by his Will he created a Trust in which he appointed his son, Yogesh Dhanda as Chairman of Trust, Shri B.J. Dave, Chartered Accountant, Indore and one Shri Chhaganlal Nagar as member. The above two immovable properties apart from other properties were put in Trust under the aforesaid Will. All Trustees under the Will were the executors of the Will. Shri H.C. Dhanda died on 05.07.2003.

4. A meeting of Board of Trustees was held on 06.04.2005. A resolution was passed by Executors/Trustees to transfer and vest area by executing a Deed of Transfer with a site plan from the trustees to beneficiaries by registering the same. On 21.04.2005 a Deed of Assent was executed between M/s H.C. Dhanda Trust, a private trust as one part and Jogesh Dhanda and others as other part. By Deed of Assent the Trustees/Executors gave assent to complete the title of the Legatees and vest absolutely and forever in their favour both Lantern Hotel and Jahaj Mahal property. A notice was issued by the Collector of Stamps, District Indore stating that in Deed of Assent dated 21.04.2005 proper stamp duty has not been paid, 22.03.2007 was fixed for appearance. The notice further stated that why deficit stamp duty of Rs. 1,62,82,150/-on the document dated 21.04.2005, and ten times penalty should not be imposed. The Trust appeared before the Collector of Stamps and filed its objection. The Collector of Stamps passed an order dated 22.09.2008 holding the Deed of Assent dated 21.04.2005 as a gift deed. The Collector held that under Indian Stamp Act, 1899, the stamp duty payable on a gift deed would be 8% of the market value, Municipal duty 1% and Janpad duty 1%.

The Collector found deficit duty to the extent of Rs.1,28,09,700/- and also imposed ten times penalty i.e. Rs.12,80,97,000/-. The order called upon the Trust to deposit amount of Rs.14,09,06,700/- within thirty days. Aggrieved against the order of Collector, Reference Application was filed by the appellant before the Board of Revenue, Madhya Pradesh, Gwalior. Board of Revenue vide its order dated 25.10.2011 upheld deficiency of stamp duty of Rs.1,28,09,700/- and ten times penalty of Rs.12,80,97,000/-. The order called upon the Trust to deposit amount of Rs.14,09,06,700/-within thirty days. Board of Revenue vide its order dated 25.10.2011 upheld the order of the Collector dated 22.09.2008 and dismissed the Reference Application. Challenging the order of the Board of Revenue as well as the Collector of Stamps a Writ Petition No.8888 of 2011 was filed by the appellant in the High Court of Madhya Pradesh. Learned Single Judge of the High Court vide its judgment dated 30.03.2017 dismissed the writ petition. Learned Single Judge upheld the order of the Collector by which deficiency in the stamp duty and ten times penalty was imposed.

5. An SLP was filed in this Court challenging the order of the learned Single Judge by the appellant which was withdrawn by the appellant on 4.5.2017 seeking liberty to file writ appeal in the High Court. The writ appeal was filed by the appellant being Writ Appeal No.255 of 2017 which has been dismissed by the Division Bench on 4.9.2017 holding the writ appeal as not maintainable. Aggrieved against the aforesaid two orders these appeals have been filed by the appellant.

6. This Court by its order dated 10.11.2017 issued limited notice to the following effect:

> "Issue notice, returnable in six weeks, limited to the quantum of penalty that has been imposed by the Collector (Stamps).
>
> Subject to the condition that stamp duty is paid within a period of one month, there shall be stay of the order qua the penalty."

7. In response to the above notice the respondents have appeared.

8. We have heard Shri A.K. Chitale, learned senior counsel, for the appellant and Shri Tushar Mehta, learned Solicitor General, for the State.

9. Shri A.K. Chitale, learned senior counsel appearing for the appellant submits that the Deed of Assent executed on 21.04.2005 is referable to Section 331 and 332 of Indian Succession Act, 1925. Shri Chitale submitted that document in question is not a Gift Deed. Shri Chitale submits that the penalty imposed by the Collector of Stamps was wholly illegal. There was no dishonest conduct on the part of the appellant, Deed of Assent was executed bona fide on which there was no deficiency in the stamp duty. Shri Chitale submits that no reason has been given by the Collector of Stamps as to why maximum penalty of

ten times was imposed on the appellant while determining the stamp duty. Shri Chitale submits that the Collector of Stamps has not exercised his jurisdiction in reasonable and fair manner and imposition of ten times penalty on the appellant deserves to be set aside.

10. Shri Tushar Mehta, learned Solicitor General refuting the submission of counsel for the appellant contends that nature of document having been found to be gift the Collector has rightly determined the deficiency in the stamp duty and imposed ten times penalty. Shri Mehta submits that there was clear intention of the appellant to evade the payment of stamp duty which clearly called for imposition of ten times penalty. Shri Mehta referred to the order of Board of Revenue and submits that Board of Revenue has also upheld imposition of ten times penalty by holding that the applicant has executed Deed of Assent suppressing the facts intentionally due to which there has been loss of stamp duty. This can neither be termed as wrong nor illegal.

11. We have considered the submissions of the parties and perused the records.

12. Only question to be determined in these appeals is as to whether the imposition of ten times penalty by the Collector of Stamps under Section 40 of the Indian Stamp Act, 1899 was validly imposed or not.

13. The Collector of Stamps vide its order dated 22.09.2008 determined the nature of document dated 21.04.2005 as Gift Deed. The Collector of Stamps in his order also proceeded to determine the market value of property, Lantern Hotel situate at Yashwant Niwas Road and Jahaj Mahal situate in Ravindra Nath Tagore Marg, on the market value of both afove properties stamp duty payable was determined as Rs.1,28,09,900/-, stamp duty of Rs.200/- only having been paid on the document deficit duty was determined as Rs.1,28,09,700/-. The Collector of Stamps by the same order also imposed ten times penalty of Rs.12,80,97,000/-.

14. Before we proceed to consider the respective submissions, it is useful to extract the order of the Collector of Stamps which contains the discussion regarding imposition of penalty, which is as follows:

> ".....In the above background, the deed in question is classified in the category of a gift deed. The total market value of the property in question in the position of year 2005-06 under the document is fixed at market value Rs.12,80,99,000/-, on which total stamp duty of Rs.1,28,09,900/- is payable. Only Rs.200/- stamp duty has been paid on the document. Thus, remaining stamp duty Rs.1,28,09,700/- and, since the party has not mentioned the actual nature of the document with an intention to escape the duty, therefore, under Section 40 of the Indian Stamp Act, 1899, ten times penalty Rs.12,80,97,000/-is imposed. Thus,

total Rs.14,09,06,700/- shall be deposited in the treasure within 30 days."

15. Section 40 of Indian Stamp Act, 1899 provides for Collectors power to stamp instruments impounded. Section 40(1) which is relevant for the present case which is as follows:

> "40. Collectors power to stamp instruments impounded. — (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure: —
>
> (a) if he is of opinion that such instrument is duly stampeded or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;
>
> b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:
>
> Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section."

16. According to Section 40(1)(b) if the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof. The statutory scheme of Section 40(1)(b) as noticed above indicates that when the Collector is satisfied that instrument is not duly stamped, he shall require the payment of proper duty <u>together with a penalty of the five rupees</u>. The relevant part of Section 40(1)(b) which falls for consideration in these appeals is: "<u>or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or deficient portion thereof</u>."

17. The amount of penalty thus can be an amount not exceeding ten times. The expression "an amount not exceeding ten times" is preceded by expression **"if he thinks fit".** The statutory scheme, thus, vest the discretion to the Collector to

impose the penalty amount not exceeding ten times. Whenever statute transfers discretion to an authority the discretion is to be exercised in furtherance of objects of the enactment. The discretion is to be exercised not on whims or fancies rather the discretion is to be exercised on rational basis in a fair manner. The amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force. Neither imposition of penalty of ten times under Section 40(1)(b) is automatic nor can be mechanically imposed. The concept of imposition of penalty of ten times of a sum equal to ten times of the proper duty or deficiency thereof has occurred in other provisions of the Act as well. We may refer to Section 35(a) in this context is as follows:

> "35. **Instruments not duly stamped inadmissible in evidence, etc.** — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :
>
> Provided that—
>
> (a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
>
> (b) ... ..."

18. It is relevant to notice that Section 35 contemplates that when ten times the amount of the proper duty of or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion is required to be deposited. Under Section 39 Collector is empowered to refund penalty. As noticed above under Section 35(a) there is no option except to pay sum equal to ten times of such duty or deficient portion but Section 39 empowers the Collector to refund any portion of the penalty in excess of five rupees which is expressed in following words: "if he thinks fit refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument."

19. The legislative intent which is clear from reading of Sections 33,35,38 and 39 indicates that with respect to the instrument not duly stamped, ten times penalty is not always retained and power can be exercised under Section 39 to reduce penalty in regard to that there is a statutory discretion in Collector to refund penalty.

20. Section 39(1)(b) of the Indian Stamp Act, 1899 came for consideration before this Court in *Gangtappa and another vs. Fakkirappa,* 2019(3) SCC 788 (of which one of us Ashok Bhushan, J. was a member). This Court noticed the legislative scheme and held that the legislature has never contemplated that in all cases penalty to the extent of ten times should be ultimately realized. In paragraph 16 following has been laid down by this Court:

> "16. Deputy Commissioner under Section 38 is empowered to refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. Section 38 Sub-section (1) again uses the expression "if he thinks fit". Thus, in cases where penalty of 10 times has been imposed, Deputy Commissioner has discretion to direct the refund of the penalty in facts of a particular case. The power to refund the penalty Under Section 38 clearly indicates that legislature have never contemplated that in all cases penalty to the extent of 10 times should be ultimately realised. Although the procedural part which provides for impounding and realisation of duty and penalty does not give any discretion Under Section 33 for imposing any lesser penalty than 10 times, however, when provision of Section 38 is read, the discretion given to Deputy Commissioner to refund the penalty is akin to exercise of the jurisdiction Under Section 39 where while determining the penalty he can impose the penalty lesser than 10 times." 20.
>
> The expression "if he thinks fit" also occurs in Section 40 sub-clause (b). The same legislative scheme as occurring in Section 39 is also discernible in Section 40(b), there is no legislative intentment that in all cases penalty to the extent of ten times the amount of proper stamp duty or deficient portion should be realised. The discretion given to Collector by use of expression "if he thinks fit" gives ample latitude to Collector to apply his mind on the relevant factors to determine the extent of penalty to be imposed for a case where instrument is not duly stamped. Unavoidable circumstances including the conduct of the party, his intent are the relevant factors to come to a decision.

21. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).

22. We may refer to judgment of this Court in *Peteti Subba Rao vs. Anumala S. Narendra,* 2002 (10) SCC 427. This Court had occasion to consider in the above

case provisions of Section 40 of the Indian Stamp Act, 1899. Referring to Section 40 this Court made following observation in paragraph 6:

> "6..... The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned."

23. This Court in the above case categorically held that it is only in the very extreme situation that penalty needs to be imposed to the extent of ten times.

24. The Collector by imposing ten times penalty in his order has given the reason for imposition as "the party has not mentioned the actual nature of the document with the intention to escape the duty". When the Collector found intention to escape the duty, it was the case of imposition of penalty but whether the reason given by the Collector is sufficient for imposition of extreme penalty of ten times is the question which needs to be further considered. The High Court while considering the question of imposition of penalty of ten times has also given almost same reason in following words:

> " .....But in the present case the complete title has been transferred by Trust to Jogesh Dhanda and Ishan Dhanda in the name of Deed of Assent. Therefore, there was intention to evade the heavy stamp duty on such transaction. Therefore, the Collector of Stamp has rightly imposed 10 times penalty which is maximum under the Act.
>
> In view of the above, I do not find any merit in this writ petition. The same is hereby dismissed."

25. No other reasons have been given either by the Collector or by the High Court justifying the imposition of maximum penalty of ten times. It is not the case of Collector that the conduct of the appellant was dishonest or contumacious. The High Court in its judgment has noticed that although the resolution was passed on 06.04.2005 to execute the Deed of Transfer by Trustees in favour of Jogesh Dhanda and Ishan Dhanda, but later on they deliberately executed the deed in the name of Deed of Assent on a stamp paper of Rs.200/-. For the reason given by the Collector as well as by the High Court that there was intention to evade the

stamp duty in describing the document as Deed of Assent the imposition of the penalty was called for but in the facts and circumstances and the reasons which have been given by the Collector of Stamps as noticed above we are satisfied that this was not a case of imposition of extreme penalty of ten times of deficiency of stamp duty. Taking into consideration all facts and circumstances of the case, we are of view that ends of justice will be served in reducing the penalty imposed to the extent of the half i.e. five times of deficiency in the stamp duty.

26. In result the appeals are allowed the order of the Collector of Stamps dated 22.09.2008 is modified to the extent that penalty imposed of ten times of Rs.12,80,97,000/- is modified into five times penalty i.e. Rs.6,40,48,500/-. The appeals are partly allowed to the above extent.

Appeal partly allowed

I.L.R. [2020] M.P. 2024 (FB)
FULL BENCH

Before Mr. Justice Ajay Kumar Mittal, Chief Justice,
Mr. Justice Sanjay Yadav & Mr. Justice Vijay Kumar Shukla

W.P. No. 25364/2019 (Jabalpur) decided on 21 September, 2020

TRINITY INFRASTRUCTURE (M/S) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

(Alongwith W.P. Nos. 10711/2019, 18737/2019, 18776/2019, 19313/2019, 24869/2019, 24870/2019, 25365/2019, 25704/2019, 25932/2019, 26091/2019, 26097/2019, 26589/2019, 27371/2019, 27378/2019, 27530/2019, 129/2020, 690/2020, 703/2020, 945/2020, 948/2020, 954/2020, 1005/2020, 1006/2020, 1010/2020, 1665/2020, 1667/2020, 1670/2020, 1739/2020, 1744/2020, 1746/2020, 1862/2020, 2138/2020, 2141/2020, 2143/2020, 2144/2020, 2160/2020, 2444/2020, 2620/2020, 2623/2020, 2625/2020, 2626/2020, 2628/2020, 2734/2020, 3044/2020, 3045/2020, 3046/2020, 5243/2020, 5412/2020, 6087/2020, 9344/2020, 9930/2020, 6767/2020, 5277/2020, 5965/2020 & 2637/2020)

***A. Minor Mineral Rules, M.P. 1996, Rule 6 & 7, Schedule I, Serial No. 6 & Schedule II, Serial No. 3 – Stone for Making Gitti by Mechanical Crushing (Mineral-G) – Government/Private Land – Auction* – Held – Rule 6 & 7 operate in different fields and cover different minerals specified in Schedule I & II – Mineral-G at Serial No. 6 of Schedule-I governed by Rule 6, cannot be taken for "Stone, Boulder, Road Metal Gitti, Rubble Chips etc. as mentioned in Serial No. 3 (Schedule II) governed by Rule 7 – Grant of quarry**

lease for Mineral-G cannot be by way of open auction – For Mineral-G, there cannot be two process, one by open auction for government land and another by way of grant for private land. (Paras 33, 34 & 41)

क. गौण खनिज नियम, म.प्र. 1996, नियम 6 व 7, अनुसूची I, अनुक्रमांक 6 व अनुसूची II, अनुक्रमांक 3 – यांत्रिक पिसाई द्वारा गिट्टी बनाने हेतु पत्थर (खनिज–G) – सरकारी/प्राईवेट भूमि – नीलामी – अभिनिर्धारित – नियम 6 व 7 भिन्न क्षेत्रों में प्रवर्तित होते हैं और अनुसूची I व II में विनिर्दिष्ट भिन्न खनिजों को आच्छादित करते हैं – नियम 6 द्वारा शासित अनुसूची–I के अनुक्रमांक 6 के खनिज–G को नियम 7 द्वारा शासित अनुक्रमांक 3(अनुसूची II) में यथा उल्लिखित ''पत्थर, बोल्डर, रोड मेटल गिट्टी, पत्थर के टुकड़े/चिप्स इत्यादि नहीं समझा जा सकता – खनिज–G हेतु खदान पट्टे का प्रदान, खुली नीलामी के जरिए नहीं किया जा सकता – खनिज–G के लिए दो प्रक्रियाएं नहीं हो सकती, एक, सरकारी भूमि हेतु खुली नीलामी द्वारा एवं दूसरा, प्राईवेट भूमि हेतु प्रदान करके।

***B. Minor Mineral Rules, M.P. 1996, Rule 6 & 7, Schedule I, Serial No. 5 & 6 and Schedule II, Serial No. 1 & 3 – Stone for Making Gitti by Mechanical Crushing (Mineral-G) – Grant/Renewal* – Held – Grant of renewal of quarry lease of Mineral-G at Serial No. 6 of Schedule-I and rest of mineral in Schedule I & II (except Serial No. 5 of Schedule I & Serial No. 1 & 3 of Schedule II on Government land) is governed by Rule 6 and could not be by way of open auction – Even quarry of minerals at Serial No. 3 of Schedule II situated in private land is covered by Rule 6, prescribing the procedure of its grant/renewal by Authority and not by auction. (Para 33)**

ख. गौण खनिज नियम, म.प्र. 1996, नियम 6 व 7, अनुसूची I, अनुक्रमांक 5 व 6 एवं अनुसूची II, अनुक्रमांक 1 व 3 – यांत्रिक पिसाई द्वारा गिट्टी बनाने हेतु पत्थर (खनिज–G) – प्रदान/नवीकरण – अभिनिर्धारित – अनुसूची–I के अनुक्रमांक 6 का खनिज–G एवं अनुसूची I व II के शेष खनिज (सरकारी भूमि पर अनुसूची–I का अनुक्रमांक 5 एवं अनुसूची–II के अनुक्रमांक 1 व 3 को छोड़कर), के खदान पट्टों के नवीकरण का प्रदान, नियम 6 द्वारा शासित होता है एवं खुली नीलामी के जरिए नहीं किया जा सकता – यहां तक कि प्राईवेट भूमि पर स्थित अनुसूची–II के अनुक्रमांक 3 के खनिजों की खदान भी नियम 6 द्वारा आच्छादित हैं जिसमें, प्राधिकरण द्वारा उसके प्रदान/नवीकरण की प्रक्रिया विहित है और न कि नीलामी द्वारा।

***C. Constitution – Article 226 and Minor Mineral Rules, M.P. 1996, Rule 6, Schedule I, Serial No. 6 – Auction – Scope* – Apex Court concluded that Court cannot mandate one method to be followed in all facts and circumstances – Auction, an economic choice of disposal of natural resources, is not a constitutional mandate – Court can test the legality and constitutionality of these methods when questioned and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provision of Constitution. (Para 36)**

ग. संविधान – अनुच्छेद 226 एवं गौण खनिज नियम, म.प्र. 1996, नियम 6, अनुसूची I, अनुक्रमांक 6 – नीलामी – व्याप्ति – सर्वोच्च न्यायालय ने निष्कर्षित किया कि न्यायालय सभी तथ्यों एवं परिस्थितियों में एक ही पद्धति का पालन करने की आज्ञा नहीं दे सकता – नीलामी, प्राकृतिक संसाधनों के निपटान का एक आर्थिक चुनाव है, एक संवैधानिक आज्ञा नहीं है – न्यायालय, इन पद्धतियों पर प्रश्न उठाये जाने पर उसकी वैधता एवं संवैधानिकता का परीक्षण कर सकता है और एक संवैधानिक उत्तर दे सकता है कि कौनसी पद्धतियां संविधान के उपबंध के अधिकारातीत है और कौनसी शक्ति के अधीन।

***D. Interpretation of Statutes* – Apex Court concluded that jurisdiction of Court can be invoked when the language of statute/provision is ambiguous but Court cannot enlarge the scope of legislation or intention when the language of statute is plain and unambiguous – Court cannot add or subtract words to a statute or read something into it which is not there.**

(Para 28)

घ. कानूनों का निर्वचन – सर्वोच्च न्यायालय ने निष्कर्षित किया कि जब कानून/उपबंध की भाषा संदिग्ध हो, न्यायालय की अधिकारिता का अवलंब लिया जा सकता है परंतु जब कानून की भाषा स्पष्ट एवं असंदिग्ध है, तब न्यायालय, विधान की व्याप्ति या आशय को नहीं बढ़ा सकता – न्यायालय, एक कानून में शब्दों को जोड़ या घटा नहीं सकता या उसमें ऐसा कुछ नहीं पढ़ सकता जो वहां नहीं है।

Cases referred:

(2015) 8 SCC 129, (2012) 3 SCC 1, (2012) 10 SCC 1, (1976) 1 SCC 834, 1957 SCC OnLine MP 63, (2005) 9 SCC 579, (2007) 14 SCC 556, (2003) 2 SCC 111, (2005) 6 SCC 281, (1990) 4 SCC 680,(1977) 4 SCC 193, (1992) 4 SCC 711, (2003) 2 SCC 577, (2004) 6 SCC 672, (2005) 2 SCC 271, (2008) 1 SCC 683, 2017 SCC Online MP 1764, (2002) 2 SCC 678.

Devdatt Kamat with *Shoeb Hasan Khan* and *Amit Seth, Kishore Shrivastava* with *Kapil Jain, Arvind Dudawat, Samdarshi Tiwari, Shekhar Sharma, Anil Lala, Vivek Kumar Jain, Shyam Yadav, Ranjeet Dwivedi, Devendra Singh, Tapan Bathere, Aishwarya Singh* and *Saurabh Makhija, Ankit Upadhyay* and *Rahul Deshmukh*, for the petitioners.

P.K. Kaurav, A.G. with *Pushpendra Yadav,* Addl. A.G. for the respondents/State.

O R D E R

(Through Video Conferencing)

The Order of the Court was passed by :

AJAY KUMAR MITTAL, CHIEF JUSTICE : - A Division Bench of this Court while hearing the Writ Petition No.25364/2019 *(M/s Trinity Infrastructure vs. State of*

M.P. and others) along with connected matters on 29.01.2020 found conflict ***between*** the Division Bench decision of Indore Bench of this Court passed in W.P. No.6215/2019 *(Prathvi Infrastructure Pvt. Ltd. vs. State of M.P. and others)* decided on 27.06.2019, which was later on modified by the Bench vide common order dated 08.11.2019 passed in Review Petition No.1051/2019 *(State of M.P. and others vs. Prathvi Infrastructure Pvt. Ltd. and others)* decided along with connected review petitions ***and*** the observations made by a Division Bench of Gwalior Bench of this Court vide order dated 20.01.2020 passed in W.P. No.19690/2019 *(Smt. Prabha Sharma vs. State of M.P. and others)*. Therefore, the following questions were framed for consideration and determination by the Larger Bench:-

(I) Whether the grant of quarry lease for minor mineral *stone for making Gitti by mechanical crushing (i.e. use of crusher)* at Item No.6 of Schedule I, which is governed by Rule 6 of the M.P. Minor Mineral Rules, 1996, on the government land, could be only by way of open auction?

(II) Whether under the 1996 Rules there can be two separate processes i.e. one by open auction for government land and another by way of grant for private land in respect of grant of minor mineral *stone for making Gitti by mechanical crushing (i.e. use of crusher)* at Item No.6 of Schedule I particularly when Rule 6 of the 1996 Rules prescribes for grant and renewal of quarry lease by the Authority mentioned thereunder?

(III) Whether the Division Bench judgment of Indore Bench of this Court in W.P. No.6215/2019 *(Prathvi Infrastructure v. State of M.P.)* decided on 27.06.2019 which was modified in R.P. No.1051/2019 decided on 08.11.2019 *to mean that allotment of quarry lease on any land owned/controlled by any instrumentality of the State or the State in respect of quarry for making Gitti shall be done by the State through the process of open auction only* can be held to be deciding the legal issue correctly in view of the Constitution Bench decision of the Supreme Court in *Natural Resources Allocation, In re, Special Reference No.1 of 2012, (2012) 10 SCC1?*

(IV) Whether the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the M.P. Minor Mineral Rules, 1996 have been correctly interpreted in the Division Bench judgment of Gwalior Bench of this Court in W.P. No.19690/2019 *(Smt. Prabha Sharma vs. State of M.P. and others)?*

(V) Any other question, which may arise for adjudication of the issue involved in the present petition or which the Larger Bench thinks appropriate to decide?

2. After the matter was referred to the Larger Bench for consideration and determination of the aforesaid questions in *M/s Trinity Infrastructure's* case (supra) and connected matters, some more writ petitions involving similar dispute have been filed. In W.P. No.6767/2020 *(M/s Aman Stone Crusher vs. State of M.P. and others)* filed before the Gwalior Bench involving similar controversy, the petitioner therein sought parity with the order dated 20.01.2020 passed by the Division Bench in the case of *Smt. Prabha Sharma* (supra) wherein the Court has directed the Licensing Authority to exercise powers under Rule 6 of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as "the 1996 Rules") and table contained therein, which indicates that the case of the petitioner therein falls under Entry 6 of Schedule-I (specified minerals which can only be granted and renewed as per the procedure prescribed therein). After discussing both the pronouncements in the cases of *Prathvi Infrastructure Pvt. Ltd.* (supra) and *Smt. Prabha Sharma* (supra), the Division Bench at Gwalior vide order dated 08.07.2020 again observed that quarry of stone for making *Gitti* by mechanical crushing can only be allotted by the authority as per the procedure prescribed in Rule 6 of 1996 Rules itself and not by auction. Accordingly, the said Division Bench relying upon the judgment of the Supreme Court in *P. Suseela and others vs. University Grants Commission and others* (2015) 8 SCC 129, formulated the two questions for determination by the Full Bench:-

(i) Whether, in view of Rule 6 of M.P. Minor Mineral Rules, 1996, where specific mode of allotment of quarry lease is provided, whether judicial pronouncement can dilute the said provision and direct the authority to hold auction contrary to Rule 6, even if it is for maximization of revenue?

(ii) Whether, direction No. B given by Division Bench of this Court at Indore Bench in the case of *Prathvi Infrastructure* (supra) to hold auction even in respect of Stone for making Gitti by mechanical crushing (i.e. use of crusher) is contrary to Rule 6 of M.P. Minor Mineral Rules, 1996?

3. Since the above referred two questions in *M/s Aman Stone Crusher'*s case (supra) are almost similar which have already been formulated and referred for consideration in the case of *M/s Trinity Infrastructure* (supra), therefore, the said writ petition and all other matters involving identical dispute have been linked. However, the facts are extracted from *M/s Trinity Infrastructure's* case (supra) wherein the above referred questions were primarily framed.

4. Brief facts, leading to the questions referred, are that the petitioner M/s Trinity Infrastructure has obtained a quarry lease from one M/s Premium Stones by way of transfer, which is situated at village Ghathari, Tehsil Gorihar, District Chhatarpur bearing Khasra No.48 admeasuring 4.00 Hectares, for "Minor Mineral Stone for making *Gitti* by mechanical crushing" (hereinafter referred to in short as "Mineral-G"), which was registered in its favour on 08.08.2016. The

said lease is valid till 2021. Therefore, the petitioner submitted an application dated 02.08.2018 (Annexure P-2) to the Collector, Chhatarpur for renewal of grant in terms of Rule 17 of the M.P. Minor Mineral Rules, 1996 (for short "the 1996 Rules"), but, in view of an order dated 27.06.2019 (Annexure P-1) passed by Division Bench of Indore Bench of this Court in *Prathvi Infrastructure*'s case (supra) the Mining Department has stalled the entire process for grant/renewal of quarry lease for Mineral-G other than by way of auction, as a result of which, the renewal application of the petitioner has been kept pending. In this manner, the present petition has been filed by the petitioner seeking a writ of mandamus against the respondent Nos.1 to 4 to renew its quarry lease for Mineral-G as prescribed in the Rules 6 and 18 of the 1996 Rules.

5. Before taking up the questions referred, it would be essential to summarise the facts of the case in *Prathvi Infrastructure'*s case (supra), which led to issue of directions to the State Government by the Division Bench to take up the process of open auction only in respect of mines for making *Gitti* and later on, modifying the said order in R.P. No.1051/2019 (supra) to the extent that in respect of land, which is under the exclusive title of a private person, the provisions of Rules 6, 9 and 18 of the 1996 Rules wherein a separate procedure is prescribed, shall be followed and in respect of Government land, the question of grant of mining lease/renewal without conducting a process of auction/ issuing NIT does not arise and that the judgment dated 27.06.2019 which was under review, shall also be applicable in respect of renewal as well as pending applications for the Government land. The petitioner- M/s Prathvi Infrastructure and some of the respondents therein had applied for grant of mining lease in respect of Mineral-G. An order was passed on 17.02.2017 granting mining lease in favour of M/s Prathvi Infrastructure, which was assailed by the respondents Nos.5 and 6 therein by filing writ petition being W.P. No.2888/2017 and W.P. No.2691/2017. The said writ petitions were disposed of by directing the parties to avail the alternative remedy of appeal. Accordingly, an appeal was filed, which was dismissed by order dated 08.03.2019 and the order granting the mining lease in favour of M/s Prathvi Infrastructure was affirmed. But, surprisingly, on the same day, another order was passed by the Department allowing the appeal and thereafter, the third order dated 11.03.2019 was passed stating that the order dated 08.03.2019 by which the appeal was allowed, was the correct order. It was in these circumstances, M/s Prathvi Infrastructure had preferred W.P. No.6215/2019 (supra). The Division Bench, apart from summoning the original record in respect of those three orders, referred the matter to the Inspector General of Police, CID to ascertain whether any tampering in the record was done or mischief was played. On the basis of the investigation report, which held the conduct of the officers as suspicious coupled with the allegations and counter-allegations between the parties and further taking note of Rule 7 of the 1996 Rules, which provides for allotment of trade quarries only by auction and Schedule-I and Schedule-II appended to the 1996 Rules, the

Division Bench observed that the proper course of action in the case would be to direct the respondent/State to adhere to the provisions of Rule 7 of the 1996 Rules and to conduct an open auction in respect of quarry in question. Further, the Division Bench relying upon the two decisions of the Supreme Court in *Centre for Public Interest Litigation vs. Union of India,* (2012) 3 SCC 1 and *Natural Resources Allocation*, In re, Special Reference No.1 of 2012, (2012) 10 SCC 1, directed the State to conduct an auction in respect of the quarry in question, as quarry relates to a mineral which is at Serial No.3 of Schedule-II appended to the 1996 Rules and further that in future also the State in respect of mines for making *Gitti* shall conduct an open auction and no mining lease shall be granted without conducting an open auction. The relevant operative part of the judgment in *Prathvi Infrastructure'*s case (supra) is reproduced as under:-

> "In the light of the aforesaid order also and the judgments referred above of the Hon'ble Supreme Court, the safest course is to direct the State Government to conduct a process of auction, which is also provided under the rules, the writ petition is disposed of with the following directions:-
>
> (A) The respondent/State shall conduct an auction in respect of the quarry in question as quarry relates to a mineral which is at item No.3 schedule 2 appended *(sic* to) the MP Minor Mineral Rules, 1996. The process of auction be initiated within the period of four weeks from today.
>
> (B) The Respondent/State in future also in respect of mines for making Gitti shall conduct an open auction and no mining lease shall be granted without conducting an open auction."

Thereafter, some of the affected parties including the State of M.P. sought review of the said order dated 27.06.2019 (Annexure P-1) forming the subject matter of R.P. No.1271/2019 *(Gulshan Temre vs. State of M.P. and others);* R.P. No.1051/2019 *(State of M.P. and others vs. Prathvi Infrastructure Pvt. Ltd. and others)* and R.P. No.1270/2019 *(Rupesh Bisen vs. State of M.P. and others),* which were decided vide common order dated 08.11.2019 (Annexure P-4) and the order dated 27.06.2019 was modified to the extent indicated hereinbefore. The relevant paragraphs of the order passed in R.P. No.1051/2019 (supra) are reproduced as under: -

> "5. After hearing learned counsel for the parties, this Court is of the opinion that for private land, a separate procedure is prescribed under the Rules. The order passed by this Court for conducting auction/issuing NIT in respect of private land deserves to be modified. Resultantly, it is made clear that in respect of land which is under the exclusive title of a private person, the provisions of Rule 6, 9 & 18 shall be followed. It is further clarified that in case the land is owned/controlled by any local

body, Gram Panchayat or any other instrumentality of State or the State, it shall not be treated as private land. Only that land which is vesting in a private person shall be subject to Rules 6, 9 & 18.

6. It has also been argued by the learned counsel Shri Tiwari that certain applications in respect of government land are at the verge of renewal and are at the verge of finalisation. In the considered opinion of this Court, in respect of government land, the question of grant of mining lease/renewal without conducting a process of auction/issuing NIT does not arise and, therefore, the judgment delivered by this Court dated 27/06/2019 shall also be applicable in respect of renewal as well as in respect of pending applications in case they are in respect of government land."

6. Mr. Devdatt Kamat, learned senior counsel leading the arguments on behalf of the respective petitioners with regard to the legal defensibility and sustainability of the directions contained in the orders dated 27.06.2019 (Annexure P-1) and 08.11.2019 (Annexure P-2) passed in *Prathvi Infrastructure'*s *case* (supra) for conducting open auction in respect of Mineral-G on the Government land as well as in cases of renewal and pending applications therefor, took us through the various provisions of the 1996 Rules and broadly made the following submissions:-

i. Mineral-G in question is specifically provided at Serial No.6 of Schedule-I governed by Rule 6 of the 1996 Rules and therefore, there is no scope of different interpretation with regard to the said Rule;

ii. Rule 6 of the 1996 Rules covers grant and renewal of quarry lease by the authority mentioned in table appended thereto and another is grant of trade quarry which follows the process of auction in terms of Rule 7(1) of the said Rules. Once both the processes of grant and allotment respectively of quarry leases for minerals specified in Schedule-I and Schedule-II are clearly governed by different provisions of the 1996 Rules without the one falling on the other, they should not have been applied by the Division Bench in *Prathvi Infrastructure'*s case (supra) to arrive at a conclusion that the entire action of the State Government in allotting the mines in question without adhering to the process of auction is bad in law, as it is contrary to the statutory provisions. Further, the Division Bench has failed to properly appreciate as to what those two entries at Serial No.6 of Schedule-I and Serial No.3 of Schedule-II are;

iii. while interpreting different entries in the schedule there is a presumption that each entry constitutes a class and every endeavour should be made to read and maintain the distinction

in different classes. Attention was invited to the Supreme Court judgment in *State of Tamil Nadu vs. Pyare Lal Malhotra and others,* (1976) 1 SCC 834;

iv. it is not the Rule 6 but the Rule 7 of the 1996 Rules which only confines to allotment of trade quarry in respect of minerals specified at Serial No.5 of Schedule I and Serial Nos.1 and 3 of Schedule II of the 1996 Rules to be done by auction;

v. under Chapter-IV of the 1996 Rules, Rule 9 provides for the manner of grant or renewal of a quarry lease in respect of minerals specified in Schedule I and II by submitting an application in the prescribed Form-I for quarry lease. The Mineral-G is a specified mineral worded at Serial No.6 of the Schedule-I and for its grant or renewal also the application is submitted in Form-I and nowhere its allotment is prescribed by auction;

vi. the Rule 17 pertaining to renewal of quarry lease and Rule 18 of the 1996 Rules prescribing disposal of application for grant or renewal of quarry lease do not call for allotment of quarry lease by auction;

vii. as per Rule 21 of the 1996 Rules, the quarry lease of the mineral specified at Serial No.6 of Schedule I shall be preferably given to Cooperative Society/Association of Schedule Tribe/ Schedule Caste/Backward class; educated unemployed youth belonging to below poverty line families etc. The scheme of the State Government for the said purpose is with respect to Article 39 of the Constitution of India which expects every State to direct its policies towards securing the common good and clause (b) whereof provides that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The State in its wisdom can always carve out a class of persons who will be given the natural resources in preference through other modes of grant than the auction. If the Mineral-G at Serial No.6 of Schedule-I is ordered to be allotted by auction, the Rule 21 will become meaningless;

viii. in respect of grant of minerals specified at serial Nos.1 to 4, 6 and 7 of Schedule-I, the State has consciously set out a specific policy as envisaged in Chapter III and IV of the 1996 Rules. If not so, the State would not have excluded these minerals from the purview of Rule 7(1) of the 1996 Rules i.e. the minerals other than Serial No.5 of Schedule I and Serial Nos.1 and 3 of Schedule II situated in Government land;

ix. the purpose of trade quarry to be allotted by auction in respect of minerals at Serial No.1 and 3 of Schedule-II of the 1996 Rules is

the revenue maximization, which cannot be the only parameter for alienation of natural resources by the State. Therefore, the direction to auction the quarry lease for Mineral-G, which is meant for grant as per preferential rights, cannot be sustained in the eye of law;

x. the application submitted by the petitioner is to be considered by the competent authority in accordance with the provisions contained in the Rules 18 and 21 of the 1996 Rules and therefore, withholding the process on any ground which is not contemplated in the said Rules is arbitrary;

xi. the Mineral-G at Serial No.6 of Schedule-I is totally different from the Minerals at Serial No.3 of Schedule-II. Entry at Serial No.6 applies for grant of quarry lease when the stone is to be used only for making *Gitti* by mechanical crushing wherein the existence of mechanical crushing by way of crusher etc. is must but there is absence of such requirement for Minerals mentioned at Serial No.3 of the Schedule.II. This fact is further supported by Rule 21(3)(ii) which directs the sanctioning authority to take into consideration the technical and special management experience of establishing, running and maintaining a cutting and polishing industry;

xii. the Rule 22 of the 1996 Rules relates to the period for which leases may be granted or renewed. On plain reading of the said Rule, it would be discernible that the period prescribed for quarry lease, which are given by grant or renewal under Rule 6, is different than the one allotted by auction in terms of Rule 7 of the 1996 Rules. The Rule 7 in itself is exhaustive in terms of period of its allotment. As per Sub-Rule (2) of Rule 7, the period of quarry of minerals at Serial No.1 and 3 of Schedule-II is five years contrary to the period prescribed for quarry of Mineral-G in terms of Rule 22, which is maximum ten years and minimum not less than five years and further renewable for the period equal to original period. Further, in terms of proviso to Sub-rule (2) of Rule 7, it is only when the contractor invests for establishing cutting and polishing industry or crusher for making *Gitti* by mechanical means within an initial period of contract for minerals specified at Serial No.5 of Schedule I and Serial No.3 of Schedule-II respectively that the period of contract quarry of said minerals shall be extended by the Government for the period specified therein but if no cutting and polishing industry or crusher as such is established then the period is not extendable. Reliance was placed upon the Division Bench judgment of this Court in *G.R. Kulkarni vs. State of M.P.,* 1957 SCC OnLine MP 63;

xiii. under Rule 29 of the 1996 Rules, the rates of dead rent in respect of 'stone for crusher' and 'stone for building purposes and other minor minerals' which are provided under Schedule-IV are completely different, which separates the Mineral-G at Serial No.6 of Schedule-I from the minerals at Serial No.3 of Schedule-II;

xiv. in Rule 30 of the 1996 Rules which relates to general conditions of quarry lease also there is no provision to grant quarry lease by the process of auction;

xv. the grant or renewal of quarry lease for Mineral-G at Serial No.6 of the 1996 Rules cannot be and should not be by auction is further corroborated by Rule 36 of the 1996 Rules prescribing auction of quarries and sub-rule (1) thereof mandates grant of trade quarries of the very same minerals enumerated in Rule 7 by auction situated in Government land. The grant of Mineral-G over any land whether private or government land is excluded from the purview of Rules 7 and 36 of the 1996 Rules;

xvi. though the Entry at Serial No.3 of Schedule-II includes 'stone' but the category of Mineral-G has been purposely kept in Schedule-I and related with Rule 6 of the 1996 Rules and this fact is sufficient to show that the Legislature had no intention to prescribe a common process of allotment of these minerals;

xvii. there was no challenge to the Constitutional validity of the provisions of Rules 6 and 7 of the 1996 Rules and neither the issue for open auction of mineral-G as such was specifically raised in *M/s Prathvi Infrastructure'*s case (supra), therefore, such provisions were not open for judicial interpretation, as has been done therein. Support was gathered from the two decisions of the Supreme Court in *Union of India & others vs. Vipan Kumar Jain & others,* (2005) 9 SCC 579 and *Union of India & others vs. S.K. Saigal & others,* (2007) 14 SCC 556;

xviii. the 1996 Rules prescribe separate procedure for grant of "trade quarry" as defined under Clause (xvi-a) and "quarry lease" as per Clause (xxv) of Rule 2, in terms of minerals and not on the basis of Government land or private land. Therefore, there cannot be any separate process for private land as well as government land unless specifically provided for;

xix. After taking us through the various paragraphs of the judgment of the Supreme Court in *Natural Resources Allocation, In re, Special Reference* (supra), learned counsel submitted that the same has not been read in correct perspective whereas the Constitution Bench in the said decision has clarified the ratio in

Centre for PIL's case (supra) and held that the auction is not a constitutional mandate and legitimate deviation from the auction is permissible for the purposes of disposal of natural resources; and

xx. the High Court in exercise of judicial review dealing with different entries/provision cannot render an interpretation which may have the effect of making a particular entry/provision completely redundant. The Court cannot read anything into a statute which is plain and unambiguous. Reference was made to the judgment of the Supreme Court in *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others,* (2003) 2 SCC 111;

xxi. the probability of abuse of the statute cannot be a ground for either declaring the statute unconstitutional or making the provision redundant. If there is abuse of the provision of the statute, the Court has wide powers to set right the same in the given facts and circumstances of the case as held by the Supreme Court in *Sushil Kumar Sharma vs. Union of India and others,* (2005) 6 SCC 281; and

xxii. in almost similar circumstances, the view expressed by a Division Bench of Gwalior Bench of this Court in *Smt. Prabha Sharma'*s case (supra) and *M/s Aman Stone Crusher'*s case (supra) is more probable and reasonable than the Division Bench judgment in *Prathvi Infrastructure'*s case (supra), which does not lay down the correct law as it is merely based on the assumption that the entry at Serial No.6 of Schedule-I i.e. Mineral-G also falls under Schedule-II because in Rule 7 the Entry No.3 of Schedule-II starts with Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips, which is meant for allotment by auction by dint of Rule 7 of the 1996 Rules.

7. The aforesaid arguments of Mr. Kamat have been adopted by the learned counsel appearing for the other petitioners and they have vehemently argued that the Rules 6 and 7 of the 1996 Rules are separate and distinct in respect of grant/renewal and allotment respectively of the minerals specified in Schedule-I and II and since there is no ambiguity in the said Rules and the Division Bench in *Prathvi Infrastructure'*s case (supra) having completely overlooked the entry at Serial No.6 of Schedule-I and Serial No.3 of Schedule-I *vis a vis* Rule 6 of the 1996 Rules, the said judgment in directing the State to conduct auction in respect of Mineral-G on the Government land is untenable in the eye of law. However, Mr. Kishore Shrivastava, learned senior counsel supplemented the arguments by contending that the Division Bench judgment in *Prathvi Infrastructure*'s case (supra) has erroneously proceeded on the assumption that the judgments of the Supreme Court in cases of *Centre for PIL'*s case (supra) and *Natural Resources*

Allocation, in re, Special Reference (supra) have propounded the theory of auction and the fallout of which led to amendment in the Mines and Minerals (Development and Regulation) Act, 1957 (in short "the 1957 Act") and the Parliament enacted Mines and Minerals (Development and Regulation) Amendment Act, 2015. It provides for a process of auction and the constitutional validity of the amendment was affirmed by a Full Bench of this Court in *Savita Rawat vs. State of M.P. and others* passed in W.P. No.4278/2001 decided on 11.03.2016. He invited our attention to paragraphs 67, 69, 82, 83, 108, 112, 113, 115 and 120 of the Constitution Bench judgment in *Natural Resources Allocation, in re, Special Reference* (supra). It was further contended that Rule 6 of the 1996 Rules projects a different picture. As such the table appended to the said Rules provides the Authority to take care of grant and renewal of applications in the case of quarry lease. As per Item No.1 of the Table, Mineral-G mentioned at Column No.3(i) is provided to be granted or renewed by the Director to the extent the area applied for exceeds 10.00 Hectares as per column No.4(i), whereas according to Item No.2, again for the Mineral-G mentioned at Column No.3(ii), if the area applied for exceeds 2.00 Hectares but does not exceed 10.00 Hectares as per Column No.4(ii) then the Collector/Additional Collector (Senior IAS Scale) is the prescribed authority to grant or renew the application for the quarry of Mineral-G. According to him, the Division Bench in *Prathvi Infrastructure*'s case (supra) has completely overlooked the Rule 6 and its governing provisions particularly Rule 18 of the 1996 Rules which prescribes for the disposal of applications for the grant or renewal of quarry lease. Learned senior counsel further argued that the purpose of Mineral-G is to make *Gitti* by using it as raw material and nothing else and that too by using crusher whereas the entry at Serial No.3 of Schedule-II only uses the word "stone" like any other item, which makes the clear distinction between the two minerals. Learned counsel submitted that in a situation where a particular item like "stone" in the present case is mentioned in two different schedules or provisions, how it is to be interpreted and which one will be preferred by the Court would be governed by the law laid down by the Supreme Court in *Eskayef Limited vs. Collector of Central Excise,* (1990) 4 SCC 680. Therein, the Item 68 of the Excise Tariff was a residuary entry, which dealt with all other goods not elsewhere specified. It was held that a product which is found to be covered by the other items of the schedule of the Excise Tariff would be outside the ambit of Item No.68.

8. Mr. Shekhar Sharma, learned counsel for some of the petitioners additionally submitted that in exercise of the jurisdiction under Article 226 of the Constitution of India, the Court shall not read down the provision in the manner done therein and therefore, the Division Bench judgment in *Prathvi Infrastructure*'s case *(supra)* does not deserve to be sustained.

9. Mr. Arvind Dudawat and Mr. Samdarshi Tiwari, learned counsel for certain other petitioners further supplemented the arguments that the Division Bench in *Prathvi Infrastructure*'s case (supra) appears to have escaped the conclusion part of the majority view in *Natural Resources Allocation, in re, Special Reference* (supra) and thus, arrived at a wrong conclusion whereas, there is a specific method of grant of quarry lease under Rule 6 of the 1996 Rules and therefore, the auction is not the only permissible method.

10. Mr. P.K. Kaurav, learned Advocate General for the State submitted that in *Prathvi Infrastructure*'s case (supra), the Division Bench *prima facie* observed questionable action of the authority deciding the appeal of the private respondents against the grant of quarry lease in favour of the petitioner therein i.e. initially dismissing their appeal and then on the same day allowing the appeal and thereafter, on 08.03.2019 affirming the order allowing the appeal. There being three orders in respect of the same appeal, the Court on 26.03.2019 ordered for producing the original record, which was produced by the State on 04.04.2019. Thereupon, the Court ordered for C.I.D. investigation and report was sought. As such there was no occasion for the State to file reply. Therefore, a review petition was filed that if the directions to conduct open auction in respect of Mineral-G are implemented, the same would amount to rewriting the relevant rules and thus, the order dated 27.06.2019 was modified. He fairly assisted the Court for proper interpretation of the various provisions of the Statute governing the trade quarry/quarry lease. The learned counsel contended that the minerals be it on the Government or private land are the privileges of the State under Sections 57 and 247 of the M.P. Land Revenue Code, 1959 and considering the nature of the minerals, the same have been specified in different schedules of the 1996 Rules and procedure for allotment has been prescribed under two different Rules 6 and 7 of the 1996 Rules. Keeping in view the Table appended to the Rule 6 of the 1996 Rules, the same is also applicable for minerals on the Government land. The Minerals specified at Serial Nos.1 to 4, 6 and 7 of Schedule-I which are mentioned at Item No.1 Column 3(i) of the Table are covered by Rule 6 and therefore, the nature of land either Government or private has not been mentioned. The private land has been specifically provided in respect of mineral specified at Serial No.5 of Schedule-I. Such provision has been accordingly made in the said Table, at Item No.1 Column 3(ii) because the Government land is excluded by Rule 7. The Minerals specified at Serial No.1 to 4, 6 and 7 of Schedule-I are not covered by Rule 7. Further, the Rule 9 of Chapter IV relates to grant of quarry lease in respect of minerals specified at Schedule-I and II. As per Rule 9(k) under Chapter-IV, if the land is not owned by the applicant, the application for quarry lease shall be submitted with an affidavit that the applicant has obtained surface rights over the area or has obtained the consent of the owner for conducting mining/quarrying operations. However, the proviso to Rule 9(k) makes it clear that no affidavit shall

be necessary where land-rights vest with the State Government. This would clear any doubt that the application for quarry lease can be filed for mineral in the Government land or private land. Thus, the Rules 6, 9 and 18 are applicable on the Government land also. It was, thus, contended that if it is held that Rule 6 is applicable only for the private land then all other minerals which are not covered by Rule 7 specified in Schedule-I and II on the Government land will also have to be allotted by auction.

11. The finding of the Division Bench judgment of Indore Bench of this Court in *Prathvi Infrastructure's* case (supra), likening Mineral-G at Serial No.6 of Schedule-I (*see* Rule 6) of the 1996 Rules to the Minerals at Serial No.3 of Schedule-II (*see* Rules 6 & 7) of the said Rules and the consequent directions to the State Government to conduct a process of auction in respect of the quarry in question, which was later on modified in review petition in respect of private land only but covering the grant or renewal on Government land, has triggered the present controversy, as a result of which all the petitioners' applications for renewal of quarry lease for Mineral-G in the State are languishing.

12. We now proceed to take up the questions framed and referred for determination by the Full Bench. For considering the first question, it is necessary to analyse the provisions of the 1996 Rules, insofar as they are relevant for the purposes of the present discussion. The State Government in exercise of its powers conferred by Section 15 of the 1957 Act has framed the 1996 Rules. In the definition Clauses under Rule 2 of the 1996 Rules, the "Trade Quarry" has been defined under clause (xvi-a), which means a quarry for which the right to work is auctioned. The "Quarry Lease" has been defined in clause (xxv), which means a mining lease for minor minerals as mentioned in Section 15 of the 1957 Act. The said provisions of the 1957 Act and the 1996 Rules, read thus:-

"MMDR Act, 1957"

> **15. Power of State Governments to make rules in respect of minor minerals.**— (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.
>
> (1A) 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 person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgment of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads power transmission lines, tramways, railways, aerial rope ways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be, prescribed.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.

M.P. Minor Mineral Rules, 1996

CHAPTER I

"2. Definitions. - In these Rules, unless the context otherwise requires, -

*** *** ***

(xvi-a) "Trade Quarry" means a quarry for which the right to work is auctioned.;

*** *** ***

(xxv) "Quarry Lease" means a mining lease for minor minerals as mentioned in Section 15 of the Act;

13. The Rule 6 under Chapter-III of the 1996 Rules deals with the powers to grant quarry lease, which provides that the quarry lease in respect of minerals specified in Schedule-I and II shall be granted and renewed by the authority mentioned in Column (2) for the minerals specified in column (3) subject to the extent as specified in the corresponding entry in column (4) thereof of the Table given thereunder. Since in the present case, the cavil is not with regard to the competence and the extent of powers conferred upon the Authority mentioned in the Table appended to Rule 6 to grant any specified mineral, therefore, the said part of the Rule 6 is not required to be delve into. However, the controversy involved in the present case revolves around the "stone for making *Gitti* by mechanical crushing (i.e. use of crusher)", which is the subject matter of grant and/or renewal and referred to as the Mineral-G hereinabove. The Mineral-G, as is apparent from perusal of Schedule-I of the 1996 Rules, is specified at Serial No.6 of Schedule-I, which is governed by the Rule 6 of the 1996 Rules. On the other hand, Rule 7(1) under Chapter-III of the 1996 Rules deals with the power to grant trade quarry in respect of the minerals, specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II of the 1996 Rules, situated in Government land to be allotted only by auction subject to the proviso attached thereto. The said proviso provides for grant of quarry lease of minerals specified at Serial No.1 of Schedule II in favour of the Madhya Pradesh State Mining Corporation Ltd. (Government of Madhya Pradesh Undertaking). The relevant Rules 6 and 7 along with the Schedule-I and Schedule-II of the 1996 Rules are reproduced as under:-

"CHAPTER III

Powers to grant Prospecting Licence, Quarry Lease or Trade Quarry

6. Powers to grant quarry lease. - Quarry lease in respect of minerals specified in Schedule-I and II shall be granted and renewed by the authority mentioned in column (2) for the minerals specified in column (3) subject to the extent as specified in the corresponding entry in column (4) thereof of the Table below:-

TABLE

S.No.	Authority	Minerals	Extent of powers
(1)	(2)	(3)	(4)
1.	Director	(i) Minerals specified in serial number 1 to 4, 6 and 7 of Schedule-I.	(i) Where the area applied for exceeds10.00 hectares.
		(ii) Quarry of minerals specified in serial number 5 of Schedule I situated in private land.	(ii) Where the area applied for exceeds 10.00 hectares.
		(iii) Quarry of minerals specified in serial number 3 of Schedule-II situated in private land.	(iii) Where the area applied for exceed 10.00 hectares.
		(iv) Minerals specified in serial number 4 of Schedule-II.	(iv) Where the area applied for exceeds 10.00 hectares.
2.	Collector/ Additional Collector (Senior IAS Scale)	(i) Minerals specified in serial number 1 to 3 of Schedule-I.	(i) Where the area applied for does not exceeds 10.00 hectares.
		(ii) Minerals specified in serial number 4,6 and 7 of Schedule-I.	(ii) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(iii) Quarry of minerals specified in serial number 5 of Schedule-I situated in private land.	(iii) Where the area applied for does not exceeds 10.00 hectares
		(iv) Minerals specified in serial number 2 of Schedule II ordinary clay for making bricks and tiles in chimney kilns/kilns.	(iv) Where the area applied for exceeds 4.00 hectares.
		(v) Quarry of minerals specified in serial number 3 of Schedule II situated in private land.	(v) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(v) Minerals specified in serial number 4 of Schedule II.	(v) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(vi) Minerals specified in serial number 5 to 12 of Schedule II.	(vi) Where the area applied for exceeds 4.00 hectares.
3.	Officer Incharge, Mining Section	(i) Minerals specified	(i) Where the area applied for does not exceed 2.00 hectares.
		(ii) Minerals specified in serial number 2 of Schedule II, ordinary clay for making bricks and tiles in cheminey-kilns/kilns.	(ii) Where the area applied for does not exceed 4.00 hectares.

		(iii) Quarry of minerals specified in serial number 3 of Schedule II situated in private land.	(iii) Where the area applied for does not exceed 4.00 hectares.
		(iv) Minerals specified in serial number 4 of Schedule II.	(iv) Where the area applied for does not exceed 2.00 hectares.
		(iv) Minerals specified in serial number 5 to 12 of ScheduleII.	(iv) Where the area applied for does not exceed 4.00 hectares.

Note. - Power to sanction prospecting license of mineral specified in serial number 1 to 3 of schedule I shall be with those authorized officer who has the power to sanction quarry lease of these minerals.

7. Power to grant trade quarry. - (1) The quarries of Minerals, specified in serial number 5 of Schedule I and serial numbers 1, 3 of Schedule II, situated in government land, shall be allotted only by auction:

Provided that quarry lease of minerals specified in serial number 1 of Schedule II may be granted in favour of the Madhya Pradesh State Mining Corporation Limited (Government of Madhya Pradesh Undertaking.)

(2) The period of quarry of minerals specified in serial number 5 of schedule I and mineral specified in serial number 1 and 3 of schedule II shall be upto the end of fifth financial year from the financial year, fixed for auction:

Provided that if contractor establishes cutting and polishing industry of crusher for making gitti by mechanical means, within an initial period of contract, for mineral specified in serial number 5 of schedule I and serial number 3 of schedule II respectively, then the period of contract quarry of minerals specified in serial number 5 of schedule I shall be 15 years instead of 5 years and period of contract quarry of mineral specified in serial number 5 of serial number 3 of schedule II shall be 10 years instead of 5 years. For extended period contractor shall submit approved mining plan/environmental permission. The contractor shall maintain separate account of gitti and mineral after establishing crusher:

Provided further that, a contract money of the contract quarry shall be increased by 5 percent every year excluding first year.

Explanation. - For example if contract money is Rupees 1000 then contract money for second year shall be Rupees 1050 for third year Rupees 1100, for fourth year Rupees 1150 and for fifth year Rupees 1200. Likewise calculation of contract money for ensuing years shall be made.

(emphasis supplied)

The Schedule I and II appended to the 1996 Rules, read thus:-

"Schedule-1

(See Rule 6)

Specified Minerals

1. Dimensional stone-granite, dolerite, and other igneous and metamorphic rocks which are used for cutting & polishing purpose for making blocks, slabs, tiles of specific dimension.
2. Marble which is used for cutting and polishing purpose for making blocks, slabs, tiles of specific dimension.
3. Marble stone for other purposes.
4. Limestone when used in kilns for manufacture of lime used as building material.
5. Flagstone-Natural sedimentary rock which is used for flooring, roof top etc and used in cutting and polishing industry.
6. Stone for making gitti by mechanical crushing (i.e. use of crusher).
7. Bentonite/Fuller's earth.

Schedule-II

(See Rules 6 & 7)

Other Minerals

1. Ordinary Sand, Bajri.
2. Ordinary clay for making bricks, pots, tiles etc.
3. Stone. Boulder, Road Metal Gitti, Dhoka, Khanda. Dressed Stones, Rubble, Chips.
4. Murrum.
5. Lime Kankar when used in kilns for manufacture of lime used as building material.
6. Gravel.
7. Lime shell when used in kilns for manufacture of lime used as building material.
8. Reh Mitti.
9. Slate when used for building material.
10. Shale when used for building material.
11. Quartzite and quartzitic sand when used for purposes of building or for making road metal or house-hold utensils.

12. Salt petre."

(emphasis supplied)

A plain reading of Rule 6 of the 1996 Rules does not show any express provision that the quarry lease for any of the minerals specified either in Schedule-I or for Mineral-G specified at Serial No.6 of Schedule-I, shall be allotted by open auction.

14. The Division Bench in *Prathvi Infrastructure*'s case (supra) while returning the finding that the mineral in question (i.e. Mineral-G at Serial No.6 of Schedule-I covered by Rule 6 of the 1996 Rules) also finds place at Entry 3 of Schedule-II of the 1996 Rules has nowhere considered the effect of Rule 6 in respect of Entry at Serial No.6 of Schedule-I of the 1996 Rules with regard to Mineral-G. It appears that solely because of the obtaining factual matrix in the peculiar facts and circumstances of the case in *Prathvi Infrastructure*'s case (supra), the Division Bench was carried away with the words "stone, boulder, road metal Gitti, Rubble, Chips etc." narrated in Serial No.3 of the Schedule-II of the 1996 Rules to hold that even if it is established that the Mineral-G finds place in both the schedules, in larger public interest, the process of auction as provided under Rule 7 of the 1996 Rules, which is a transparent process, has to be followed. To return a finding with regard to grant of mining lease/renewal for Mineral-G only through the process of auction/issuing NIT in respect of Government land and the same being applicable in respect of renewal as well as in respect of pending applications, it would be unsafe to leave the matter merely on the probability and possibility of Mineral-G also finding place in both the Schedules as held by the Division Bench in *Prathvi Infrastructure*'s case (supra). Rather the Division Bench could have concluded only after specifically holding that there is material indicating the likeness or connection between "the Mineral-G" mentioned at Serial No.6 of Schedule-I covered by Rule 6 of the 1996 Rules and the "Stone, Boulder, road metal Gitti, Rubble Chips etc." which find place at Serial No.3 of Schedule-II thereof and therefore, the grant/renewal of Mineral-G should also take place through the process of auction as provided under Rule 7 of the 1996 Rules in larger public interest. But, there is nothing observed in the judgment to even remotely associate the Mineral-G with the entry at Serial No.3 in Schedule-II of the 1996 Rules. In absence thereof, it would not be correct, just and proper to hold that the mineral in question (Mineral-G) is governed under Serial No.3 of Schedule-II, therefore, the process of auction as provided under Rule 7 of the 1996 Rules has to be followed. The relevant paragraphs of the judgment in *Prathvi Infrastructure*'s case (supra) are reproduced as under:-

> "..... Stone, boulder, road metal Gitti, Rubble, Chips etc are under item no.3 of schedule-2 and rule 7 provides for auction of the same and

> therefore, in the considered opinion of this Court, keeping in view the controversy involved in the matter and all kind of allegations, counter allegations, manner and method in which, the State government has conducted itself in issuing the mining lease, the proper course of action would be to direct the respondent/State to adhere the provision of rule 7. Meaning thereby, to conduct an open auction in respect of quarry in question.
>
> *** *** ***
>
> The mineral in question also finds place in Entry 3 of Schedule- 2. Even if it is established that mineral finds place in both the Schedule, in larger public interest, the process of auction as provided under Rule 7 has to be followed. It is a transparent process and otherwise also it is in the larger public interest and in the interest of State exchequer and hence, the State Government is directed to conduct an auction."

15. Let us now examine whether the Mineral-G at Serial No.6 of Schedule-I also finds place at Serial No.3 of Schedule-II of the 1996 Rules. A perusal of Rule 7 of the 1996 Rules, reproduced hereinabove, makes it amply clear that the Legislature has categorically excluded the quarries of Minerals, specified at Serial No.5 of Schedule-I along with those specified at Serial Nos.1 and 3 of Schedule-II situated in Government land to be allotted only by auction. Had it not been so, there was no occasion for the Legislature to frame separate Rule 7 in respect of grant of trade quarry for the quarries of minerals specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II. It is only because the minerals specified in Schedule-II are in the category of other minerals that they have been put in Schedule-II and not in Schedule-I and therefore, it is provided that they shall be covered both by Rules 6 and 7 of the 1996 Rules. To put it differently, except the minerals at Serial No.1 and 3 of Schedule-II, rest of the minerals specified in Schedule-II shall be covered by Rule 6 of the 1996 Rules.

16. A perusal of the application (Annexure P-2) submitted by the petitioner for renewal of quarry lease shows that the same is in the prescribed Form-I as per Rule 9 under Chapter IV of the 1996 Rules wherein it is provided as to how the application for grant or renewal of a quarry lease in respect of minerals specified in Schedule I and II is to be submitted. Since the Mineral-G is a specified mineral at Serial No.6 of the Schedule-I, therefore, it is covered by Rule 9 to be granted or renewed by way of an application submitted in the prescribed Form-I thereunder. Necessarily, it does not cover the cases of public auction. Furthermore, as per Rule 9(k), an affidavit is required to be filed by the applicant with the application for grant if the land is not owned by him, stating that he has obtained surface rights over the area or has obtained the consent of the owner for conducting mining/quarrying operations. The proviso attached to Rule 9(k) makes it clear that no affidavit shall be necessary where land-rights vest with the State

Government. Thus, it is vivid that the application for quarry lease can be filed for mineral in the Government land or private land. Under Rule 17 of the 1996 Rules, the time and limitation for furnishing application for renewal is prescribed. The relevant Rules read as under:-

> **"9. Application for quarry lease.** - An application for the grant or renewal of a quarry lease shall be made in Form I in triplicate for the minerals specified in Schedule I and II. The application shall be affixed with a court fee stamp of the value of five rupees and shall contain the following particulars together with documents in support of the statements made therein
>
> (a) If the applicant is an individual, his name, nationality, profession, caste, educational qualification, age, residence, present address and financial status;
>
> (b) If the applicant is a company, its name, nature and place of business and place of registration or incorporation, list of directors and their nationality, financial status, registration/ incorporation certificate;
>
> (c) If the applicant is a firm, its name, nature and place of business, list of partners and their nationality, partnership deed, registration certificate, financial status;
>
> (d) If the applicant is a society/association, its name, nature and place of working, list of members and their caste, educational qualification, nationality, registration certificate, bye-laws and financial status of individual member;
>
> (e) A description illustrated by a map or plan showing as accurately as possible the situation and boundaries of the land in respect of which the quarry lease is required where the area is unsurveyed the location of the area should be shown by some permanent physical feature, roads, tank, etc.;
>
> (f) Copy of latest Khasra Panchsala;
>
> (g) The minerals or mineral which the applicant intends to quarry or mine;
>
> (h) The period for which the quarry lease is required;
>
> (i) The purpose for which the extracted mineral is to be used;
>
> (j) Every application for the grant or renewal of a quarry lease shall be accompanied by an affidavit showing particulars of the areas mineral-wise in each district of the State, which the applicant or persons jointly with him:-
>
> (i) already holds under quarry lease;

(ii) has already applied for, but not granted; and

(iii) being applied for simultaneously;

(k) An affidavit to the effect that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner/owners for conducting mining; quarrying operations:

Provided that no such affidavit shall be necessary where the Land-rights vest with the State Government;

(I) Every application for the grant or renewal of a quarry lease shall be accompanied by a no dues certificate in Form II granted by the Mining Officer or Assistant Mining Officer, or incharge of the Mining Section of the district in respect of payment of mining dues payable under the Act or rules made thereunder from all the districts where the applicant holds or held mineral concessions:

Provided that it shall not be necessary for the applicant to produce the no dues certificate if he has furnished an affidavit and such other evidence as may be required to the satisfaction of the concerned authority that he docs not hold and has never held any minerals concession in any district of the State:

Provided further that the grant of no dues certificate shall not discharge a holder of such certificate from the liability to pay the mining dues which may be subsequently found to be payable by him under the Act or Rules made thereunder."

*** *** ***

17. Renewal of quarry lease. - Every application for the renewal of a quarry lease shall be made at least one year before the date on which the lease is due to expire. In case of delay on submission of application, sanctioning authority on the basis of satisfactory reasons may condone such delay and dispose of such application, imposing penalty of Rs.1000/- per month:

Provided that, on any condition, submission of renewal application, three months prior to due date of expiry of lease, shall be mandatory."

(emphasis supplied)

17. The aforesaid reasoning further finds support from the Rules 18 and 21 of the 1996 Rules. The Rule 18 of the 1996 Rules provides for the procedure of disposal of application for grant/renewal of quarry lease. Under second proviso to Rule 18(2), it is provided that if the application is not disposed of by sanctioning authority within the period of six months then the same shall be disposed of by senior authority as mentioned in Rule 6. Thus, even under Rule 18 of the 1996 Rules, there is no provision for allotment of quarry lease by auction. The said Rule reads, thus:-

> **"18. Disposal of applications for the grant or renewal of quarry lease. -**
>
> (1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Sabha concerned of the district and collectorate of the district concerned.
>
> (1-A) Addition to in sub-rule (1), the details of quarry lease application, received for any area shall be published in leading daily Hindi newspaper in the form of notice for general information within fifteen days from the date of receipt of application.
>
> (2) The sanctioning authority after making such inquires as he may deem fit. The sanctioning authority, may take decision to grant of quarry lease or refuse to sanction it or renew the quarry lease or refuse to renew it before the expiry of quarry lease already sanctioned, after receiving the enquiry report. Information of in-principle sanction, shall be given to applicant. Applicant shall furnish approved mining plan/approved environment management plan, within six months from such information. Provided that if in-principle sanction is for five hectare or more area, then applicant from the date of such information, shall submit environment permission obtained under notification dated 14.09.2006 of Ministry of Environment and Forest within period of six month. After completion of all formalities sanctioning authority shall issue grant order or it's renewal of quarry lease. On the basis of satisfactory reasons, the sanctioning authority may permit to enhance the time period, if all formalities are not completed in prescribed time period:
>
> Provided that no new quarry lease shall be sanctioned without obtaining opinion of the respective Gram Sabha:

Provided further that if the application, is not disposed of by sanctioning authority within the period of six months then application shall be disposed of by senior authority as mentioned in rule 6.

(3) Notwithstanding anything contained in sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh applications in this behalf may be made according to the procedure laid down under these rules.

(4) Where an applicant for grant or renewal of a quarry lease, dies before the sanction order is passed it will be deemed to have been filed by his heir and if the applicant dies after the sanction order of grant or renewal but before execution of lease deed it will be deemed to have been granted or renewed to the legal heir of the applicant.

(5) Mineral concession to Minerals specified at Sr. No. 1, 2 and 3 of Schedule I may be granted as per the provisions of Granite Conservation And Development Rules, 1999 and Marble Conservation and Development Rules, 2002."

18. Preferential rights are governed under Rule 21 of the 1996 Rules. Under Sub-Rule (2) thereof, the quarry lease of the minerals specified at Serial No.4, 6 and 7 of Schedule-I and Minerals specified in Schedule-II excluding Serial No.1 and 3 shall be preferably given to the Co-operative Society/Association of Scheduled Tribe/Scheduled Caste/Backward Classes, Co-operative Society/ Association of educated unemployed youths or individuals subject to the further stipulations contained thereunder. Here also the Legislature has purposely excluded the quarry lease of the minerals specified at Serial No.3 of Schedule-II from being given to certain category of bodies unlike the mineral specified at Serial No.6 of Schedule-I i.e. the Mineral-G because it is easier to give the quarry lease of the Mineral-G as per the preferential rights enumerated in Rule 21 of the 1996 Rules and not the minerals specified at Serial No.3 of Schedule-II, which are meant to be allotted only by auction. It is a common ground that while putting the grant of trade quarry for allotment by auction the rates for allotment would vary and therefore, it would be difficult to allot the quarry through auction which is meant to be given as per preferential rights. The said grant/renewal of quarry lease for Mineral-G under Rule 6 and in terms of Rule 21 of the 1996 Rules as per preferential rights is in tune with the Directive Principles of State Policy under Part-IV of the Constitution of India. Article 39 thereunder, provides for certain

principles of policy to be followed by the State and that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood under clause (a) thereof and under clause (b) thereof, it is mandated that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. In view of these principles, the State has thought out that the quarry lease of certain minerals at Serial Nos.4, 6 and 7 of Schedule-I is given in order of preference to certain class of persons whereas it is not so in the case of minerals specified at Serial No.3 of Schedule-II. If the Mineral-G at Serial No.6 of Schedule-I is held to be allotted through auction, the scope and purpose of Rule 21 shall become redundant because the grant or renewal as per preferential rights cannot be taken care of through the process of auction. Thus, the Legislature has purposely excluded the minerals specified at Serial No.3 of Schedule-I to be given as per the preferential rights. The Rule 21 of the 1996 Rules, is extracted as under:

> **"21. Preferential Rights.** - (1) *(sub-rule (1) omitted by No.12 (19.9.2008).*
>
> (2) The quarry lease of the minerals specified at S.No.4, 6 and 7 of Schedule I and Minerals specified in Schedule II excluding Serial No.1 and 3 shall be preferably given to the following category, namely:-
>
> (i) Co-operative Society/Association of Scheduled Tribe/ Scheduled Caste/Backward Classes, Co-operative Society/ Association of educated unemployed youths or individuals where more than fifty per cent, of the members belong to the concerned category and also where the Chairman of the Society is of the concerned category and also where the executive committee have the representation in the ratio of the members of the concerned category and hail from below Poverty Line families listed in the District Rural Development Agency or educated unemployed youth belonging to Scheduled Tribe/Scheduled Caste/ Backward Classes in that order.
>
> *** *** ***
>
> (3) Whenever more than one application in any particular category are received for minerals of Schedule I for an area, the Sanctioning Authority shall while sanctioning a quarry lease take into consideration the following matters in respect of the applicants -
>
> (i) Any special knowledge or experience of mining and export;
>
> (ii) Technical and special management experience of establishing, running and maintaining cutting polishing industry; and
>
> *** *** ***
>
> (emphasis supplied)"

19. Still further, under the Scheme of the 1996 Rules, the renewal in respect of quarry lease of mineral specified at Serial No.6 of Schedule-I is altogether different than the trade quarries allotted in respect of minerals specified in Entry 3 of Schedule II. The maximum period of quarry lease, under Rule 22 of the 1996 Rules, is ten years and the minimum period is not less than five years. Under Sub-rule (2) of Rule 22, the period of renewal of quarry lease is equal to the original period. However, the period of allotment of trade quarry for Minerals at Serial No.3 of Schedule-II is separately prescribed under Sub-rule (2) of Rule 7 of the 1996 Rules i.e. upto the end of fifth financial year from the financial year, fixed for auction but there is no provision for its renewal in Rule 7. There is force in the submission advanced by Mr. Kamat, learned senior counsel for the petitioners that for the purposes of Mineral-G use of crusher is indispensable and therefore, it requires setting up of an industry for which investment is made and thus, larger time period is provided in the 1996 Rules for its grant and provision of renewal is also made. However, for the Mineral at Serial No.3 of Schedule-II, a fixed period is provided in Sub-Rule (2) of Rule 7 unless as per first proviso thereto the contractor establishes cutting and polishing industry or crusher for making *Gitti* by mechanical means. While so, the period of contract quarry of such mineral shall be 10 years instead of 5 years and for the extended period the contractor shall submit approved mining plan/environmental permission. The Rule 22 of the 1996 Rules is in the following terms:-

> **"22. Period for which leases may be granted or renewed. -** (1) The period of quarry lease shall not be more than ten years and minimum period shall not be less than five years. If any period applied in between maximum and minimum period then sanctioning authority shall sanction quarry lease for the applied period.
>
> (2) The period of renewal of quarry lease shall be equal to the original period.
>
> **Note. -** Period of quarry lease of minerals specified in serial number 1, 2 and 3 of Schedule I, shall be as prescribed in Granite Conservation and Development Rule, 1999 and Marble Development and Conservation Rule, 2002]"

20. Taking into account Rule 22, as aforesaid and the proviso to Sub-Rule (2) of Rule 7 reproduced above, it clearly depicts that distinction between Mineral-G at Serial No.6 of Schedule-I and Mineral at Serial No.3 of Schedule-II is carved out. Inasmuch as, it is understood that the Mineral-G at Serial No.6 of Schedule-I i.e. Stone for *Gitti* does not contain the mineral part in it and therefore, is granted by the prescribed authority on an application for grant or renewal whereas the Mineral at Serial No.5 of Schedule-I i.e. Flagstone-Natural sedimentary rock which is used for flooring, roof top etc. and used in cutting and polishing industry and those mentioned in Schedule-II, at Serial No.1 i.e. Ordinary Sand, Bajri and

Serial No.3, namely, Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips as mentioned under Sub-Rule (2) of Rule 7 of the 1996 Rules contain mineral part in it, and thus, allotted through the process of auction for a period of five years. It is only when the contractor establishes the cutting and polishing industry or crusher for making *Gitti* by mechanical means within an initial period of contract for non-mineral part of the Stone mentioned therein, the period of lease is required to be extended and it is made mandatory for the contractor to maintain separate account of *Gitti* and mineral after establishing the crusher. Therefore, the first proviso to Sub-rule (2) of Rule 7 appears to have been added for extending the period of quarry lease because the contractor like for the Mineral-G, would make an investment for such establishment of crusher in respect of non-mineral part of the minerals at Serial No.3 of Schedule-II. Still further, the second proviso to sub-rule (2) of Rule 7 provides that a contract money of the contract quarry shall be increased by 5 percent every year excluding the first year which is not in the case of quarry lease given by grant or renewal in terms of Rule 6 read with Rules 17, 18, 21 and 22 of the 1996 Rules. Thus, there is a clear distinction in respect of grant or renewal of quarry lease of Mineral-G in terms of Rule 6 and the allotment of Mineral at Serial No.3 of Schedule-II as per Rule 7 of the 1996 Rules. In Division Bench decision of this Court in *G.R. Kulkarni'*s case (supra) relied upon on behalf of the petitioners, the process of manufacture has been explained. The question therein was: whether the breaking of boulders into metal (gitti) is a process of manufacture. It was held as under:-

> "8. The stones which are won in the process of quarrying may be sold without fashioning them into something else. If they are so sold they would not be manufactured but merely delivered from the quarry-head. When they are broken into metal or gitti there is some process, manual though it may be, for the purpose of shaping the stones into another marketable commodity."

21. The limitation under Rule 26 of the 1996 Rules for the execution of the lease is three months. The Rule provides that after the quarry lease is granted or renewed, a lease deed in Form VII shall be executed and registered under the Indian Registration Act, 1908 within three months of the order of sanction of the lease. Whereas, for the trade quarries allotted by auction in terms of Rule 7 and 36 of the Rules, the contract agreement in different Form XVIII relating to auction of trade quarry shall be registered under the Indian Registration Act, 1908 in terms of Rule 37(2) of the 1996 Rules. Thus, different procedure is prescribed under the Rules for registration of the quarries leases granted or renewed by application and those allotted by auction. The Relevant Rules 26 and 37(2) of the 1996 Rules are reproduced as under:-

> **"26. Lease to be executed within three months.** - Where a quarry lease is granted or renewed, the lease deed in Form VII shall be executed

and registered under the Indian Regulation Act, 1908 (No.16 of 1908) within three months of the order of sanction of the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked:

Provided that where the Sanctioning Authority is satisfied that the applicant is not responsible for the delay in the execution of the lease deed, the Sanctioning Authority may permit the execution of the lease deed after the expiry of the aforesaid period of three months.

*** *** ***

37. Execution and Registration of Contract Agreement. -

(1) *** *** ***

(2) The contract agreement in Form XVIII relating to auction of trade quarry shall be registered in accordance with the provisions of the Indian Regulation Act, 1908 (XVI of 1908)."

22. Similarly, the Mineral-G at Serial No.6 of Schedule-I is completely different from the minerals at Serial No.3 of Schedule-II is also apparent from perusal of Rule 29 of the 1996 Rules read with Schedule-IV of the 1996 Rules, as the rates of dead rent in respect of 'stone for crusher' and 'stone for building purposes and other minor minerals' which are provided at Serial No.5 and 8 of the Schedule-IV are completely different. The relevant Rule 29 and the entries in the Schedule-IV, for ready reference are as under:-

"29. Rent and Royalty. - (1) When a quarry lease is granted or renewed -

(a) dead rent shall be charged at the rates specified in Schedule IV;

(b) royalty except for limestone shall be charged at the rates specified in Schedule III;

(c) rate of royalty on limestone shall be the same as fixed by the Government of India from time to time for limestone in Schedule II of the Act;

(d) surface rent shall be charged at the rates specified by the Collector of the district from time to time for the area occupied or used by the lessee.

(2) On and from the date of commencement of these rules, the provisions of sub rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date;

(3) If the lease permits the working of more than one mineral in the same area separate dead rent in respect of each mineral may be charged:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever is higher in amount;

(4) Notwithstanding anything contained in any instrument of the lease, the lessee shall pay rent/royalty in respect of any mineral removed and/or consumed at the rate specified from time to time in Schedule III and IV;

(5) The State Government may, by notification in the Official Gazette amend the Schedules III and IV so as to enhance or reduce the rate at which rents/royalties shall be payable in respect of any mineral with effect from the date of publication of the notification in the Official Gazette:

Provided that the rate of royalty/dead rent in respect of any mineral shall not be increased more than once during any period of three years;

(6) No granite and marble block either processed or in the raw form or any other mineral shall be dispatched from any of leased areas without a valid transit pass issued by Mining Officer. The transit pass shall be issued on an application in Form VIII after depositing royalty for the quantity intended to be transported out of the minerals extracted. Contravention of this rule may result in forfeiture of the security deposit by the Collector without prejudice to any other action that might lie against the lessee;

(7) The Transit Pass shall be in Form IX.

*** *** ***

SCHEDULE IV

(See rule 29)

Rates of Dead Rent in Rupees per Hectare per Annum

S. No.	Category of Mineral	1st year of the quarry lease	2nd year to 3rd year of the quarry lease	4th year of the quarry lease and onward
(1)	(2)	(3)	(4)	(5)
	***	***		***
5.	Stone for crusher	Nil	30,000/-	40,000/-
	***	***		***
8.	Stone for building purpose and other Minerals	Nil	25,000/-	30,000/-

Note. - In case of renewal of quarry lease, the rates of dead rent applicable shall be as per column (5) above.

23. Under Rule 30 of the 1996 Rules relating to general conditions of quarry lease also nothing has been spelt out about the process of auction regarding grant of quarry lease. The relevant part of the said Rule is as under:-

> **"30. Conditions of quarry lease**.-(1) Every quarry lease shall be subject to the following Conditions:-
>
> (a) The lessee shall pay, for every year, yearly dead rent at the rates specified in the Schedule IV in the advance for the whole year, on or before the 20th day of the first month of the year;
>
> (b) The lessee shall pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both. The lessee shall pay royalty in respect of quantities of mineral intended to be consumed or transported from the leased area, no sooner the amount of dead rent already paid equals the royalty on mineral consumed or transported by him. The dead rent or royalty shall be deposited in the Revenue receipt head prescribed in sub-rule (3) of Rule 10;
>
> (c) The lessee shall also pay for the surface area occupied or used by him for the purposes of mining operations, surface rent in advance for the whole year on or before the 20th day of the first month every year;
>
> (d) Notwithstanding any other action that may be taken for default in the payment of dues as specified in clause (a), (b), (c) within time under these rules or under any other condition of the lease, the lessee shall pay interest at the rate of 24% per annum for all defaulted payments of dead rent, royalty and surface rent.
>
> *** *** ***

24. The Chapter VI of the 1996 Rules pertains to grant of trade quarries wherein the procedure for grant of the trade quarries; their execution and registration of contract; rates of royalty; maintenance of register of trade quarry; maintenance of accounts of income; and resumption of possession etc. has been clearly prescribed. Rule 36 under the said Chapter provides for auction of quarries wherein the minerals meant to be allotted only by auction are the same minerals which are specified in Rule 7 of the 1996 Rules i.e. the mineral at Serial No.5 of Schedule-I and minerals specified at Serial No.1 and 3 of Schedule-II situated in Government land. Apart from these minerals, under Rule 36 none of the mineral specified in Schedule-I have been provided to be allotted only by auction. Thus, the grant or renewal of quarry lease of Mineral-G cannot be by auction is also substantiated by Rule 36 of the 1996 Rules. The Rule 36 is quoted, as under:-

> **"36. Auction of quarries.** - (1) The quarries of minerals, specified in serial number 5 of Schedule I and minerals specified in serial number 1 and 3 of Schedule II situated in Government land, shall be allotted only by auction:

Provided that quarry lease of mineral specified in serial number 1 of Schedule II may be granted in favour of the Madhya Pradesh State Mining Corporation Limited (Government of Madhya Pradesh Undertaking).

(2) Notice of auction shall be published in Form XV atleast 15 days before the auction at the notice board or any conspicuous place by way of fixing the copy of such notice thereon in the office of the concerned Gram Panchayat, Janpad Panchayat, Zila Panchayat, Development Block, Tahsil and Collectorate and the village where the quarries are situated:

Provided that auction of the quarry shall also be made by the process of e-auction as per the conditions prescribed.

(3) Every bidder shall execute an agreement in Form XVI before he/she participates in the auction."

25. The words "Trade quarry" and "Quarry Lease" have been defined under the definition Clauses (xvi-a) and (xxv) of Rule 2 of the 1996 Rules respectively. According to it, the "Trade quarry" means a quarry for which the right to work is auctioned whereas the "Quarry Lease" is a mining lease granted to quarry minor minerals as mentioned in Section 15 of the Act. Thus, keeping in view the said two definition clauses as well, there is a clear distinction between the "Trade quarry" and "Quarry Lease" as to the nature of operation and minerals. Still further, Schedule-I of the 1996 Rules speaks about the specified minerals whereas Schedule-II relates to other minerals. Therefore, from distinction in the definition clauses of "Trade quarry" and "Quarry Lease", the aforesaid analysis of the Rules 6 and 7 and other relevant Rules of the 1996 Rules is fortified and therefore, it logically follows that the Mineral-G, which is included in Schedule-I under Rule 6 of the 1996 Rules is a separate and distinct mineral than the entry at Serial No.3 of Schedule-II governed by Rule 7 of the 1996 Rules. The Mineral-G at Serial No.6 of Schedule-I specifically covered by Rule 6 supported by Rules 9, 17, 18, 21, 22, 26, 29 and 30 of the 1996 Rules does not enlarge its scope to be covered by Rule 7 and 36 of the 1996 Rules.

26. Having analysed the statutory provisions of the 1996 Rules, it would be apt to delve with the judicial precedents. A Constitution Bench of the Supreme Court in *Union of India vs. Sankalchand Himatlal Sheth and others,* (1977) 4 SCC 193 laid down the broad principles of interpretation of a Statute. It was expressed that if the provision is clear and explicit, it cannot be reduced to a nullity by reading into it a meaning which it does not carry and, therefore, "Courts are very reluctant to substitute words in a statute or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense". It was further observed that the another rule of interpretation which is equally well-settled and follows as a necessary corollary is that where the words according to a literal meaning produce an inconsistency or absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their

ordinary signification, the court would be justified in putting on them some other signification which, though less proper, is one which the court thinks the words will bear. When the court interprets a constitutional provision it breathes life into the inert words used in the founding document. The relevant extract of the said decision reads as under:-

> **"54.** Now, it is undoubtedly true that where the language of an enactment is plain and clear upon its face and by itself susceptible to only one meaning, then ordinarily that meaning would have to be given by the Court. In such a case the task of interpretation can hardly be said to arise. But language at best is an imperfect medium of expression and a variety of significations may often lie in a word of expression. It has, therefore, been said that the words of a statute must be understood in the sense which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use, as in the subject or the occasion on which they are used and the object to be attained. It was said by Mr. Justice Holmes in felicitous language in Town v. Elsner, 245 U.S. 418 that "a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". The words used in a statute cannot be read in isolation; their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use word 'context', I mean it in its widest sense "as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in para materia and the mischief which-the statute was intended to remedy". The context is of the greatest importance in the interpretation of the words used in a statute. "It is quite true" pointed out by Judge Learned Hand in Helvering v. Gregory, 69 F (2) (d) 809 "that as the articulating of a statute increase, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes and no degree of particularity can ever obviate recourse to the setting in which all appear and which all collectively create." Again, it must be remembered that though the words used are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, a contract, or anything else, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that a statute always has some purpose or object to accomplish, whose sympathetic and imaginative discovery, is the surest guide to its meaning. The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true instant of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in Heydon's case (1584) 3 W. Rep. 16: 76 E.R. 637 which requires

four things to be "discerned and considered" in arriving at the real meaning: (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy. There is also another rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear". Vide River Wear Commissioners v. Adamson (1876-77) App. Cs. 743 at 764...."

(emphasis supplied)

27. The Supreme Court in *Nelson Motis vs. Union of India and another,* (1992) 4 SCC 711 has held that where the words of the statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. The Court held as under:-

"8. The language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in *State of U.P.* v. *Dr Vijay Anand Maharaj* [AIR 1963 SC 946] when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating:

> "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

The comparison of the language with that of sub-rule (3) reinforces the conclusion that sub-rule (4) has to be understood in the natural sense. It will be observed that in sub-rule (3) the reference is to "a Government servant under suspension" while the words "under suspension", are omitted in sub-rule (4). Also the sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension". The departure made by the author in the language of sub-rule (4) from that of sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested.

> We, therefore, hold that as a result of sub-rule (4) a government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied."
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> (emphasis supplied)

28. In the case of *Nasiruddin and others vs. Sita Ram Agarwal,* (2003) 2 SCC 577, the Supreme Court arrived at the conclusion that the Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It was clearly stated that where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner only because of harsh consequences arising therefrom. The Court held as under:-

> **"35.** In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In *E. Palanisamy* v. *Palanisamy* (2003) 1 SCC 123, a Division Bench of this Court observed: (SCC p. 127, para 5)
>
> "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters."
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> *** *** ***
>
> **37.** The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."
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> (emphasis supplied)

29. The Supreme Court in *Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat and another,* (2004) 6 SCC 672, has held that the language employed in a statute is the determinative factor of legislative intent. The question is not what may be supposed and has been intended but what has been said. The relevant extract of the said judgment reads as under:-

> **"18.** The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage* [218 FR 547].) The view was reiterated in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama* [(1990) 1 SCC 277] (SCC p. 284, para 16).
>
> **19.** In *D.R. Venkatachalam* v. *Dy. Transport Commr.* [(1977) 2 SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
>
> **20.** While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST* v. *Popular Trading Co.* [(2000) 5 SCC 511]). The legislative casus omissus cannot be supplied by judicial interpretative process.
>
> **21.** Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou* v. *Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so

> achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke* v. *IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed: (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]"
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> (emphasis supplied)

30. In *Nathi Devi vs. Radha Devi Gupta,* (2005) 2 SCC 271, it has been propounded that the 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 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. It was further held that 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. The relevant extract of the decision, reads, thus:-

> **"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 the 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.* v. *Dr. Vijay*

Anand Maharaj [AIR 1963 SC 946], *Rananjaya Singh* v. *Baijnath Singh* [AIR 1954 SC 749] , *Kanai Lal Sur* v. *Paramnidhi Sadhukhan* [AIR 1957 SC 907] , *Nyadar Singh* v. *Union of India* [(1988) 4 SCC 170] , *J.K. Cotton Spg. and Wvg. Mills Co. Ltd.* v. *State of U.P.* [AIR 1961 SC 1170] and *Ghanshyamdas* v. *CST* [AIR 1964 SC 766].)

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

31. The Supreme Court in *Aravali Golf Club vs. Chander Hass,* (2008) 1 SCC 683 went on to the extent of holding that in the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State. The relevant observations are:-

"17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen (2007) 1 SCC 408; and S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State-the legislature, the executive and the judiciary -- must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book The Spirit of Laws) broadly holds the field in India too. In Chapter XI of his book The Spirit of Laws Montesquieu writes:

"When the legislative and executive powers are united in the same person, or in the same body of Magistrates,

> there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

32. The similar provisions of the 1996 Rules, which are involved herein came up for consideration before a Five Judge Bench of this Court in *Pankaj Kumar Rai vs. State of M.P and others,* 2017 SCC Online MP 1764. The Court relying upon the judgment of the Supreme Court in *Kailash Chandra and another vs. Mukundi Lal and others,* (2002) 2 SCC 678 observed that a provision in the statute is not to be read in isolation. When the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature then it has to be read with other related provisions of the Act itself. The Bench in *Pankaj Kumar Rai'*s case (supra) observed as under:-

> **"13.** We have heard learned counsel for the parties and find that the "Quarry Permit" mentioned in Rule 68 third proviso is distinct from a "Trade quarry" granted under Rule 7 read with Rule 36 or a "Quarry lease" granted under Rule 6 read with Rule 18 of the Rules.....The "Trade quarry" is the one for which right to work is auctioned in terms of Rule 7 read with Rule 36 as contained in Chapter VI of the Rules. The quarry lease is allotted under Rule 6. Thus, the quarry lease is governed by allotment whereas the trade quarry is allotted by auction whereas the quarry permit is granted for a specified period for the purposes of specific contract in terms of third proviso to Rule 68. ..."

33. Considering the true meaning and effect of the Rules 6 and 7 and the relevant entries in the Schedule-I and II coupled with the other relevant provisions of the 1996 Rules, which have been discussed hereinbefore, in the light of the principles of interpretation laid down by the Supreme Court in the cases of *Sankalchand Himatlal Sheth* (supra), *Nelson Motis* (supra)*, Nasiruddin* (supra)*, Maulavi Hussein Haji* (supra), *Nathi Devi* (supra) and *Aravali Gold Club* (supra)*,* it is manifest that the Rules 6 and 7 of the 1996 Rules operate in different fields and they cover different minerals specified in Schedule I and II and even after reading the said provisions together with other Rules in the 1996 Rules, no

likeness is established between the Mineral-G at Serial No.6 of Schedule-I and "Stone, Boulder, road metal Gitti, Rubble Chips etc." mentioned at Serial No.3 of Schedule-II. Under the entire scheme of the 1996 Rules, the quarries of Minerals specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II situated in Government land alone are meant to be allotted by auction under Rule 7 of the 1996 Rules. A perusal of Column (3)(iii) of the Table appended to Rule 6 clearly goes to show that even the quarry of minerals specified at Serial No.3 of Schedule-II situated in private land is covered by Rule 6 of the 1996 Rules which prescribes the procedure for its grant and renewal by the Authority and not by auction as per Rule 7 of the 1996 Rules. The grant or renewal of quarry lease of Mineral-G at Serial No.6 of Schedule-I and rest of the minerals in Schedule-I and II (except Serial No.5 of Schedule-I and Serial No.1 and 3 of Schedule-II on the Government land) is governed by Rule 6 of the 1996 Rules and could not be by way of open auction. Since in the Table appended to the Rule 6 of the 1996 Rules, the grant of quarry lease of certain specified minerals on the private land has been specifically provided at column (3) e.g. at Column 3(ii) and (iii) at Serial No.(1) of the Table whereby Director is the Authority to grant the minerals and column 3(iii), (v) of Serial No.2 of the Table where the Collector is the Authority, therefore, it is apparent that except the minerals mentioned in the said Table which are on the private land, all other minerals could be on the Government or private land. Thus, under Rule 6 of the 1996 Rules, the nature of the land has not been mentioned. Accordingly, the **Question No.(I)** referred, is answered in the negative and it is held that the grant of quarry lease for Mineral-G at Serial No.6 of Schedule-I which is governed by Rule 6 of the 1996 Rules, on the Government land, cannot be by way of open auction.

34. Since the Mineral-G at Serial No.6 of Schedule-I is specifically held to be covered by Rule 6 of the 1996 Rules, which admits of the quarry lease for the said mineral by application for grant or renewal and not by auction, therefore, there cannot be two processes i.e. one by open auction for Government land and another by way of grant for private land in respect of Mineral-G. Thus, the **Question No.(II)** referred, is also answered in the negative.

35. Adverting back to the judgment in *Prathvi Infrastructure'*s case (supra), it was argued by the learned counsel for the petitioners that apart from heavy emphasis laid on Rule 7 and entry at Serial No.3 of Schedule-II of the 1996 Rules, misreading of the two judgments of the Supreme Court in *Centre for PIL's* case (supra) and *Natural Resources Allocation'*s case (supra) has also accounted for the conclusion by the Division Bench at Indore that the State Government has acted contrary to the statutory Rules in allotting mines in question without adhering to the process of auction. The said submission needs to be examined in the context of the question No.(III) referred.

36. The Division Bench at Indore specifically relied upon paragraphs 85, 89, 94, 95 and 96 of the judgment in *Centre for PIL'*s case (supra) and paragraph 188 of the judgment in *Natural Resources Allocation'*s case (supra) and held that the allocation of natural resources by taking recourse to auction is a fair and reasonable process and since the Rules also provide for conducting an auction, therefore, direction to adopt the most fair and transparent process came to be passed. It is, however, noticed that the judgment in *Centre for PIL'*s case (supra) was the subject matter of Presidential Reference under Article 143(1) of the Constitution of India in *Natural Resources Allocation'*s case (supra) for deciding the following question among others:-

> ***"Question 2.*** Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

The judgment in *Centre for PIL'*s case (supra) i.e. *2G Case* was explained by the Constitution Bench holding that the said judgment did not make any mention about auction being the only permissible and *intra vires* method for disposal of natural resources and the findings were limited to the case of spectrum. If the Court had actually held so, it would have found a mention in the summary at the end of the judgment. It was further explained that Article 14 of the Constitution of India does not predefine any economic policy as a constitutional mandate and even the mandate of Article 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. The relevant paragraphs from the Constitution Bench judgment are profitably reproduced as under:-

> ***"On merits***
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> *** *** ***
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> **67.** As already pointed out, the judgment in *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 triggered doubts about the validity of methods other than "auction" for disposal of natural resources which ultimately led to the filing of the present Reference. Therefore, before we proceed to answer Question 1, it is imperative to understand what has been precisely stated in *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 and decipher the law declared in that case.
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> *** *** ***
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> **69.** Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by

the Supreme Court, upon which, the case is decided. (See *Fida Hussain* v. *Moradabad Development Authority* (2011) 12 SCC 615) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided. [Also see *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] and *CIT* v. *Sun Engg. Works (P) Ltd.* [(1992) 4 SCC 363]]. In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.

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81. Our reading of these paragraphs suggests that the Court was not considering the case of auction in general, but specifically evaluating the validity of those methods adopted in the distribution of spectrum from September 2007 to March 2008. It is also pertinent to note that reference to auction is made in the subsequent para 96 with the rider "perhaps". It has been observed that "a duly publicised auction conducted fairly and impartially is *perhaps* the best method for discharging this burden". We are conscious that a judgment is not to be read as a statute, but at the same time, we cannot be oblivious to the fact that when it is argued with vehemence that the judgment lays down auction as a constitutional principle, the word "perhaps" gains significance. This suggests that the recommendation of auction for alienation of natural resources was never intended to be taken as an absolute or blanket statement applicable across all natural resources, but simply a conclusion made at first blush over the attractiveness of a method like auction in disposal of natural resources. The choice of the word "perhaps" suggests that the learned Judges considered situations requiring a method other than auction as conceivable and desirable.

82. Further, the final conclusions summarised in para 102 of the judgment (SCC) in *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 make no mention about auction being the only permissible and intra vires method for disposal of natural resources; the findings are limited to the case of spectrum. In case the Court had actually enunciated, as a proposition of law, that auction is the only permissible method or mode for alienation/allotmen of natural resources, the same would have found a mention in the summary at the end of the judgment.

83. Moreover, if the judgment in *2G case [Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1] is to be read as holding auction as the only permissible means of disposal of all natural resources, it would lead to the quashing of a large number of laws that

prescribe methods other than auction e.g. the MMDR Act. While dealing with the merits of the Reference, at a later stage, we will discuss whether or not auction can be a constitutional mandate under Article 14 of the Constitution, but for the present, it would suffice to say that no court would ever implicitly, indirectly, or by inference, hold a range of laws as ultra vires the Constitution, without allowing every law to be tested on its merits. One of the most profound tenets of constitutionalism is the presumption of constitutionality assigned to each legislation enacted. We find that *2G case [Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1] does not even consider a plethora of laws and judgments that prescribe methods, other than auction, for dispensation of natural resources; something that it would have done, in case it intended to make an assertion as wide as applying auction to all natural resources. Therefore, we are convinced that the observations in paras 94 to 96 could not apply beyond the specific case of spectrum, which according to the law declared in *2G case [Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1], is to be alienated only by auction and no other method.

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Whether "auction" a constitutional mandate

108. Such being the constitutional intent and effect of Article 14, the question arises — Can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms: like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the article apparent from its plain language.

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113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39*(b)*. The said Article enumerating certain principles of policy, to be followed by the State, reads as follows:

"39. ***Certain principles of policy to be followed by the State.***—The State shall, in particular, direct its policy towards securing—

(a) *** *** ***

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39*(b)* mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good".

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115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39*(b),* a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39*(b).* There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualisation.

116. The learned counsel for CPIL argued that revenue maximisation during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelised to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39*(b)*. However, we are not persuaded to hold so. Auctions may be the best way of maximising revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39*(b)* for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does,

irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39*(b)*."

(emphasis supplied)

The Constitution Bench in para 120 of its judgment concluded that the submission that any disposal of a natural resource for commercial use must be for revenue maximization and therefore, by auction, is neither legal nor logical and hence, it was held that disposal of all natural resources through auction is clearly not a constitutional mandate and legitimate deviations from auction are permissible for the purposes of disposal of natural resources. The said paragraph is reproduced as under:-

"120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies — Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39*(b)* imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/ allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."

(emphasis supplied)

After holding so, the Constitution Bench summarized its conclusions in para 146 and concluded that the Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. The Court can test the legality and constitutionality of these methods when questioned and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provisions of the Constitution. It was further propounded that the Court cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down. The conclusions are, thus:-

"Judicial review of policy decisions

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146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the

various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-a-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

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150. In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances.

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J.S. Khehar, J. *(concurring)*— I have had the privilege of perusing the opinion rendered by my esteemed Brother, D.K. Jain, J. Every bit of the opinion (which shall hereinafter be referred to by me, as "the main opinion") is based on settled propositions of law declared by this Court. There can, therefore, be no question of any disagreement therewith. I fully endorse the opinion expressed therein."

(emphasis supplied)

37. We are in full agreement with the submission advanced by the learned counsel for the petitioners that in *Prathvi Infrastructure'*s case (supra) there was no challenge to the validity of the Rules. In the absence thereof, the mandate as given therein was legally unfounded. The Supreme Court in *Vipan Kumar Jain'*s case (supra) had laid down as under:-

"10. Finally, the courts cannot read in limitations to the jurisdiction conferred by statutes, in the absence of a challenge to the provision itself when the language of the Act clearly allows for an ostensible violation of the principles of natural justice including the principle that a person cannot be a judge in his own cause....."

38. Similar view was expressed by the Supreme Court in *S.K. Saigal'*s case (supra) with the following observations:-

> **"8.** We have been taken through the entire petition filed by the respondents herein before the Tribunal. There is not even a whisper of challenging the Rules as discriminatory or ultra vires much less Rule 7(2)(b) of the Rules.
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>
> **10.** It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents dehors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. (See State of U.P. vs. Harish Chandra, (1996) 9 SCC 309 and Union of India vs. Assn. for Democratic Reforms (2002) 5 SCC 294)."

39. Keeping in view the analysis of the judgments of the Supreme Court in *Centre for PIL*'s case (supra) and *Natural Resources Allocation'*s case *(supra),* the Division Bench in *Prathvi Infrastructure'*s case (supra) has not correctly read the legal conclusions enunciated by the Constitution Bench judgment of the Supreme Court in *Natural Resources Allocation'*s case (supra). Thus, the **Question No.(III)** referred, stands answered accordingly.

40. As a necessary corollary, in view of the foregoing reasons, the **Question No.(IV)** with regard to correctness of the order passed by the Division Bench of Gwalior Bench of this Court in the case of *Smt. Prabha Sharma* (supra), is answered in the affirmative. Additionally, Division Bench at Gwalior in *M/s Aman Stone Crusher*'s case (supra) has referred two questions, as reproduced in the earlier part of the judgment. In view of the above answers and the said questions overlapping with them, the same stand answered accordingly in terms thereof.

41. Consequently, we have no manner of doubt that the Mineral-G at Serial No.6 of Schedule-I governed by Rule 6 of the 1996 Rules cannot be taken for the "Stone, Boulder, road metal Gitti, Rubble Chips etc." mentioned at Serial No.3 of Schedule-II governed by Rule 7 of the 1996 Rules. Therefore, we regret our inability to concur with the view expressed by the Division Bench in *Prathvi Infrastructure*'s case (supra) whereby it has held that grant of quarry lease for minor mineral stone for making *Gitti* by mechanical crushing (i.e. use of crusher) at Serial No.6 of Schedule-I would only be by way of open auction on the Government land and the said judgment is, thus, hereby ***overruled.***

42. The writ petitions shall now be laid before the Division Bench for hearing as per Roster.

Order accordingly

I.L.R. [2020] M.P. 2073 (DB)
WRIT APPEAL

Before Mr. Justice Prakash Shrivastava & Mr. Justice Vivek Rusia

W.A. No. 727/2020 (Indore) decided on 21 September, 2020

STATE OF M.P. & ors. …Appellants

Vs.

RAMESH GIR …Respondent

(Alongwith W.A. Nos. 729/2020 & 741/2020)

***Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, M.P. 2011, Rule 7 (amended) and General Clauses Act, M.P. 1957 (3 of 1958), Section 16 – Panchayat Secretary – Suspension/Dismissal – Competent Authority* – Held – Even if there is no express provision in Rules of 2011, applying general principle of master servant relationship, the appointing authority has implicit power to place the employee under interim suspension or dismiss him – CEO being appointing authority can pass order of interim suspension of Gram Panchayat Secretary – Appeals allowed. (Paras 11, 13, 17, 18 & 21)**

पंचायत सेवा (ग्राम पंचायत सचिव भर्ती और सेवा की शर्तें) नियम, म.प्र. 2011, नियम 7 (संशोधित) एवं साधारण खण्ड अधिनियम, म.प्र. 1957 (1958 का 3), धारा 16 – पंचायत सचिव – निलंबन/पदच्युति – सक्षम प्राधिकारी – अभिनिर्धारित – यदि 2011 के नियमों में अभिव्यक्त उपबंध नहीं है, तब भी, मालिक–सेवक के संबंध के सामान्य सिद्धांत को लागू करते हुए, नियोक्ता प्राधिकारी के पास, कर्मचारी को अंतरिम निलंबन में रखने या उसे पदच्युत करने की विवक्षित शक्ति है – मुख्य कार्यपालक अधिकारी, नियोक्ता प्राधिकारी होने के नाते, ग्राम पंचायत सचिव के अंतरिम निलंबन का आदेश पारित कर सकता है – अपीलें मंजूर।

Cases referred:

AIR 1964 SC 787, AIR 1956 SC 285, AIR 1950 FC 140, 1968 MPLJ 604.

Pushyamitra Bhargava, Addl. A.G. for the appellants.
Manoj Manav, for the respondent in W.A. No. 741/2020.
None, for the respondent in other Writ Appeals.

O R D E R

The Order of the Court was passed by :

PRAKASH SHRIVASTAVA, J.:- This order will govern the disposal of WA No.727/2020, WA No.729/2020 and WA No.741/2020 since it is jointly submitted by learned counsel for parties that all these appeals involve common questions in identical fact situation.

2. These appeals have been filed by the State against the order of the learned Single Judge dated 13/2/2020 passed in WP No.18128/2019(s), WP No.15511/2019(s) and WP No.27982/2019(s).

3. For convenience, facts are taken from WA No.727/2020.

4. Respondent had filed the WP No.18128/2019(s) with the plea that he was appointed as Panchayat Karmi in the year 2006 and was later notified as Panchayat Secretary of the gram panchayat in 2006 and was regularized in 2008. The Chief Executive Officer of Jilla Panchayat had passed the order dated 29/7/2019 suspending the respondent on the ground of committing serious financial irregularities and aggrieved with this order of suspension he had filed the writ petition raising the plea that the order of suspension was wrongly passed. The appellants had filed their reply and supported the order of suspension.

5. Learned Single Judge after hearing both the parties, by the order under appeal has quashed the order of suspension on the ground that the order was without jurisdiction as no provision exists in the rules to suspend a Panchayat Secretary. Learned Single Judge has opined that M.P. Panchayat Service (Discipline and Appeal Rules) 1999 which contain the general power to suspend were made applicable by unamended Rule 7 of the M.P. Panchayat Service (Gram Panchayat Recruitment and Conditions of Service) Rules 2011, but subsequently Rule 7 has been amended on 9/8/2017 and under the amended rule no such power of suspension exists, therefore, a Gram Panchayat Secretary cannot be suspended.

6. Learned counsel for appellants submits that the CEO of Jilla Panchayat being the appointing authority is competent to suspend the Panchayat Secretary. He further submits that by the notification dated 23/1/2020 it has been clarified that the CEO of the Jilla Panchayat is competent to suspend a Panchayat Secretary. He has also submitted that since the clarificatory circular has been issued to fill up the gap in the rule, therefore, it will have the binding force.

7. Learned counsel for respondent supporting the order of the learned Single Judge has submitted that though prior to the amendment in the Rules of 2011 there was a provision for suspending the Panchayat Secretary, but after the amendment of 2017 in Rule 7 no such provision for suspending a Panchayat Secretary exists, therefore, there is no power vested with the authorities to suspend a gram Panchayat Secretary. He has further submitted that the notification/circular dated 23/1/2020 has no binding effect and even otherwise no such circular was in existence when the impugned order of suspension was passed.

8. We have heard the learned counsel for parties and perused the record.

9. Undisputedly the services of the Gram Panchayat Secretary are governed by the M.P. Panchayat Service (Gram Panchayat Secretary Recruitment and

Conditions of Service) Rules 2011 (for short "Rules of 2011"). Schedule I of the Rules of 2011 clearly provides that the CEO of Jilla Panchayat is the appointing authority of Gram Panchayat Secretary. There is also no dispute that Rule 7 of Rules of 2011 prior to its amendment in 2017 contained the provision relating to the applicability of M.P. Panchayat Service (Discipline and Appeal Rules) 1999 (for short "Rules of 1999") and Rule 4 of Rules of 1999 contains the provision for suspension of a member of panchayat service. By the amendment dated 9/8/2017, Rule 7 of Rules of 2011 has been substituted and the newly incorporated Rule 7 is silent about suspension or applicability of Rules of 1999.

10. In the aforesaid backdrop the issue arises for consideration before this court as to whether a Panchayat Secretary can be suspended by the appointing authority in the absence and any expressed power of suspension conferred under the Rules of 2011 ?.

11. When the Rules are silent about power of suspension, then the general principle of suspension will apply. The general principle is that under the ordinary law of master and servant the authority which has power to appoint an employee has the implicit power to place him under interim suspension. Such interim suspension can be on account of contemplated or pending departmental enquiry or due to registration of the criminal case or for any other justifiable reason. Such suspended employee is entitled for subsistence allowance as per rules during the suspension period and if there is no rule governing suspension allowance, then full remuneration is payable.

12. The Constitution Bench of the Supreme Court in a case in the matter of *R.P. Kapur Vs. Union of India & another* AIR 1964 SC 787 while considering somewhat similar issue relating to suspension has drawn the distinction between permanent suspension by way of punishment and interim suspension pending the enquiry or a criminal case. It has been held that interim suspension order can be passed even though there is no specific provision to that effect in the terms of appointment or in the Rules. While approving the above general principle, the Supreme Court has held that:-

> "10- Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, Management of Hotel Imperial New Delhi v. Hotel Workers' Union (1960) 1 SCR 476: (AIR 1959 SC 1342) and T. Cajee v. U. Jormanik Siem, (1961) A SCR 750: (AIR 1961 SC 276) These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could

not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

"11- The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision ins. 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry

> or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Art. 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

13. The above general principle that the authority empowered to appoint an employee also has the power to suspend him has been recognized u/S.16 of the M.P. General Clauses Act which is para materia with Sec.16 of the Central General Clauses Act. Sec.16 of the M.P. General Clauses Act reads as under:-

> "16-**Power to appoint to include power to suspend or dismiss.** - Where, by any enactment, a power to make any appointment is conferred, then unless a different intention appears, the authority for the time being having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power."

14. Before the Constitution Bench of the Supreme Court in the matter of *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court* AIR 1956 SC 285 the issue was in respect of the power of Chief Justice of Calcutta High Court to dismiss the Registrar and Accountant General of the High Court in the absence of the expressed provision though the Chief Justice was the appointing authority. The Supreme Court considering Sec.16 of the General Clauses Act has held that the power of "appointment" includes the power "to suspend or dismiss".

15. The Federal Court in the matter of *Kutoor Vengayil Rayarappan Nayanar V. Kutoor Vengayil Valia Madhavi Amma* reported in AIR 1950 FC 140 where the issue was in respect of power to remove a Receiver appointed u/O.40 Rule 1 of the CPC by considering Sec.16 of the General Clauses Act has held that:-

> "The statute has codified the well understood rule of general law as stated by *Woodroffe on Receivers,* Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown. It seems that it was because of this statutory rule based on the principles above mentioned that in O. XL, r. 1, of the Code of Civil Procedure no express mention was made of the power of the

court in respect of the removal or suspension of a receiver. The General Clauses Act has been enacted so as to avoid superfluity of language in statutes wherever it is possible to do so. The legislature instead of saying in O. XL, r. 1, that the court will have power to appoint, suspend or remove a receiver, simply enacted that wherever convenient the court may appoint a receiver and it was implied within that language that it may also remove or suspend him. If O. XL, r. 1, of the Code of Civil Procedure is read along with the provisions above mentioned, then it follows by necessary implication that the order of removal falls within the ambit of that rule and once that decision is reached, it becomes expressly appealable under the provisions of O. XLIII, r. 1(s)."

16. The similar issue had also earlier come up before the division bench of this court in the matter of *Umashankar Shukla, Principal, Arts and Commerce College, Harda Vs. B.R. Anand, Chairman, Governing Body, Arts and Commerce College, Harda & Ors* 1968 MPLJ 604 in respect of suspension of Principal of a College in the absence of the provision to suspend in terms of service contract or statutory provision. Hon'ble Justice G.P.Singh taking note of the general law and also Sec.16 of the General Clauses Act has held that the authority entitled to appoint a servant is also competent to suspend and dismiss him. In this regard the division bench has held that:-

"3. The law regarding the right of the master to suspend his servant and to deprive him of his remuneration is well-settled. A master can refuse to take work from his servant and in that sense can suspend him during the pendency of an enquiry against him even though there is no specific provision in the contract of service. But the servant remains entitled to his full remuneration in spite of suspension unless there is some contractual term or statutory provision which enables the master to suspend the servant without payment of salary. Management of Hotel Imperial, New Delhi v. Hotel Workers' Union; T Cajee v. Jormanik Siem and R.P.Kapur v. Union of India.

4. We now turn to the argument that the college code read along with Section 16 of the Madhya Pradesh General Clauses Act, 1957, confers power of suspension along with power to withhold pay in whole or in part during the period of suspension. The college, with which we are concerned, is affiliated to the Saugar University and is governed by the college code which is an Ordinance made by the Saugar University under the University of Saugar Act, 1946. The code having-been made under statutory powers has the force of law [P.R.Godh v. A.L. Pandey] 1965 J.L.J. 513 (S.C.). The only provision in the code to which our attention is drawn is Clause 9 (iv) which reads as follows ;

"No disciplinary action of any kind shall be taken against the principal of a college by its governing body without previous approval of the Vice-Chancellor."

The aforesaid provision neither expressly nor impliedly provides for suspension without; pay. The effect of the provision is that the governing body of a college can with previous approval of the Vice-Chancellor take disciplinary action against a principal. It is also implicit on general principles that the governing body will have power to suspend the principal during an enquiry against him. But there is nothing in the language of the clause from which a power to withhold pay either wholly or partly during the period of suspension may be spelt out. Section 1.1 of the Madhya Pradesh General Clauses Act, 1957, to which reference is made, is also of no assistance and is altogether inapplicable. The Madhya Pradesh General Clauses Act, 1058, applies for construing Madhya Pradesh Acts, Ordinances and Regulations made under the Constitution after the appointed day, i.e., after 1 November 1955, The definitions of the expressions" Madhya Pradesh Act," " Ordinance," "Regulation," " enactment" and " appointed day"- as contained in Section 2 read along with Section 31 make that position clear. By force of Section 31(6) the Act also applies for construction of rules, regulations, bylaws, orders, notifications, schemes or forms made or issued under a Madhya Pradesh Act. But a Madhya Pradesh Act here referred to is again an Act which, according to the definition contained in Section 2(21), is made after 1 November 1956. In our opinion, the Madhya Pradesh. General Clauses Act, 1957, in general or Section 16 thereof in particular, cannot be resorted to for construing the University of Saugar Act, 1946, or an Ordinance made by the university under that Act. For construction of the University of Saugar Act, 1946, one has to take the assistance of the Central Provinces and Berar General Clauses Act, 1914. Section 15 thereof, which corresponds to Section 16 of the General Clauses Act, 1958, when read along with the definition contained in Section 2(30) applies to construction of a Madhya Pradesh Act enacted before 1 November 1956 ; but there is nothing in the Act to make Section 15 applicable for construing an Ordinance made by the university under the University of Saugar Act, 1946. Further neither Section 15 of the Central Provinces and Berar General Clauses Act, 1914, nor 8. 16 of the Madhya Pradesh General Clauses Act, 1957, confer any power to suspend without pay. The language used in them corresponds to Section 16 of the Central Act (The General Clauses Act, 1897) which was considered by their Lordships in R.P. Kapur's case. It was there observed:

> "On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897 which lays down that where any Central Act or Regulation gives power of appointment, that includes the power

> to suspend or dismiss unless a different intention appears, Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision, the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension."
>
> The aforesaid observations go to show that Section 16 of the General Clauses Act statutorily enacts the rule of general law that the authority entitled to appoint a servant is also competent to suspend and dismiss him but the section has not the effect of providing that the servant who has been suspended will not be entitled to his pay. In the absence of any other provision depriving the servant of his pay, he will be entitled to his full emoluments during the period of suspension."

17. Having regard to the aforesaid, we are of the opinion that applying the general principle of master servant relationship, the authority who has the power to appoint an employee has the implicit power to place the employee under interim suspension or to dismiss him. In this view of the matter even if there is no expressed provision in the Rules of 2011 or even if these Rules are silent about power of the appointing authority to suspend the CEO, then also attracting the general principle, the appointing authority has the power to place a Panchayat Secretary under interim suspension.

18. In the present case, as already mentioned above the appointing authority of Gram Panchayat Secretary under Rules of 2011 is the CEO of Jilla Panchayat, therefore, the said appointing authority also has the power to suspend or dismiss the Gram Panchayat Secretary. In the present case, the impugned order of interim suspension has been passed by the appointing authority which also provides for payment of suspension allowance during the suspension period, therefore, it does not suffer from the vice of lack of jurisdiction.

19. It is also worth noting that the State Government has published the notification dated 20/1/2020 in the M.P. Gazettee to the following effect:-

> **"No.F.10-1-2020-XXII-P.1**—The State Government hereby makes the clarification that if it is necessary for maintaining discipline and control under rule 7 of the Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011. The Action of suspension under the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules 1999 may be taken and Chief Executive Officer of Zilla Panchayat is competent to suspend the Secretary of the Gram Panchayat.

This explanation shall be applicable from the date of enforcement of the Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011."

20. The aforesaid clarificatory notification issued by the State government is in consonance with the general principle of implicit power to suspend, which the appointing authority is conferred with in the master servant relationship.

21. Having regard to the aforesaid, we are of the opinion that CEO, Jilla Panchayat, Ujjain was competent to suspend the appellant and the order of suspension dated 29/7/2019 does not suffer from the vice of lack of jurisdiction.

22. In view of the above analysis, we set aside the order of the learned Single Judge and dismiss the writ petitions. The Writ Appeals are accordingly **allowed.**

23. The signed order be placed in the record WA No.727/2020 & a copy whereof be placed in the record of connected WA No.729/2020 & WA No.741/2020.

Appeal allowed

I.L.R. [2020] M.P. 2081
WRIT PETITION

Before Mr. Justice G.S. Ahluwalia

W.P. No. 28789/2019 (Gwalior) decided on 13 January, 2020

SUMEDHA VEHICLES PVT. LTD. (M/S) …Petitioner

Vs.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL & ors. …Respondents

***A. Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), Section 7-I & 7-Q – Appeal – Maintainability* – Held – Order passed by authority u/S 7-Q of the Act of 1952 is not appealable and no appeal u/S 7-I would be maintainable. (Paras 41, 42, 45 & 46)**

क. कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम (1952 का 19), धारा 7–I व 7–Q – अपील – पोषणीयता – अभिनिर्धारित – प्राधिकारी द्वारा 1952 के अधिनियम की धारा 7–Q के अंतर्गत पारित किया गया आदेश अपील योग्य नहीं तथा धारा 7–I के अंतर्गत कोई अपील पोषणीय नहीं होगी।

***B. Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), Section 7-Q – Interest on Delayed Payment – Appeal* – Held – While levying interest on delayed payment made by employer, authority is not required to determine any disputed question of fact – Rate of interest is**

already provided u/S 7-Q – No discretion with the authority to determine liability of employer – No appeal lies against order passed u/S 7-Q of the Act.
(Para 28)

ख. कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम (1952 का 19), धारा 7–Q – विलंबित भुगतान पर ब्याज – अपील – अभिनिर्धारित – नियोक्ता द्वारा किये गये विलंबित भुगतान पर ब्याज उद्ग्रहित करते समय, प्राधिकारी से किसी विवादित तथ्य के प्रश्न का अवधारण किया जाना अपेक्षित नहीं – ब्याज की दर पहले से धारा 7–Q में उपबंधित है – नियोक्ता के दायित्व के अवधारण हेतु प्राधिकारी के पास कोई विवेकाधिकार नहीं – अधिनियम की धारा 7–Q के अंतर्गत पारित आदेश के विरूद्ध कोई अपील नहीं होगी।

C. Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), Section 7-Q & 14-B – "Interest" & "Damages" **– Held – "Interest" and "damages" are two different provision – "Interest" is payable on delayed payments without any further adjudication whereas recovery of "damages" is not automatic due to delayed payments of amount due but authority may recover damages.** **(Para 34)**

ग. कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम (1952 का 19), धारा 7–Q व 14–B – ''ब्याज'' व ''क्षतिपूर्ति'' – अभिनिर्धारित – ''ब्याज'' व ''क्षतिपूर्ति'' दो भिन्न उपबंध हैं – ''ब्याज'', बिना किसी अतिरिक्त न्यायनिर्णयन के विलंबित भुगतानों पर देय है जबकि ''क्षतिपूर्ति'' की वसूली, देय रकम के विलंबित भुगतानों के कारण अपने आप नहीं होगी परंतु प्राधिकारी क्षतिपूर्ति की वसूली कर सकता है।

D. Constitution – Article 227 – Scope & Jurisdiction – Reliefs **– Held – This Court cannot travel beyond the relief prayed by petitioner.**
(Para 47)

घ. संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अनुतोष – अभिनिर्धारित – यह न्यायालय, याची द्वारा निवेदित अनुतोष से परे नहीं जा सकता।

E. Interpretation of Statute **– Held – Court cannot read anything into a statute provision, which is plain and unambiguous – To ascertain the intention of legislature, Court must see as to what has been said and what has not been said – Court is bound to accept the express intention of legislature.**
(Para 40)

ङ. कानून का निर्वचन – अभिनिर्धारित – न्यायालय एक कानूनी उपबंध में कुछ और नहीं पढ़ सकता, जो स्पष्ट एवं असंदिग्ध है – विधान मंडल के आशय को सुनिश्चित करने के लिए न्यायालय को देखना चाहिए कि क्या कहा गया है और क्या नहीं कहा गया है – न्यायालय, विधान मंडल के अभिव्यक्त आशय को स्वीकार करने हेतु बाध्य है।

Cases referred :

1980 Supp SCC 92, (2009) 10 SCC 531, (2004) 11 SCC 672, AIR 2006 Ker 58, AIR 1998 Kerala 231, (2009) 10 SCC 123, (2013) 16 SCC 1, (2019) 9 SCC

508, (1993) 3 SCC 217, (2004) 2 SCC 783, (1979) 4 SCC 573, (2006) 2 SCC 670, (2015) 12 SCC 169, (2010) 4 SCC 653, (2010) 2 SCC 422.

D.K. Agrawal, for the petitioner.
R.K. Goyal, for the respondents.

O R D E R

G.S. AHLUWALIA, J. :- Heard on the question of admission.

2. This petition under Article 227 of the Constitution of India has been filed against the order dated 20-12-2019 passed by Central Government Industrial Tribunal-cum-Labour Court, Lucknow in Appeal No. 53/2019 by which the appeal filed the petitioner against the order dated 10-10-2019 passed under Section 7-Q of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, has been dismissed on the ground that it is not maintainable.

3. According to the petitioner, the necessary facts for disposal of the present petition in short are that the petitioner is a Private Limited Company and is working as an authorized dealers for Vehicles/Cars. The petitioner's establishment is situated at Gwalior, and the office of respondents no. 2 and 3 are also situated in Gwalior and the order dated 10-10-2019 was also passed at Gwalior. Thus it is claimed that, a part of Cause of Action has arisen within the territorial jurisdiction of this Court, therefore, this Court has a jurisdiction to entertain the writ petition against the order dated 20-12-2019 passed by CGIT-cum-Labour Court, Lucknow. It is not disputed by the Petitioner, that Petitioner firm is covered by the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (In short EPF Act). It is claimed that although the petitioner had deposited its Provident Fund Contribution after payment of wages to its employees, and there was no default in deposit of contribution, however, for the pre-discovery period between July 2009 to April 2014, by order dated 14-12-2016, the petitioner was saddled with the liability of Rs. 48,76,050 without there being any identification of the beneficiaries. It is admitted by the Petitioner, that the said amount was deposited by it with the responent (sic : respondent) no. 3 on 21-3-2017, 24-8-2013,14-9-2017 and 9-10-2017 and the order dated 14-12-2016 was never challenged by the petitioner and thus, the order dated 14-12-2016 has attained finality.

4. It is the case of the petitioner, that after the deposit of amount of Rs. 48,76,050, the petitioner was issued a composite show cause notice on 26-9-2019 indicating that an amount of Rs. 48,76,050 is due under Section 14-B and an amount of Rs. 31,13,873 is due under Section 7-Q of EPF Act, and thus in all an amount of Rs. 79,89,923 was shown to be outstanding against the petitioner under

Section 14B and 7-Q of EPF Act. Along with the show cause notice, a calculation sheet was also supplied to the petitioner. The petitioner filed his response to the show cause notice.

5. The Assistant Provident Fund Commissioner (C-II), (Damages), Regional Office, Gwalior by order dated 10-10-2019 passed in PF/RO/GWL/MP/15995/C-II/1327 imposed the damages of Rs. 48,76, 050 under Section 14-B of EPF Act, and by order dated 10-10-2019 passed in PF/RO/GWL/MP/15995/C-II/1328, levied the interest of Rs. 31,13,973 under Section 7-Q of EPF Act.

6. Since a composite Show Cause Notice was issued, and a joint inquiry was conducted, therefore, the petitioner filed a composite appeal under Section 7-I of EPF Act against the aforementioned two orders dated 10-10-2019.

7. It is submitted that by the impugned order dated 20-12-2019, the CGIT-cum-Labour Court, Lucknow passed in Appeal No. 53/2019 held that although the appeal filed against the order dated 10-10-2019 passed under Section 14-B of EPF Act is maintainable, however, the appeal filed against the order dated 10-10-2019 passed under Section 7-Q of EPF Act has been dismissed as non-maintainable by observing as under :

> "..... and held not maintainable as regards to the order passed u/s 7-Q of the Act."

8. It is submitted that the present petition has been filed challenging the dismissal of the appeal filed against the order dated 10-10-2019 passed under Section 7-Q of the EPF Act.

9. Challenging the impugned order dated 20-12-2019, it is submitted that different benches of CGIT have held that the appeal filed against the order passed under Section 7-Q of EPF Act is maintainable, and the orders passed by different benches of CGIT are binding on each of them. Further, it is submitted that as per the provisions of Section 7-A of EPF Act, it is clear that all determinations of moneys due from employers are determined under this Section, and any order passed under Section 7-A is appealable under Section 7-I of EPF Act. It is submitted that how much was the delay in making payment of "amount due" by the employer would require determination, therefore, in view of the provisions of Section 7-A of EPF Act, the order determining the interest payable by the employer is also appealable, and thus, the impugned order passed by CGIT-cum-Labour Court, Lucknow is liable to be quashed, and the Tribunal below may be directed to admit the appeal filed against the order passed under Section 7-Q of EPF Act. It is submitted that since, a composite show cause notice was issued, therefore, merely because two different orders have been passed under Section 14B and 7-Q of EPF Act, therefore, the appeal against the order passed under Section 7-Q of EPF Act would not become non-maintainable. It is further

submitted that the provisions of appeal should be construed liberally, and merely because Section 7-Q has not been mentioned in Section 7-I of EPF Act, therefore, it would not mean, that no appeal lies against the order passed under Section 7-Q of EPF Act. To buttress his contentions, the Counsel for the petitioner has relied upon the judgments passed by the Supreme Court in the case of *V.C. Shukla v. State through CBI* reported in 1980 Supp SCC 92, *Super Cassettes Industries Ltd. v. State of U.P.* reported in (2009) 10 SCC 531, *P.S. Sathappan v. Andhra Bank Ltd.* reported in (2004) 11 SCC 672 and by Kerala High Court in the case of *K.V. Balan and another Vs. Sivagiri Sree Narayana Dharma Sanghom Trust and others* reported in AIR 2006 Ker 58 and *K. Premavalli Vs. State of Kerala* reported in AIR 1998 Kerala 231. It is further submitted that the words " any amount due from an employer" occurring in Section 11(2) should not be confined to amount determined under Section 7-A but it should also include interest payable under Section 7-Q of EPF Act. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of *Maharashtra State Co-operative Bank Limited Vs. Assistant Provident Fund Commissioner and others* reported in (2009) 10 SCC 123.

10. Per contra, the Counsel for the respondent has supported the impugned order and submitted that an appeal against the order passed under Section 7-Q of EPF Act is not maintainable and to buttress his contentions, he has relied upon the judgment passed by the Supreme Court in the case of *Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others* reported in (2013) 16 SCC 1.

11. Heard the learned Counsel for the parties.

12. The EPF Act, is a beneficial legislation promulgated for the protection of the rights of the employees.

13. The Supreme Court in the case of *Shree Vishal Printers Ltd. v. Provident Fund Commr.,* reported in (2019) 9 SCC 508 has held as under:

> **1.** Welfare economics, enlightened self-interest and the pressure of trade unions led larger factories and establishments to introduce schemes that would benefit their employees, including schemes like that of the provident fund.[1]- However, with an increasing number of small factories and establishments coming into the market, the employees of such fledgling units remained deprived of these benefits. In order to diffuse such benefits in establishments across the market, the legislature promulgated the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the said Act"). The said Act was enacted with the avowed object of providing for the security of workers in organised industries, in the absence of any social security scheme prevalent in our country.

14. Further, while interpreting the Provisions of EPF Act, the Court is required to keep the objects and reasons of the Act in the mind, so that the basic object of the EPF Act is not frustrated. The Supreme Court in the case of *Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore,* reported in (1993) 3 SCC 217 has held as under :

> **13.** That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer.

15. Section 7-A, 7-I, 7-Q and 14-B of EPF Act reads as under :

> **7-A. Determination of moneys due from employers.**—(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner

or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3-A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer *ex parte,* he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

7-I. Appeals to Tribunal.— (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof, or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7-Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

14-B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund , the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or subsection (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of

> penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:
>
> Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:
>
> Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

16. From the plain reading of Section 7-Q of EPF Act, it is clear that nothing is required to be determined for levying the interest on late payment by the employer. The rate of interest is already provided in the Section and no discretionary power has been conferred on the authority. Thus, the only question which is required to be decided under Section 7-Q of EPF Act is that whether there was any delay on the part of the employer in depositing the amount due under this Act or not? If the employer succeeds in establishing that nothing was due from him under this Act, then there will not be any question of levying the interest and if it is found that certain amount was due from the employer on a particular date, and the same was not deposited, then the authority shall be under obligation to find out the date on which the amount so due from the employer was deposited and then to levy the interest on the delayed payment. Nothing is required to be adjudicated by the Authority while passing an order under Section 7-Q of the EPF Act.

17. From the plain reading of Section 7-I of EPF Act, it is clear that no appeal has been provided against the order passed under Section 7-Q of EPF Act. However, it is submitted by the Counsel for the petitioner, that while interpreting the statutory provisions of Law, this Court must give a liberal meaning to the statutory provisions, and therefore, it should be held that when the order of Damages passed under Section 14-B of EPF Act has been made appealable, then the order passed under Section 7-Q of EPF Act is also appealable.

18. The Petitioner has relied upon the judgment passed by the Supreme Court in the case of *P.S. Sathappan v. Andhra Bank Ltd.* (Supra) in which it has been held as under :

> **68.** For proper construction of Section 104 of the Code, vis-a-vis clause 15 of the Letters Patent, it is necessary to ascertain the intention of Parliament. If a right of appeal, it is trite, is a creature of statute, it must be governed thereby. Sub-section (2) of Section 104 clearly states that no appeal from an order passed under sub-section (1) thereof would be maintainable. Proviso appended to Section 104 of the Code provides for a limited right

> of appeal in respect of clause (ff) of sub-section (1) of Section 104 of the Code which is an indicia of the fact that such a right may be circumscribed. The statute has used the language in the negative and, thus must be construed as mandatory. In view of the fact that an appeal from an order specified in Section 104 of the Code is maintainable only thereunder and from no other it leads to incongruity that in the event the forum is the High Court the appellate judgment would be governed by clause 15 of the Letters Patent, but in the event the forum is the District Judge, the judgment would be governed by sub-section (2) of Section 104 of the Code. If such a contention is accepted, the same would not only give rise to an anomalous situation which may be culled out from a plain reading of the said provision but also would give rise to different treatment to different classes of litigants, although a right of appeal is available to both the classes from orders of similar nature which possibility should, as far as possible, be avoided. The wordings of Section 104(2) of the Code, in our opinion, do not call for more than one interpretation. Liberal interpretation, as is well known, is the rule.
>
> **69.** Furthermore, it is now well settled that when two interpretations of a statute are possible, the court may prefer and adopt the purposive interpretation having regard to object and intent thereof. (See *Swedish Match AB* v. *Securities & Exchange of Board of India.)*

19. The Petitioner has relied upon the judgment passed by the Supreme Court in *Super Cassettes Industries Ltd.* (Supra) in which it has been held as under :

> **21.** In *D.N. Taneja* v. *Bhajan Lal* a three-Judge Bench of this Court observed that: (SCC p. 32, para 12)
>
> "*12.* ... the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration."
>
> **22.** In *V.C. Shukla* v. *State* this Court while dealing with the submission that right of appeal should be liberally construed referred (at SCC p. 128, para 42) to the observations of Crawford: *The Construction of Statutes,*
>
> "[m]oreover, statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable".
>
> and held: (SCC p. 128, para 43)

> "*43*. There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that 'the right will not be restricted unless such a construction is unavoidable'. In the instant case, in view of the non obstante clause, Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of Crawford, extracted above."

20. The Petitioner has relied upon the judgment passed by the Supreme Court in the case of *V.C. Shukla v. State through CBI* (Supra) in which it has been held as under :

> **42.** The learned counsel for the appellant then finally submitted that the present statute which gives a right of appeal, should be liberally construed in favour of the accused so as not to deprive him of the right of appeal. The counts counsel relied on the observations of Crawford: *THE CONSTRUCTION OF STATUTES* (pp. 692- 93) which may be extracted thus:
>
> "S. 336. *Appeals.*—.... Moreover, statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable."
>
> **43.** There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that "the right will not be restricted unless such a construction is unavoidable". In the instant case, in view of the non obstante clause Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of Crawford, extracted above. Thus, this argument of the learned counsel also is wholly devoid of any substance.

21. The Kerala High Court in the case of *K.V. Balan* (Supra) has held as under :

13. Crawford on 'Construction of Statutes' states as follows :

".....Statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable. In a few States, however, where the statute pertains to appeals from interlocutory orders the rule of strict construction has been applied. But, there seems to be no real justification for this departure from the general rule in accord with which a liberal construction would be given by the Court."

(Emphasis supplied)

In Sutherland's Statutory Construction (3rd Edn., Vol. 3, para 6807) it is said in relation to 'statutes allowing appeals' :

"Statutes giving the right of appeal are liberally construed in furtherance of justice, and an interpretation which will work a forfeiture of that right is not favoured. Thus provisions limiting the time for bringing an appeal are liberally interpreted so that the party pursuing the remedy of appeal will not be defeated on mere technicalities. Likewise, an interpretation limiting the cases from which an appeal may be brought or the persons who may bring an appeal is not preferred."

(Emphasis supplied)

In Premavalli v. State of Kerala (1998) 1 Ker LT 822 : (AIR 1998 Kerala 231) (FB), a Full Bench of this Court held that even though right of appeal is not automatic, but, statutory, it is an equally well settled proposition of law that if there is a power conferring right of appeal, it should be read in a reasonable practical and liberal manner. In that case, Full Bench held that an appeal will lie against judgement of a single Judge rendered under Section 54 of the Land Acquisition Act in view of the Section 5(ii) of the Kerala High Court Act. The intention of the legislature is primarily to be gathered from the language used in the Statute itself as held by the Apex Court in Gwalior Rayons Co. Ltd. v. Custodian of Vested Forests, AIR 1990 SC 1747 at page 1752. Merely because the modern trend is to reduce appeals, we cannot ignore the clear provision under Section 5(i) of the Kerala High Court Act. If appeal is to be transferred as a policy decision specific provision like Section 100-A can be incorporated in CPC or suitable amendment can be made to the Kerala High Court Act. The Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. M/s. Popular Trading Company, AIR 2000 SC 1578 and in State of Jharkhand v. Govind Singh

> 2004 AIR SCW 6799 : AIR 2005 SC 294 held that while interpreting a provision, the Court only interprets the law. It is for the legislature to amend, modify or repeal it. By judicial interpretative process, Courts cannot usurp legislative powers. Courts cannot legislate, either creating or taking away substantial rights by stretching or straining piece of legislation as held by the Apex Court in Sri Ram Saha v. State of West Bengal, 2004 AIR SCW 5807 : AIR 2004 SC 5080, para 18. As observed by Gejendra Gadkar, J. in Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 'he words used in the material provisions of the Statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise'. When Section 5(i) clearly provides for appeal from orders, it cannot be stated that no appeal will lie from the adjudicated 'order' under Section 24, CPC, of the single Judge to the Division Bench. Merely because no appeal is provided from the order of District Court under Section 24, CPC, it cannot be stated that right of appeal given under Section 5(i) should be denied despite the clear wordings used in that section, if the District Court passes an illegal order, parties can approach the High Court under Article 227 of the Constitution of India.

22. The Kerala High Court in the case of *K.Premavalli* (Supra) has held as under :

> **21** . The principle that is deducible from the above mentioned decisions is that unless there is express or implied bar curtailing the right of appeal, the Court should always uphold the right of appeal. As held by the Supreme Court in C. I. T., A. P. v. Ashoka Engg. Co., 1993 Supp (1) SCC 754 : (AIR 1993 SC 858), it is an equally well-settled proposition of law that, if there is a provision, conferring a right of appeal, it should be read in a reasonable, practical and liberal manner. In Salimuddin Ahammed v. Rahim Sheik, AIR 1926 Cal 1113, it was pointed out that in a matter which relates to the curtailment of the right of appeal, if there is slightest doubt in one's mind, the benefit of that doubt should go to the party who seeks to appeal.

23. Thus, by relying upon the aforementioned judgments, the Counsel for the petitioner has submitted that unless there is an express bar curtailing the right of appeal, the Court should always uphold the right of appeal. Since, in Section 7-I of EPF Act, there is no specific bar curtailing the right of appeal against the order passed under Section 7-Q of EPF Act, therefore, it should be held that the order under Section 7-Q of EPF is appealable.

24. Considered the submissions made by the Counsel for the Petitioner.

25. In the case of *K. Premavalli* (Supra) it has been held by Kerala High Court, that unless and until there is express or implied bar cutrailing the right of appeal, the Court should always uphold the right of appeal.

26. In the case of *Super Cassettes Industries Ltd.* (Supra) it has been held by the Supreme Court as under :

> **23.** It is well known that the right of appeal is not a natural or inherent right. It cannot be assumed to exist unless expressly provided for by statute. Being a creature of statute, remedy of appeal must be legitimately traceable to the statutory provisions. It is true that mere omission or error in quoting the provisions would not affect the maintainability of appeal, if otherwise, the order impugned is amenable to appeal.

27. As already pointed out, Order passed under Section 7-Q of EPF Act, has not been made appealable under Section 7-I of EPF Act. However, it is the contention of the Counsel for the petitioner, that non-mentioning of Section 7-Q in Section 7-I would not make the order under Section 7-Q non-appealable and considering the stakes and rights of the employer, specifically when the determination is done under Section 7-A of EPF Act, and since, the order under Section 7-A of EPF Act is appealable, therefore, the appeal would lie against the order passed under Section 7-Q of EPF Act.

28. As already held in the previous paragraph, that while levying interest on the delayed payment made by the employer, the authority is not required to determine any disputed fact, because, the rate of interest is already provided under Section 7-Q of EPF Act, and no discretion has been given to the Authority. Once, the liability is assessed by the Authority, then for levying the interest, only period of delay committed by the employer is to be seen. The date on which the amount became due is already determined while determining the liability of the employer and therefore, only the date on which the amount is deposited is to be ascertained. Thus, for levying the interest, the authority is not required to determine any disputed question of fact, but is merely required to consider two dates i.e., when the amount became due and the date on which the amount was deposited. Therefore, it cannot be said that the order under Section 7-Q of EPF Act, is passed after determining the money due from employer.

29. The Supreme Court in the case of *Arcot* (Supra) has held as under :

> **34.** Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore,

> there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the competent authority.

30. So far as the order under Section 14-B of EPF Act is concerned, the nature of the said order is different. Section 14-B speaks about "Damages".

31. The Supreme Court in the case of *Karnataka Rare Earth v. Deptt. of Mines & Geology,* reported in (2004) 2 SCC 783 has held as under :

> 13. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. *(Black's Law Dictionary,* 7th Edn., p. 1421.) Penalty is a liability composed (sic imposed) as a punishment on the party committing the breach. The very use of the term "penal" is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. (See Aiyar, P. Ramanatha: *The Law Lexicon,* 2nd Edn., p. 1431.)
>
> * * * *
>
> 18. ..... An order imposing penalty for failure to carry out the statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation. Penalty will also not be imposed merely because it is lawful to do so. In spite of a minimum penalty prescribed, the authority competent to impose the penalty may refuse to impose penalty if the breach complained of was a technical or venial breach or flew from a bona fide though mistaken belief."

32. The Supreme Court in the case of *Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore,* reported in (1993) 3 SCC 217 has held as under :

> 13. That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it

> may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer.

33. The Supreme Court in the case of *Organo Chemical Industries v. Union of India,* reported in (1979) 4 SCC 573 has explained "Damages" as under :

> **13.** The contention that Section 14-B confers unguided and uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such damages "as he may think fit" is, therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under Section 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute. Having regard to the punitive nature of the power exercisable under Section 14-B and the consequences that ensue

therefrom, an order under Section 14-B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which in Section 14-B arises, on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word "damages" in Section 14-B lays down sufficient guidelines for him to levy damages.

14. Learned counsel for the petitioners, however, contends that in the instant case, the period of arrears varies from less than one month to more than 12 months and, therefore, the imposition of damages at the flat rate of hundred per cent for all the defaults irrespective of their duration, is not only capricious but arbitrary. The submission is that if the intention of the legislature was to make good the loss caused by default of an employer, there could be no rational basis to quantify the damages at hundred per cent in case of default for a period less than one month and those for a period more than 12 months. It is urged that the fixation of upper limit at hundred per cent is no guideline. If the object of the legislation is to be achieved, the guidelines must specify a uniform method to quantify damages after considering all essentials like loss or injury sustained, the circumstances under which the default occurred, negligence, if any, etc. It is said that the damages under Section 14-B, which is the pecuniary reparation due, must be corelated to all these factors. In support of his contention, he drew our attention to Section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1958, which uses the words "damages not exceeding twenty-five per cent" like Section 14-B of the. Act, and also to a tabular chart provided under that Act itself showing that the amount of damages was corelated to the period of arrears. We regret, we cannot appreciate this line of reasoning. Section 10-F of the Act of 1958 came up for consideration before this Court in *Commissioner of Coal Mines Provident Fund, Dhanbad* v. *J.P. Lalta.* This Court observed, firstly, that the determination of damages is not 'an inflexible application of a rigid formula: and secondly, the words "as it may think fit to impose" show that the authority is required to apply its mind to the facts and circumstances of the case. The contention that in the absence of any guidelines for the quantification of damages,

Section 14-B is violative of Article 14 of the Constitution, must, therefore, fail.

* * * * *

38. What do we mean by "damages"? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are *(a)* detriment to one by the wrongdoing of another, *(b)* reparation awarded to the injured through legal remedies, and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, "exemplary damages" are damages on an increased scale, awarded to the plaintiff ever and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money". It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14-B is good for these reasons.

* * * * *

40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the

> Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour, the concept of "damages" when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed: "The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty."
>
> **41.** A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to "damages" a larger, fulfilling meaning.

34. Thus, it is clear that EPF Act is a beneficial Act for the protection of the employees. The "Interest" and "Damages" are two different provisions. "Interest" is payable on delayed payment without any further adjudication, whereas the recovery of "Damages" is not automatic due to delayed payment of amount due, but the authority **may** recover damages.

35. Since, the EPF Act is a beneficial Legislation for the employees and damages have been provided under Section 14-B of EPF Act, then the question for consideration is that whether the Legislation has deliberately omitted the Section 7-Q from the provision of appeal as provided under Section 7-I of EPF Act or this Court can hold that although the Section 7-Q of EPF Act has been omitted in Section 7-I of EPF Act, but still an appeal would lie against the order passed under Section 7-Q of EPF Act?

36. The Supreme Court in the case of *Vemareddy Kumaraswamy Reddy v. State of A.P.,* reported in (2006) 2 SCC 670 has held as under :

> **16.** Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See *Institute of Chartered Accountants of India* v. *Price Waterhouse.)* The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of

words as meaningless has to be avoided. As observed in *Crawford* v. *Spoone,* courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat* v. *Dilipbhai Nathjibhai Patel.)* It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock* v. *Frank Jones (Tipton) Ltd.]* Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd.* v. *Evans* quoted in *Jumma Masjid* v. *Kodimaniandra Deviah.)*

17. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage.)* The view was reiterated in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama* (SCC p. 284, para 16).

18. In *D.R. Venkatachalam* v. *Dy. Transport Commr.* it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

19. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST* v. *Popular Trading Co.)* The legislative casus omissus cannot be supplied by judicial interpretative process. (See *Maulavi Hussein Haji Abraham Umarji* v. *State of Gujarat* and *State of Jharkhand* v. *Govind Singh.)*

37. The Supreme Court in the case of *Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin,* reported in (2015) 12 SCC 169 has held as under :

31. It is a settled principle of rule of interpretation that the court cannot read any words which are not mentioned in the section nor can substitute any words in place of those mentioned in the

> section and at the same time cannot ignore the words mentioned in the section. Equally well-settled rule of interpretation is that if the language of a statute is plain, simple, clear and unambiguous then the words of a statute have to be interpreted by giving them their natural meaning. (See *Principles of Statutory Interpretation* by G.P. Singh, 9th Edn., pp. 4445.) Our interpretation of Section 33(1) read with Section 28(k) is in the light of this principle.

38. The Supreme Court in the case of *Mohd. Shahabuddin v. State of Bihar,* reported in (2010) 4 SCC 653 has held as under :

> **179.** Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd.* v. *State of Haryana.*
>
> **180.** Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision.

39. The Supreme Court in the case of *Union of India v. Kartick Chandra Mondal,* reported in (2010) 2 SCC 422 has held as under :

> **15.** Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent not found in the statute. Reference in this regard may be made to the recent decision of this Court in *Ansal Properties and Industries Ltd.* v. *State of Haryana.*

40. Thus, it is clear that while interpreting a statute, the Court cannot read anything into a statutory provision, which is plain and unambigous. In order to ascertain the intention of the legislation, the Court must pay attention to what has been said and what has not been said. Therefore, the primary test is the language used in the Act, and if the same is plain and unambigous, then the Court is bound to accept the express intention of the Legislature. Further, the Act should be read in a manner so as to do justice to the parties.

41. Considering the nature of orders to be passed under Section 7-Q and Section 14-B of EPF Act, as well as considering the fact that no discretion has been given to the Authority under Section 7-Q of EPF Act, whereas the Damages under Section 14-B of EPF Act, **may** be recovered, this Court is of the considered opinion, that the Legislature after considering the reasons and object of the EPF Act, as well as after considering the Beneficial nature of the Act, has deliberately omitted the Section 7-Q from Section 7-I of EPF Act. Therefore, this Court by giving a liberal interpretation, cannot hold that the order passed under Section 7-Q of EPF Act, is also appealable. Further the Supreme Court in the case of *Arcot* (Supra) has held as under :

> **21.** At this stage, it is necessary to clarify the position of law which does arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the establishment concerned. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Sections 7-A and 7-Q together. Such an order shall be amenable to appeal under Section 7-I. The same is true of any composite order a facet of which is amenable to appeal and Section 7-I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7-Q the same is not appealable.
>
> (Underline supplied)

42. Thus, this Court is of the considered opinion, that the order passed under Section 7-Q of EPF Act is not appealable, and no appeal under Section 7-I of EPF Act, would be maintainable.

43. There is another aspect of the matter. According to the petitioner himself, an order under Section 7-A of EPF Act was passed on 14-12-1996 and the petitioner was saddled with the liability of Rs. 48,76,050/- for the period between July 2009 to April 2014. According to the petitioner himself, the said amount was deposited by the petitioner in installments on 21-3-2017, 24-8-2013,14-9-2017

and 9-10-2017. Thus, the petitioner himself has admitted that there was delay in deposit of "money due from the employer/petitioner". Under these circumstances, nothing was left for the competent authority to determine for recovery of interest from the employer under Section 7-Q of EPF Act. Further more, the order dated 14-12-1996 passed by the competent authority under Section 7-A of EPF Act was never challenged and it has attained finality.

44. It is further submitted by the Counsel for the petitioner, that since, different benches of CGIT-cum-Labour Court have entertained the appeal against the order passed under Section 7-Q of EPF Act, therefore, the impugned order dated 10-10-1996 is bad. Considered the submissions made by the Counsel for the petitioner. The Counsel could not point out any provision which makes the orders passed by CGIT binding on all the benches of CGIT. Further, any order passed by different benches of CGIT are not binding on this Court. Even otherwise, this Court after considering various provisions of Statute, has already come to a conclusion that no appeal lies against the order passed by the authority under Section 7Q of EPF Act.

45. Merely because a composite show cause notice under Section 14-B and 7-Q of EPF Act was issued to the petitioner, would not make any difference, because no prejudice has been claimed by the petitioner. A separate order dated 10-10-1996 (Page 88) has been passed under Section 7-Q of EPF Act.

46. Accordingly, it is held that no appeal lies against the order passed under Section 7-Q of EPF Act. Therefore, the appeal filed by the petitioner against the order dated 10-10-2019 passed by Asstt. Provident Fund Commissioner (C-II) (Damages), Regional Office, Gwalior under Section 7-Q of EPF Act was not maintainable, and the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow by its order dated 20-12-2019 passed in Appeal No. 53/2019 has rightly held that the appeal filed against the order passed under Section 7-Q of EPF Act is not maintainable.

47. The Counsel for the petitioner has tried to assail the impugned order on merits. However, the petitioner has not challenged the correctness of the order dated 20-12-2019 passed by CGIT-cum-Labour Court, Lucknow on merits. It is well established principle of law, that this Court cannot travel beyond the relief prayed by the Petitioner.

48. **Accordingly, this petition fails and is hereby Dismissed** without any order as to costs.

Petition dismissed

I.L.R. [2020] M.P. 2104
WRIT PETITION

Before Mr. Justice Sujoy Paul

W.P. No. 27106/2018 (Jabalpur) decided on 20 August, 2020

VIRENDRA JATAV …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Service Law – Recruitment – Post of Constable – 'Suitability' & 'Eligibility' — Judicial Review* – Petitioner though selected was declared unsuitable – Held – Although petitioner acquitted for charge u/S 376 IPC, it does not give him any right to be appointed even if he is selected – Employer carry the discretion to examine "suitability" considering nature of job, duties, department, status of post, nature of accusation and his acquittal etc – Ultimate decision which is an opinion of employer is beyond the scope of Judicial review – "Eligibility is subjected to judicial review but "suitability" is not – Petitioner failed to establish any manifest, procedural impropriety in decision making process – No *malafide* established – No breach of any circular/Rules – Petition dismissed. (Paras 20, 23, 28 & 29)**

क. सेवा विधि – भर्ती – आरक्षक का पद – 'उपयुक्तता' व 'पात्रता' – न्यायिक पुनर्विलोकन – यद्यपि याची का चयन किया गया था उसे अनुपयुक्त घोषित किया गया – अभिनिर्धारित – यद्यपि याची को धारा 376 भा.दं.सं. के अंतर्गत आरोप से दोषमुक्त किया गया था, चयनित हो जाने पर भी, उसे नियुक्ति का कोई अधिकार नहीं मिलता – नियोक्ता, कार्य का स्वरूप, कर्तव्य, विभाग, पद की प्रास्थिति, आरोपों का स्वरूप एवं उसकी दोषमुक्ति इत्यादि का विचार करते हुए ''उपयुक्तता'' का परीक्षण करने का विवेकाधिकार रखता है – अंतिम विनिश्चिय, जो कि नियोक्ता की एक राय है, न्यायिक पुनर्विलोकन की व्याप्ति से परे है – ''पात्रता'', न्यायिक पुनर्विलोकन के अधीन है किंतु ''उपयुक्तता'' नहीं – याची, विनिश्चय करने की प्रक्रिया में किसी प्रकट, प्रक्रियात्मक अनौचित्य स्थापित करने में असफल रहा – कोई कदाशय स्थापित नहीं – किसी परिपत्र/नियमों का भंग नहीं – याचिका खारिज।

***B. Constitution – Article 226 – Recruitment – Suitability – Judicial Review – Scope* – Held – Apex Court concluded that in respect of decisions of expert bodies like Selection Committee, scope of judicial review is extended to examine existence of bias, *malafide* and arbitrariness whereas in case of decision of Screening Committee, scope is confined to existence of *malafide* only – In instant case, decision of Screening Committee is final unless *malafide* established – Court cannot sit in appeal and examine the decision of screening committee regarding suitability of candidate. (Para 27 & 28)**

ख. संविधान – अनुच्छेद 226 – भर्ती – उपयुक्तता – न्यायिक पुनर्विलोकन – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि विशेषज्ञ निकायों के विनिश्चयों के संबंध में, जैसे कि चयन समिति, न्यायिक पुनर्विलोकन की व्याप्ति पक्षपात, कदाशय एवं मनमानेपन की विद्यमानता के परीक्षण की सीमा तक होती है जबकि छानबीन समिति के विनिश्चय के प्रकरण में व्याप्ति केवल कदाशय की विद्यमानता तक सीमित है – वर्तमान प्रकरण में, छानबीन समिति का विनिश्चय अंतिम है जब तक कि कदाशय स्थापित नहीं होता – न्यायालय, अभ्यर्थी की उपयुक्तता के संबंध में अपील सुनने नहीं बैठ सकता तथा छानबीन समिति के विनिश्चय का परीक्षण नहीं कर सकता।

***C. Service Law – Recruitment – Suitability – Parameters* – Held – For judging 'suitability', no strict parameters can be reduced in writing with accuracy and precision – It varies from post to post and from department to department – A candidate after acquittal, in one department which is only doing ministerial job may be treated as 'suitable' whereas for another department/post, considering the nature of job may be treated as 'unsuitable'. (Para 20)**

ग. सेवा विधि – भर्ती – उपयुक्तता – मापदण्ड – अभिनिर्धारित – 'उपयुक्तता' परखने हेतु किसी कठोर मापदण्ड को शुद्धता एवं यथार्थता के साथ लिखित रूप में नहीं दिया जा सकता – यह पद एवं विभाग के अनुसार बदलता रहता है – एक अभ्यर्थी को दोषमुक्ति पश्चात्, एक विभाग में जिसमें केवल अनुसचिवीय कार्य होता है, 'उपयुक्त माना जा सकता है जबकि अन्य विभाग/पद हेतु, कार्य का स्वरूप ध्यान में रखते हुए 'अनुपयुक्त' माना जा सकता है।

***D. Service Law – Recruitment – Malafides/"Malice in Fact" & "Malice in Law" – Pleadings* – Held – Whenever allegations as to *malafides* is levelled, sufficient particulars and cogent materials making out *prima facie* case must be pleaded – Vague allegations and bald assertion is not enough – Petitioner could not point out the necessary ingredients which can establish "Malice in Fact" or "Malice in Law". (Paras 23 to 25)**

घ. सेवा विधि – भर्ती – कदाशय/''तथ्य में विद्वेष'' व ''विधि में विद्वेष'' – अभिवचन – अभिनिर्धारित – जब कभी कदाशय के अभिकथन किये जाते है, प्रथम दृष्ट्या प्रकरण बनाती हुई पर्याप्त विशिष्टियों तथा तर्कपूर्ण सामग्री का अभिवाक् होना चाहिए – अस्पष्ट अभिकथन एवं कोरे प्राख्यान पर्याप्त नहीं हैं – याची, ऐसे आवश्यक घटकों को नहीं दर्शित कर सका है जो ''तथ्य में विद्वेष'' या ''विधि में विद्वेष'' स्थापित कर सकते हो।

***E. Constitution – Article 226(2) – Territorial Jurisdiction* – Held – As per Article 226(2) of Constitution, even if a part of cause of action has arisen within the territory of this Bench, petition is maintainable – Full Bench of this Court opined that cause of action would arise at a place where impugned order is made and also at a place where its consequence fall on person concerned – In present case, consequence of impugned order has fallen on petitioner at Sehore – Petition is maintainable. (Para 10)**

ङ *संविधान – अनुच्छेद 226(2) – क्षेत्रीय अधिकारिता* – अभिनिर्धारित – संविधान के अनुच्छेद 226(2) के अनुसार इस न्यायपीठ के क्षेत्र के भीतर यदि वाद हेतुक का एक भाग भी उत्पन्न हुआ है, याचिका पोषणीय है – इस न्यायालय की पूर्ण न्यायपीठ का मत है कि वाद हेतुक उस स्थान पर उत्पन्न होगा जहां आक्षेपित आदेश किया गया है और उस स्थान पर भी जहां संबंधित व्यक्ति पर उसके परिणाम होते हैं – वर्तमान प्रकरण में, याची पर आक्षेपित आदेश का परिणाम सीहोर में हुआ है – याचिका पोषणीय है।

Cases referred :

2013 (1) SCC 598, AIR 1964 SC 787, 2016 (8) SCC 471, W.A. No. 46/2018 decided on 24.01.2018, 2009 (13) SCC 758, 2013 (7) SCC 150, 2018 (2) MPLJ 419, 1987 MPLJ 396, (2018) 15 SCC 796, (2018) 1 SCC 797, (2004) 8 SCC 788, (2013) 14 SCC 304, (2015) 2 SCC 591, (2013) 7 SCC 685, 1994 MPLJ 792, W.P. No. 21231/2017 decided on 17.04.2018 (FB), 1986 (4) SCC 566, 2010 (9) SCC 437, (2009) 13 SCC 758.

K.C. Ghildiyal, for the petitioner.
Akshay Pawar, for the respondents.

O R D E R

SUJOY PAUL, J.:- This petition filed under Article 226 of the Constitution, calls in question the legality, validity and propriety of the order dated 26.10.2018 (Annexure-P/5) whereby the respondent No.5 declared the petitioner as "unsuitable" for employment in the Police Department.

2. The relevant facts are in narrow compass. The petitioner submitted his candidature pursuant to an advertisement issued for the post of Constable (GD). After cracking the physical test, written test etc., the petitioner was selected. He was required to fill up a verification form. In Col. 12 of the verification form (Annexure-P/2), the petitioner clearly disclosed that he was facing a criminal case for allegedly committing offences under Sections 363, 366, 376 and 506/34 of the Indian Penal Code (IPC). The Chief Judicial Magistrate, Sehore decided the said case (ST No.43/2008) by judgment dated 20.10.2008. The Court acquitted the petitioner from all the charges. Copy of the judgment aforesaid is filed as Annexure-P/3.

3. Learned counsel for the petitioner criticized the impugned order dated 26.10.2018 (Annexure-P/5) and urged that since petitioner's acquittal by judgment dated 20.08.2008 is an "acquittal on merits", the Scrutiny Committee and the respondent No.5 have committed an error in treating the petitioner as "unsuitable". The reason assigned in the operative para of the impugned order dated 26.10.2018 is liable to be interfered with in view of judgment of Supreme Court report in 2013 (1) SCC 598 *(Inspector General of Police Vs. S. Samuthiram).*

4. Shri Ghildiyal urged that the expression "honourable acquittal" has a different meaning. In case of mere acquittal, an employee is not entitled to be reinstated whereas in case of "honourable acquittal" he is entitled to. Reliance is placed on the judgment of *R.P. Kapoor Vs. Union of India,* AIR 1964 SC 787, which was considered in the case of *S. Samuthiram* (supra) wherein it was held that if a person is acquitted fully and completely, then it can be said that he is "honourably acquitted". It is argued that if the judgment dated 20.10.2008 is examined with sufficient care, there will be no doubt that the petitioner's acquittal amounts to "honourable acquittal".

5. Learned counsel for the petitioner also placed reliance on 2016 (8) SCC 471 *(Avtar Singh vs. Union of India).* Much emphasis is placed on Para 38.4.3 and 38.5. It is urged that in cases of "honourable acquittal", it is no more open to the employer to treat the candidate as "unsuitable". The "antecedents", in the opinion of Shri Ghildiyal, relates to larger incidents which have taken place prior to the relevant crime, which was disclosed in the verification form (Col. 12). For this purpose, he placed reliance on a Division Bench judgment of Gwalior Bench in W.A. No.46/2018 *(Bhupendra Yadav Vs. State of M.P. and others)* decided on 24.01.2018.

6. By placing reliance on 2009 (13) SCC 758 *(Swaran Singh Chand Vs. Punjab SEB),* he further submits that in a case of this nature where respondents have acted contrary to the governing circular dated 24.07.2018 (filed as Annexure-P/11 with I.A. No.7028/2020) coupled with the aforesaid paragraphs of judgment of *Avtar Singh* (supra), rejection order amounts to 'malice in law'. Whether or not there are specific pleadings alleging malice by the petitioner and whether or not the person concerned is impleaded *eo nomine,* this Court can interfere because such act falls within the ambit of "malice in law".

7. The next reliance is on the judgment of Supreme Court reported in 2013 (7) SCC 150 (G. *Jayalal Vs. Union of India).* It is urged that in view of this judgment also, the impugned order falls within the four corners of "malice in law". Shri Ghildiyal placed reliance on the judgment of Gwalior Bench passed in A. No.1954/19 *(Devendra Singh Gurjar vs. State of M.P.)* to submit that after clean acquittal of petitioner from criminal case, department has committed an error in rejecting the candidature by declaring the petitioner as 'unsuitable'. Lastly, Shri Ghildiyal, learned counsel for the petitioner placed reliance on the Full Bench decision of this Court in the case of *Ashutosh Pawar Vs. High Court of M.P.* 2018 (2) MPLJ 419. It is argued that this Court can examine the correctness of the decision of the employer and when it is palpably wrong, this Court can interfere with the decision. Shri Ghildiyal has taken pains to contend that if in a case of this nature where candidate is exonerated on merits, discretion is

left with the employer to decide the "suitability", it may be misused and in fact there exists no such unfettered discretion with the employer If discretion is improperly exercised, the order will not be beyond judicial review by this Court.

8. Sounding a *contra note,* Shri Akshay Pawar, learned P.L. for the State took preliminary objection regarding maintainability of this petition. He submits that the petitioner although is resident of Sehore, the impugned order dated 26.10.2018 (Annexure-P/5) was served on him at Guna itself, which is evident from Annexure-R/4 wherein he has appended his signature as a token of acknowledgment. The document dated 26.10.2018 (Annexure-R/4) could not have travelled from Guna to Sehore on the same date. Since the petitioner put his signature on the same date (Annexure-R/4), it is clear that it must have been served on him at Guna itself. Thus, the impugned order dated 26.10.2018 is issued from Guna and served at the same station. Hence, no part of cause of action has arisen within the territory of this Bench. Hence, this petition is not maintainable.

9. Faced with this, Shri Ghildiyal urged that the order impugned was served at Sehore because the said address of the petitioner is mentioned in the order. There is no pleading in the return that it was served on the petitioner at Guna otherwise the petitioner would have filed rejoinder and rebutted the same. By placing reliance on Full Bench judgment reported in 1987 MPLJ 396 *(K.P. Govil vs. J.N.K. Vishwavidayalaya),* Shri Ghildiyal submitted that even if the order is issued from Guna, evil consequences of the same has fallen on the petitioner at Sehore, a District situated within the territorial jurisdiction of this Bench, therefore this Court could have jurisdiction.

10. Before dealing with the rival contentions of the parties on merits, in the fitness of things, I deem it proper to decide the question of maintainability first.

This Court on 27.11.18 ignored objection of Registry regarding territorial jurisdiction. Apart from this, I find substance in the argument of Shri Ghildiyal that the impugned order dated 26.10.18 contains address of petitioner i.e. Village Jharkheda, Tehsil Shyampur, District Sehore, which is indisputably situated within the territorial jurisdiction of Principal Seat. The Full Bench in *K.P. Govil* (supra) opined that cause of action would arise at a place where impugned order is made and also at a place where its consequence fall on the person concerned. In my opinion, the petitioner's case is covered by later portion of the said finding because the consequences of impugned order has fallen on the petitioner at Sehore. As per Article 226 (2) of the Constitution, even if a part of cause of action has arisen within the territory of this Bench, the petition can be entertained. For these cumulative reasons, I am not inclined to dismiss this petition on the ground of territorial jurisdiction.

11. The next contention of Shri Pawar is that the Screening Committee is an 'expert body'. The decision of respondent No.5 regarding 'suitability' of petitioner is founded upon the decision of an 'expert body'. The scope of judicial review by this Court on the decision of an 'expert body' is limited. By placing reliance on (2018) 15 SCC 796 *(UPSC v. M. Sathiya Priya),* Shri Pawar urged that this Court cannot sit in an appeal over the decision of Screening Committee. In absence of bias, malafide or arbitrariness, interference is unwarranted.

12. Shri Pawar placed reliance on (2018) 1 SCC 797 *(State (UT of Chandigarh) v. Pradeep Kumar)* to buttress his contention that judicial review on the decision of Screening Committee is further limited. It is confined to examine whether the decision so taken is malafide in nature or not? The correctness of decision is beyond the purview of the judicial review. Shri Pawar by placing reliance on (2004) 8 SCC 788 *(M.P. Special Police Establishment v. State of M.P.)* and (2013) 14 SCC 304 *(Mutha Associates v. State of Maharashtra)* urged that it is necessary to plead with accuracy and precision regarding allegations of 'malice' for both namely 'malice in fact' or 'malice in law'. In absence thereof, the allegations of malafide cannot be entertained. In the instant petition, the petitioner has neither impleaded anybody *eo nomine* nor devoted any sufficient pleadings relating to 'malice in law/fact'. Hence, the aspect of malice cannot be gone into.

13. Interestingly, Shri Pawar also placed reliance on the same Full bench judgment of this Court in the case of *Ashutosh Pawar* (supra). By placing reliance on certain other paragraphs of same judgment, Shri Pawar reiterated that the final decision regarding suitability is not the subject matter of judicial review. The 'eligibility' and 'suitability' are two different facets. The aspect of 'eligibility' can become subject matter of judicial review whereas wide discretion is there with the employer to decide whether a candidate is 'suitable' or not.

14. Learned Panel Lawyer also cited the judgments reported in (2015) 2 SCC 591*(State of M.P. v. Parvez Khan),* (2013) 7 SCC 685 *(Commissioner of Police v. Mehar Singh)* and the aforesaid judgments of *Avtar Singh* (supra). To combat the argument of Shri Ghildiyal on the aspect of 'antecedents', the reliance is placed on a Full Bench decision of this Court reported in 1994 MPLJ 792 *(Gangacharan Baijnath Prasad v. State of Madhya Pradesh)*. It is argued that as per ratio of this decision, the employer is competent to see the nature of offence, which was subject matter of aforesaid judgment dated 20.10.2008 and other relevant material for the purpose of deciding the suitability.

15. Parties confined their arguments to the extent indicated above.

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

17. In the case of *Avtar Singh* (supra), the Apex Court considered almost 21 previous judgments on the point. As noticed, reliance is placed on two paragraphs by Shri Ghildiyal. It is apposite to quote the same which reads as under:-

> ***"38.4. .....***
>
> ***38.4.1. .....***
>
> ***38.4.2 .....***
>
> ***38.4.3.*** *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may* ***consider all relevant facts*** *available as to antecedents, and* ***may take appropriate decision*** *as to the continuance of the employee.*
>
> ***38.5.*** *In a case where the employee has made declaration truthfully of a concluded criminal case,* ***the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate."***
>
> *(Emphasis Supplied)*

18. Apart from this, if different clauses of Para 38 are read minutely, it will be clear like noonday that the Supreme Court has nowhere held that in the event a selected candidate is 'honourably acquitted' or 'acquitted on merits', it is obligatory on the employer to appoint him. On the contrary, a conjoint reading of different paras of *Avtar Singh* (supra) makes it clear that the Apex Court has held that it depends on the nature of duty/employment, the job nomenclature, the sensitivity of post/department and other relevant factors on the basis of which it is prerogative/discretion of the employer to take a decision regarding 'suitability' of a candidate. No judgment is brought to the notice of this Court wherein the Apex Court directed that in case of 'honourable acquittal' of candidate, the employer has no authority and discretion to examine the 'suitability' of a candidate.

19. As per judgment of the Supreme Court in *Mehar Singh and Avtar Singh* (supra), the Screening Committee considered the case of the petitioner. No procedural impropriety in decision making process adopted by committee is pointed out to this Court. The whole argument is focused on the last para of impugned order dated 26.10.18 (Annexure P/5). It is apt to quote the same which reads as under:-

> *''अतः उपरोक्त समस्त प्रतिपादित सिद्वांतो/तथ्यों को दृष्टिगत रखते हुए आपके विरूद्व पंजीबद्व अपराध में नैतिक अधोपतन के आयाम होने के कारण यद्यपि उक्त प्रकरण में आपको दोषमुक्त किया गया है, ऐसी दोषमुक्ति Clean/Honourable Acquittal की श्रेणी में न आने के कारण आपको इस पुलिस सेवा के अयोग्य पाया जाता है।''*

A plain reading of this para shows that respondent No.5 treated the petitioner as 'unsuitable' because the allegations mentioned against him related to 'moral turpitude'. Indisputably, the allegations relating to Section 376 of IPC falls within the ambit of 'moral turpitude'.

20. The acquittal of a candidate, as a rule of thumb, does not give him any right to be appointed even if he is selected. The employer needs to examine the 'suitability' on various facets including (i) the nature of job needs to be performed by him; (ii) the nature of department in which he will be performing the duties; (iii) the status of post and other attendant circumstances; and (iv) the nature of accusation & his acquittal etc. A candidate, after acquittal in one department which is only doing ministerial job may be treated to be 'suitable' whereas for another department/post considering the nature of work, may be treated as 'unsuitable'. Thus, no strict parameters regarding judging such suitability can be reduced in writing with the accuracy and precision. It varies from post to post and from department to department. Perhaps for this reason, the Apex Court has not held that after clean acquittal, the candidate has an indefeasible right of appointment and much discretion is left with the employer to decide his 'suitability'.

21. This Court after considering the judgment of Full Bench in *Ashutosh Pawar* (supra) in WP. 21231/17 *(Madhur vs. State of M.P.)* decided on 17.04.18 opined that 'suitability' cannot be confused with 'eligibility'. No doubt the eligibility is subjected to judicial review but 'suitability' is not. The relevant portion reads as under:-

> *"The "suitability" cannot be confused with eligibility". In the 'Major Law Laxicon' by P. Ramanatha Iyer about the word following view is expressed-"the word 'suitable'does not require a definition because any man of experience would know who is suitable. However, each case has to be viewed in the context in which the word "suitability" or "suitable" is used, the object of the enactment and the purpose sought to be achieved." A constitution Bench of Supreme Court in* ***State of J & K vs. Trilokinath Khosa*** *(1974) 1 SCC19 and another Bench in* ***State of Orissa vs. N.N. Swami*** *(1977) 2 SCC 508 opined that eligibility must not be confused with the suitability of the candidate for appointment. These judgments were considered by Calcutta High Court in 2013 SCC Online 22909* ***(All b. Ed. Degree Holders Welfare Association vs. State of West Bengal).*** *In (2009) 8 SCC 273* ***(Mahesh Chandra Gupta vs. Union of India)*** *it was again held that suitability of a recommendee and the consultation are not subject to judicial review but the issue of lack of eligibility or an effective consultation can be scrutinized.. The Supreme Court in (2014) 11 SCC 547* ***(High Court of Madras vs. R. Gandhi)*** *while dealing with appointment on a constitutional post opined that 'eligibility' is an objective factor. When 'eligibility' is put in question, it*

could fall within the scope of judicial review. ***The aspect of 'suitability' stands excluded from the purview of judicial review.*** *At the cost of repetition, the Apex Court opined that 'eligibility' is a matter of fact whereas* ***'suitability' is a matter of opinion.*** *"*

(Emphasis Supplied)

22. In *Ashutosh Pawar* (supra), the Full Bench considered following question:-

> *"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?"*

It was answered as under:-

> ***"40.*** *In view of the law laid down in above said judgments, there is no doubt that in exercise of power ofjudicial review under Article 226 of the Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of appeal over the reasons recorded by the State Government. We find that the decision of the State Government holding that the petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post and the duties to be discharged."*

23. At the cost of repetition, in the present case, the petitioner has not pointed out any flaw in the decision making process. As held in catena of judgments of Supreme Court, which were considered in *Ashutosh Pawar* (supra), it is clear like cloudless sky that ultimate decision which is an 'opinion' of employer is beyond the scope of judicial review. More so, on considering the nature of job of police/discipline force, it cannot be said that decision to treat the petitioner as 'unsuitable' is malicious in nature. In the case of *Pradeep Kumar* (Supra), the Apex Court considered the judgment of *Parvez Khan* and *Avtar Singh* (Supra) and opined that the scope of judicial review of decision of screening committee is very limited. It was poignantly held that acquittal in a criminal case is not conclusive of suitability of the candidate in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. It was further held that acquittal in a criminal case does not automatically entitled the candidate for appointment to the post. It is still open to the employer to consider the antecedents and examine whether he is 'suitable' for appointment to the post. It is pertinent to mention that in the same judgment, Supreme Court came to hold that the Court should not dilute the importance and

efficacy of a mechanism like the Screening Committee created to ensure that person who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand. "The decision of the Screening Committee must be taken as final unless it is shown to be malafide". Thus, the decision of Screening Committee can be examined only on the anvil of malafides.

24. Pausing here for a moment, petitioner in the writ petition, on more than one occasion has termed the rejection order Annexure P/5 as 'arbitrary' and 'malafide'. However, it is not described with necessary clarity as to how the impugned order can be termed as 'malafide'. The mere allegation of malafide is not sufficient unless there is sufficient foundation on the strength of which the order/action is termed as 'malafide'. In 1986 (4) SCC 566 *(State of M.P. vs. Nandlal Jaiswal),* the Apex Court held that "it is true that in the writ petitions the petitioners used words such as 'mala fide', 'corruption' and 'corrupt practice' but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied in so far as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual malafides, corruption and underhand dealing".

25. The aspect of 'legal malice' was considered by Supreme Court in 2010 (9) SCC 437 *(Kalabharati Advertising v. Hemant Vimalnath Narichania)*. The Apex Court opined that if an act is taken with an oblique or indirect object/motive and runs contrary to the purpose for which statutory power was required to be exercised, action falls within the ambit of 'legal malice'. The petitioner could not point out the necessary ingredients which can establish 'malice in fact' or 'malice in law'. It is equally settled that whenever allegations as to malafides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was malafide and malicious is not enough. In the absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. [See (2009) 13 SCC 758 *Swaran Singh Chand vs. Punjab SEB*]. In view of this legal position, I am unable to hold that petitioner could make out a case of judicial review on the decision taken by Screening Committee/department.

26. I will be failing in my duty, if the argument of Shri Ghildiyal relating to 'antecedents' is not considered. A careful reading of order of Gwalior Bench in *Bhupendra Yadav* (supra) makes it clear that it does not support the argument of

Shri Ghildiyal that while considering the 'antecedents', it was not open to the employer to consider the judgment of criminal trial dated 20.10.2008 (Annexure P/3). In the teeth of Full Bench decision reported in *Gangacharan Baijnath Prasad* (supra) also this argument cannot cut any ice.

27. It is noteworthy that while examining the scope of judicial review on decision of expert bodies like Selection Committee, [*See M. Sathia Priya* (supra)] the scope of judicial review was extended to examine existence of bias, malafide and arbitrariness whereas while determining the scope of judicial review in case of Screening Committee, the Apex Court in *Pradeep Kumar* (supra) confined it to the aspect of existence of 'malafide' only.

28. So far the order of Gwalior Bench in *Devendra Singh Gurjar* (supra) is concerned, the judgment of Full Bench in the case of *Ashutosh Pawar* (supra) was not brought to the notice of Division Bench. Thus, the Division had no occasion to consider the aspect of distinction between the judicial review of 'decision making process' and the ultimate 'decision'. Similarly, difference between 'eligibility' and 'suitability' was also not the subject matter of discussion in the case of *Devendra Singh Gurjar* (supra). Gwalior Bench in the case of *Devendra Singh Gurjar* (supra) took note of a relevant fact of the said case that the material witnesses in their entire depositions denied the prosecution story in their examination-in-chief itself. A clear finding was given by Division Bench that the prosecution case collapsed before cross examination could take place. During cross examination also, all the four injured witnesses have reiterated their stand which was taken in examination-in-chief. However, in the instant case, the allegation of rape was made by the lady, who had an affair with the petitioner. As per prosecution story, the petitioner pressurized and forced her to solemnize marriage with him. Thereafter, the petitioner committed rape on her on more than one occasion. Pertinently, the prosecutrix/victim firmly supported the prosecution story before the Court below. However, for the reasons stated therein, the Court below opined that the petitioner is not guilty. It may be argued that Screening Committee cannot sit over the judgment of the trial Court and took a different view. Similar contention was raised in the case of *Mehar Singh* (supra). In Para 24 of the said judgment, the Apex Court opined that there is no substance in the contention that by cancelling respondent's candidature the Screening Committee has overreached the judgment of criminal court. It was further observed as under:-

> ***"24.*** *We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful*

integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

While examining antecedents, as held in *Mehar Singh* (supra), experience officers/Screening Committee need to examine various factors. Experienced Officers of Screening Committee will be the best judge to decide whether acquittal or discharge of candidate is likely to revert to similar activities in future with more strength and vigour, if appointed in police force. The committee needs to examine the nature and extent of person's involvement in the crime and propensity of becoming a cause for worsening law and order situation rather than maintaining it.

In the backdrop of aforesaid judgment of *Mehar Singh* (supra), which was followed in *Pradeep Kumar* (supra), it can be safely concluded that even if a candidate is acquitted or discharged, it cannot be presumed that in every case he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be malafide. At the cost of repetition, subject matter of judicial review in a case of this nature is very limited. This Court cannot sit in appeal and examine the 'suitability' of candidate. Thus, this order in *Devendra Singh Gurjar*'s case (supra) is of no assistance to the petitioner.

29. In view of forgoing analysis, I am unable to hold that decision of department in declaring the petitioner as 'unsuitable' is malicious in nature. The petitioner has also failed to point out any manifest, procedural impropriety in the decision making process. Similarly, no breach of circular/rules etc. could be established. The decision of 'unsuitability' of petitioner is an 'opinion' of Screening Committee/department. This Court cannot sit in appeal to disturb the same. More so, when it is not palpably wrong and shocks the conscience of the Court.

30. The petition fails and is hereby dismissed. No cost.

Petition dismissed

I.L.R. [2020] M.P. 2116 (DB)
WRIT PETITION

Before Mr. Justice S.C. Sharma & Mr. Justice Shailendra Shukla
W.P. No. 8204/2020 (Indore) decided on 26 August, 2020

KANISHKA MATTA (SMT.) …Petitioner

Vs.

UNION OF INDIA & ors. …Respondents

***A. Central Goods and Services Tax (12 of 2017), Section 67(2) – Release of Seized Cash* – Held – Authorities are at stage of investigation and evidence is being collected, unless and until matter is finally adjudicated, question of releasing the seized cash does not arise – Petition dismissed. (Para 24 & 25)**

क. केंद्रीय माल और सेवा कर अधिनियम (2017 का 12), धारा 67(2) – जब्तशुदा नकद का छोड़ा जाना – अभिनिर्धारित – प्राधिकारीगण अन्वेषण के प्रक्रम पर हैं तथा साक्ष्य एकत्रित किया जाना है, जब तक कि मामला अंतिम रूप से न्यायनिर्णीत नहीं हो जाता, जब्तशुदा नकद को छोड़ने का प्रश्न उत्पन्न नहीं होता – याचिका खारिज।

***B. Central Goods and Services Tax (12 of 2017), Sections 2(17), 2(31), 2(75) & 67(2) – Definition – Word "Thing"* – Held – As per definition and interpretation, cash/money is included in the word "thing" – Cash can be seized by the authorities u/S 67(2) of the Act. (Paras 18 to 20)**

ख. केंद्रीय माल और सेवा कर अधिनियम (2017 का 12), धाराएँ 2(17), 2(31), 2(75) व 67(2) – परिभाषा – शब्द ''वस्तु'' – अभिनिर्धारित – परिभाषा एवं निर्वचन के अनुसार, नकद/धन ''वस्तु'' शब्द में सम्मिलित है – अधिनियम की धारा 67(2) के अंतर्गत प्राधिकारीगण द्वारा नकद जब्त किया जा सकता है।

***C. Central Goods and Services Tax (12 of 2017), Section 67(2) – Seizure of Cash – Confessional Statements – Effect* – Held – Apex Court concluded that "confessional statements" made before Custom Officer though retracted is an admission and binding since Custom Officers are not Police Officers. (Para 22 & 23)**

ग. केंद्रीय माल और सेवा कर अधिनियम (2017 का 12), धारा 67(2) – नकद की जब्ती – संस्वीकृति कथन – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि सीमा–शुल्क अधिकारी के समक्ष किये गये ''संस्वीकृति कथन'' यद्यपि मुकरी हुई संस्वीकृति हों एक स्वीकृति है तथा बाध्यकारी हैं क्योंकि सीमा–शुल्क अधिकारीगण, पुलिस अधिकारीगण नहीं हैं।

***D. Constitution – Article 226 – Scope & Interference – Judicial Review* – Held – Writ petition filed at the initial stage of investigation – This**

Court has earlier also denied to interfere in matter of search and seizure by way of judicial review. (Para 21)

घ. संविधान – अनुच्छेद 226 – विस्तार व हस्तक्षेप – न्यायिक पुनर्विलोकन – अभिनिर्धारित – रिट याचिका, अन्वेषण के प्रारंभिक प्रक्रम पर प्रस्तुत की गई – इस न्यायालय ने पूर्व में भी तलाशी और जब्ती के मामले में, न्यायिक पुनर्विलोकन के माध्यम से हस्तक्षेप करने से इंकार किया है।

***E. Interpretation of Statutes – Principle* – Held – Cardinal principle of interpretation is that unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy. (Para 19)**

ङ. कानूनों का निर्वचन – सिद्धांत – अभिनिर्धारित – निर्वचन का मुख्य सिद्धांत यह है कि अनुचित और असुविधाजनक परिणामों से बचना है, कृत्रिमता तथा विषमता से बचना है तथा सबसे महत्वपूर्ण बात यह कि एक कानून का ऐसा निर्वचन किया जाये जो हानि/रिष्टि को रोकता हो एवं उपचार को बढ़ावा दे।

Cases referred:

(2006) 6 SCC 456, W.P. No. 23680/2018 decided on 04.04.2019 (DB), 1997 (89) E.L.T. 646 (SC), 2017 (351) E.L.T. 264 (M.P.), (2008) 16 SCC 537.

Vivek Dalal with *Lokendra Joshi*, for the petitioner.
Prasanna Prasad, for the respondents.

O R D E R

The petitioner before this Court has filed this present petition for issuance of an appropriate writ, order or direction directing the respondent No.4 - Assistant Director, DGGSTI, Indore and respondent No.5 - Senior Intelligence Officer, DGGSTI, Indore to release the cash amounting to Rs.66,43,130/- seized from the petitioner *vide Panchnama* dated 30/05/2020 from the residential premises of the petitioner and her husband.

2. The petitioner is the wife of Shri Sanjay Matta. Shri Sanjay Matta is the Proprietor of the firm functioning in the name and style of M/s. S. S. Enterprises. The Firm is in the business of Confectionery and Pan Masala items. The petitioner has further stated that search operation was carried out by respondent No.5 (Senior Intelligence Officer, DGGSTI, Indore) at the business premises as well as residential premises and a *Panchnama* was drawn on 31/05/2020. The respondents have also seized an amount to the tune of Rs.66 Lakhs as per the *Panchnama* prepared by them.

3. Shri Vivek Dalal, learned counsel for the petitioner has vehemently argued before this Court that the respondent No.5 has got no power vested under

Section 67(2) of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) to effect seizure of cash amount from the petitioner nor from her husband. He has stated that the cash cannot be treated as "Document, Book or Things" as per the definition under the definition clause of the CGST Act, 2017 and therefore, the respondents be directed to release the cash, which they have seized.

4. It has also been stated that as per the provisions of Section 37 of CGST Act, 2017 there is a procedure for filing of returns by the assessee and return could not be filed in time on account of lockdown keeping in view the Covid-19 Pandemic. It has vehemently been argued that the sale proceeds were kept by the petitioner and her husband and the respondents have illegally seized the money without their being any provision of law.

5. It has also been stated that the statement of the petitioner's husband was recorded on 30/05/2020, 31/05/2020, 01/06/2020 and 02/06/2020 and he was tortured in the name of tax terrorism by the authorities. The basic thrust is on the ground that without their being any provision under the CGST Act, 2017 the amount as seized by the respondents could not have been done and the same is violative of Article 14 of the Constitution of India. The another ground raised by the petitioner that the raid on the residential premises of petitioner and her husband is again violative of Article 19 and finally a prayer has been made to release the seized cash / sale proceeds to the tune of Rs.66,43,130/-.

6. A reply has been filed in the matter by respondents No.1 to 5 and it has been stated that from the Directorate of Revenue Intelligence, a specific input was received that Shri Sanjay Matta is involved in large scale of evasion of GST on Pan Masala. The proper officer under reasonable beliefs that the goods / documents / things were secreted at the said premises, issued a search warrant dated 30/05/2020 and a consequential search was carried out at the residential premises of Shri Sanjay Matta on 30/05/2020 by the Team of Directorate General of GST Intelligence. A *Panchnama* dated 30/05/2020 was also prepared and the officers seized documents and cash amounting to Rs.66,43,130/-.

7. It has been stated that the documents and cash were seized in terms of Section 67(2) of the CGST Act, 2017 and the Order of Seizure in Form GST INS-02 dated 30/05/2020 was issued. It has also been stated that Shri Sanjay Matta, the husband of the petitioner, made a voluntary statement stating categorically that the said cash of Rs.66,43,130/- was the sale proceeds of the illegally sold Pan Masala without payment of GST.

8. The present petitioner is certainly not registered with GST Department and the investigation reveals that cash / documents seized, do not pertain to the applicant. The respondents have stated that the petition deserves to be dismissed as the petitioner does not have *locus* to file the present petition. It has been stated that as per the voluntary statement dated 30/05/2020 the said cash of

Rs.66,43,130/- was the sale proceeds of illegally sold Pan Masala without payment of GST. The respondents have stated that keeping in view Section 67(2) of the CGST Act, 2017 read with definition Clause makes it very clear that the respondents were justified in seizing the amount from the petitioner and the statute empowers them to do so. The respondents have also submitted the Case Diary in a sealed cover before this Court.

9. A rejoinder has been filed in the matter and the stand of the petitioner is that by no stretch of imagination Section 67(2) of the GST Act, 2017 empowers the respondents to seize the cash and later on the husband of the petitioner Shri Sanjay Matta has retracted the statement *vide* affidavit dated 07/06/2020 and in light of his affidavit dated 07/06/2020 the respondents should release the cash forthwith.

10. Heard learned counsel for the parties at length and perused the record including the case diary. The matter is being disposed of at motion hearing stage itself with the consent of the parties.

11. The statement made in the case diary reveals that Shri Sanjay Matta, a Pakistani National, was involved in illicit supply of Pan Masala of various brands without invoices and without payment of applicable GST (this statement of the Department that Shri Sanjay Matta is a Pakistani National was controverted during the arguments by learned counsel for the petitioner and he has stated that later on Shri Sanjay Matta has been granted Indian citizenship).

12. The case diary also reveals that the searches were conducted on 30/05/2020 and 31/05/2020 at the residential premises of Shri Sanjay Matta and Shri Sandeep Matta and various godowns operated by them on the reasonable belief that the aforesaid premises are being used to clandestinely store goods / records / documents / things. During the searches it was found that huge quantity of Pan Masala and tobacco were lying / stored in the various godowns of Shri Sanjay Matta which are neither declared as principal place of business nor as additional place of business as mandatorily required under Section 22 of CGST Act, 2017 read with Rule 8 of CGST Rules, 2017.

13. Goods comprising of Pan Masala, Tobacco, Mouth Freshener, Confectionery, etc. valued at Rs.2.59 Crores were seized under Section 67(2) of the CGST Act read with Section 129 of the CGST Act and Section 130 of CGST Act from six godowns operated by Shri Sanjay Matta and his brother Shri Sandeep Matta as no bills / invoices could be produced by them. Unaccounted cash of Rs.66,43,130/- was also seized from the residential premises of Shri Sanjay Matta.

14. The case diary also reveals that seizure was done under Section 67(2) of the CGST Act, 2017 under a reasonable belief that the aforesaid are the proceeds of the illicit supply of goods namely Tobacco and Pan Masala and would be useful

for further investigation. *Panchnama* dated 30/05/2020, 31/05/2020 and 05/06/2020 were also brought to the notice of this Court. The case diary also reveals that Shri Sanjay Matta in his statement before the officers have stated categorically that the value of the goods sold without any bills and invoices during the period April, 2019 to May, 2020 would be approximately 40.11 Crores in cash and the GST on the said clandestine clearance works out to Rs.18.77 Crores.

15. There are other persons involved in the matter, however, as the controversy involved in the present case only relates to the seizure of cash, this Court is not referring to the names of the other persons involved in the matter nor in respect of other recoveries and other seizures from other persons.

16. The statutory provisions as contained under the Central Goods and Services Tax Act, 2017, which are necessary for deciding the present writ petition reads as under:-

"2. Definitions

In this Act, unless the context otherwise requires.-

2(17). "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in

the course or furtherance of his trade, profession or vocation;

[(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

2(31). "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

2(75). "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

37. Furnishing details of outward supplies

(*1*) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

PROVIDED that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

PROVIDED FURTHER that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein

PROVIDED ALSO that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(*2*) Every registered person who has been communicated the details under sub-section (*3*) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (*4*) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section *(1*) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (*1*) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (*1*) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation : For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

41. Claim of input tax credit and provisional acceptance thereof

(*1*) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(*2*) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

52. Collection of tax at source

(*1*) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation : For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (*5*) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (*1*) shall be without prejudice to any other mode of recovery from the operator.

(*3*) The amount collected under sub-section (*1*) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(*4*) Every operator who collects the amount specified in sub-section *(1)* shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(*5*) Every operator who collects the amount specified in sub-section (*1*) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it,

and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(*6*) If any operator after furnishing a statement under sub-section *(4)* discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (*1*) of section 50:

PROVIDED that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(*7*) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section *(4),* in such manner as may be prescribed.

(*8*) The details of supplies furnished by every operator under sub-section *(4)* shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(*9*) Where the details of outward supplies furnished by the operator under sub-section *(4)* do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(*10*)The amount in respect of which any discrepancy is communicated under sub-section (*9*) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(*11*) The concerned supplier, in whose output tax liability any amount has been added under sub-section (*10*), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (*1*) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(*a*) supplies of goods or services or both effected through such operator during any period; or

(*b*) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(*13*) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(*14*) Any person who fails to furnish the information required by the notice served under sub-section *(12)* shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty- ivethousand rupees.

Explanation : For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

67. Power of inspection, search and seizure.

(2). Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

PROVIDED that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

PROVIDED further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

75. General provisions relating to determination of tax

(*1*) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (*2*) and (*10*) of section 73 or sub-sections (*2*) and (*10*) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section *(1)* of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (*1*) of section 73.

(*3*) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(*4*) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(*5*) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(*7*) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(*8*) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (*10*) of section 73 or sub-section (*10*) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(*12*) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(*13*) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

The petitioner's contention is that the word "money" is not included in Section 67(2) of the CGST Act, 2017 and therefore, once the "money" is not included under Section 67(2) of the CGST Act, 2017 the Investigating Agency / Department is not competent to seize the same.

17. This Court has carefully gone through Section 67 of the CGST Act, 2017 and the expression used in sub-section (2) of Section 67 is "confiscation of any documents or books or things, which in proper officer's opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place". Thereafter, sub-section (2) has two provisos and first proviso relates to goods and the second proviso refers to documents or books or things so seized shall be retained.

18. The core issue before this Court is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer.

19. The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject

matter of ownership within the spear of proprietary or valuable right, would come under the definition of " thing" (page No.1707). Similarly, Wharton's Law Lexicon at page No.1869 and 1870, the word "thing" has been defined and it includes "money". It is a cardinal principle of interpretation of statute that unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy (Interpretation of statute by Maxwel, 12th Edition, page No.199 to 205). The same preposition of law is propounded in Craies on Statute Law, 7th Edition, page No.94).

20. The Hon'ble Supreme Court in the case of *D. Vinod Shivappa Vs. Nanda Belliappa* reported in (2006) 6 SCC 456 in paragraph No.12 as held as under:-

> **"12.** It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's case [(1584)* 76 ER 637 : 3 Co Rep 7a] also known as the rule of purposive construction or mischief rule."

Therefore, keeping in view the aforesaid interpretation of the word "thing" money has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2). The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on.

21. A Division Bench of this Court in the case of *Sumedha Dutta & Another Vs. The Union of India & Another* (Writ Petition No.23680/2018, decided on 04/04/2019) in paragraphs No.9 to 12 has held as under:-

> **"9.** The Hon'ble Apex Court in the case of ***Director General of Income Tax (Investigation) & Others v/s Spacewood Furnishers Pvt. Ltd & Others*** *reported in* ***2015 (374) ITR 595 (SC)*** has dealt with the scope of interference by the High Court in the matter of search and seizure. The Apex Court has held that findings with regard to satisfaction touching upon sufficiency and adequacy of reasons and authenticity and acceptability of information on which satisfaction reached, is not permissible in writ jurisdiction. The scope of interference has been dealt with in depth by the Apex Court.
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> 10. The Apex Court in the case of ***Dr. Pratap Singh & Another v/s Director of Enforcement & Others*** *reported in* ***AIR 1985 SC 989*** has held that illegality, if any, does not vitiate the evidence collected during the search.
>
> 11. The Orissa High Court in the case of ***Aditya Narayan Mahasupakar v/s Chief Commissioner of Income Tax & Others*** *reported in* ***2017 (392) ITR 131 (Orissa)*** was dealing with the issue of search and seizure with specific reference to warrant of authorization and it has been held that the High Court should not go into the sufficiency

and insufficiency of the ground, which induce the Income Tax Officer to arrive at a conclusion to carry out search and seizure operation.

12. The scope of interference at this stage is very limited and the Income Tax Act, 1961 provides a complete mechanism, which has been followed after the search and seizure operation has been carried out. Even if it is presumed for a moment that warrant relating to search and seizure was not proper and there was some defect in it, the material collected during the search and seizure cannot be brushed aside on this count alone. The Income Tax Act, 1961 provides for a detailed procedure that has to be followed and this Court, in the present writ petition, does not find any reason to quash the entire search and seizure operation as prayed by the petitioners in the relief clause.

Accordingly, the present writ petition stands dismissed."

The Division Bench of this Court was dealing with a search a seizure case and the writ petition was filed at the initial stage only. Though it was a case under the Income Tax Act, 1961, however, this Court has declined to interfere in the matter of search and seizure by way of judicial review.

22. Much has been argued by learned counsel for the petitioner in respect of "confessional statements" and the fact that the husband of the petitioner has retracted at a later stage. In the case of *Surjeet Singh Chhabra Vs. Union of India* reported in 1997 (89) E.L.T. 646 (S.C.), the Hon'ble Supreme Court has held that "confessional statements" made before Customs Officer though retracted within six days is an admission and binding since Custom Officers are not Police Officers. In the present case also the statements were made confessing the guilt by the husband of the petitioner and later on he has retracted from that statement as stated in the writ petition and therefore, in light of the Hon'ble Supreme Court's judgment no relief can be granted in the present writ petition on the basis of aforesaid ground keeping in view the judgment of Hon'ble Supreme Court.

23. A Division Bench of this Court in the case of *R. S. Company Vs. Commissioner of Central Excise* reported in 2017 (351) E.L.T. 264 (M.P.) has dealt with "confessional statements" and decided the matter in favour of the revenue and therefore, the ground raised in the present petition that the husband of the petitioner retracted the confessional statement does not help the petitioner nor her husband in any manner.

24. Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of *Vinod Solanki Vs. Union of India and Another* reported in (2008) 16 SCC 537. Heavy reliance has been placed in paragraph No.23 and the same reads as under:-

"22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by

> other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See *Pon Adithan v. Deputy Director, Narcotics Control Bureau,* (1999) 6 SCC 1 : 1999 SCC (Cri) 1051}"

The aforesaid case was a case under the Foreign Exchange Regulation Act, 1973 and the Hon'ble Apex Court has held that evidence brought on record by way of confession, which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the Court that it may seek to rely thereupon. In the present case, the authorities are at the stage of investigation. The evidence is being collected and therefore, at this stage, the judgment relied upon by learned counsel for the petitioner is of no help.

25. Resultantly, keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed.

Certified copy as per rules.

Petition dismissed

I.L.R. [2020] M.P. 2130
ELECTION PETITION

Before Mr. Justice G.S. Ahluwalia

E.P. No. 35/2019 (Gwalior) order passed on 13 December, 2019

VISHNU KANT SHARMA …Petitioner

Vs.

CHIEF ELECTION COMMISSIONER & ors. …Respondents

***A. Representation of the People Act (43 of 1951), Section 81 & 126, Specific Relief Act (47 of 1963), Section 34 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Grounds* – Petition for violation of Section 126 of Act of 1951 – Held – Petitioner has not challenged the election of Respondent-4 and not even filed the election results – Petition barred by Section 34 of the Act of 1963 – As no relief is claimed for declaration of result of Respondent-4**

as void, petition is also not maintainable u/S 81 of Act of 1951 – Petition dismissed under Order 7 Rule 11 CPC. (Para 23)

क. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 81 व 126, विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – आधार – 1951 के अधिनियम की धारा 126 के उल्लंघन के लिए याचिका – अभिनिर्धारित – याची ने प्रत्यर्थी क्र. 4 के निर्वाचन को चुनौती नहीं दी है तथा निर्वाचन परिणाम भी प्रस्तुत नहीं किया है – याचिका 1963 के अधिनियम की धारा 34 द्वारा वर्जित है – चूंकि प्रत्यर्थी क्र. 4 के परिणाम को शून्य घोषित करने के लिए किसी अनुतोष का दावा नहीं किया गया है, 1951 के अधिनियम की धारा 81 के अंतर्गत याचिका भी पोषणीय नहीं है – सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत याचिका खारिज।

***B. Representation of the People Act (43 of 1951), Sections 81, 100 & 101 and Constitution – Article 226 – Maintainability* – Held – U/S 81, petition can be filed challenging election of candidate on any ground mentioned u/S 100 and 101 of the Act – Petitioner not challenging election of Respondent-4 and merely praying for direction to Election Commissioner for quashment of entire election process – While entertaining petition u/S 81, Court cannot exercise powers under Article 226 of Constitution – Petition not maintainable. (Para 22 & 23)**

ख. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 81, 100 व 101 एवं संविधान – अनुच्छेद 226 – पोषणीयता – अभिनिर्धारित – अधिनियम की धारा 100 एवं 101 के अंतर्गत उल्लिखित किसी भी आधार पर अभ्यर्थी के निर्वाचन को चुनौती देते हुए, धारा 81 के अंतर्गत याचिका प्रस्तुत की जा सकती है – याची, प्रत्यर्थी क्र. 4 के निर्वाचन को चुनौती नहीं दे रहा है तथा निर्वाचन आयुक्त को संपूर्ण निर्वाचन कार्यवाही अभिखंडित करने के लिए निदेशित किये जाने हेतु प्रार्थना कर रहा है – धारा 81 के अंतर्गत याचिका ग्रहण करते समय, न्यायालय संविधान के अनुच्छेद 226 के अंतर्गत शक्तियों का प्रयोग नहीं कर सकता – याचिका पोषणीय नहीं है।

***C. Specific Relief Act (47 of 1963), Section 34 – Consequential Relief* – Held – In absence of consequential relief of declaration of election of Respondent-4 as void, election petition is hit/barred by Section 34 of the Act of 1963. (Para 21)**

ग. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – परिणामिक अनुतोष – अभिनिर्धारित – प्रत्यर्थी क्र. 4 के निर्वाचन को शून्य घोषित करने के परिणामिक अनुतोष के अभाव में, निर्वाचन याचिका 1963 के अधिनियम की धारा 34 द्वारा प्रभावित/वर्जित है।

Cases referred :

(2017) 3 SCC 702, (2014) 14 SCC 502.

Vishnu Kant Sharma, petitioner is present in person.
D.K. Katare, for the respondent Nos. 1 to 3.

K.N. Gupta with *Sameer Kumar Shrivastava*, for the respondent No. 4.

(Supplied: Paragraph numbers)

O R D E R

G.S. AHLUWALIA, J.:- This Election Petition has been filed under Section 81 of Representation of the People Act, 1951, seeking the following relief :

> a. Issue writ order or direction in nature of mandamus commanding the opposite party no.1 to cancel the election which was held on 12-5-2019 in the Lok Sabha Seats no. 03 of Gwalior due to not followed the law laid down in Section 126 of The Representation of People Act, 1951.
>
> b. Issue writ order or direction in the nature of mandamus commanding to the opposite party no.1 to conduct a fresh by-election on the expenses of responsible political party/ parties/ candidate/ candidates for the sake of democratic set up as well as public fund.
>
> c. That this Hon'ble Court may kindly impose punishment as per Section 126(2) of The Representation of People Act, 1951, who found guilty for same.
>
> d. Kindly issue any other writ order or direction which this Hon'ble Court may be deemed just and proper in eye of justice.

2. The necessary facts for the disposal of the present election petition in short are that on 12-5-2019, elections were held for the Indian Parliament and the respondent no. 4 was one of the candidates from Gwalior, whereas the election petitioner has also claimed that he too had contested the election. It is the case of the election petitioner that Section 126 of Representation of the People Act, 1951 (in short Act, 1951) prohibits public meetings during period of forty eight hours ending with hour fixed for conclusion of poll and accordingly, during the period of forty eight hours, there shall be no public meetings and election campaigns, which will include any kind of advertisement or election campaign on TV, Cable TV, Electronic or any Election Matter. However, on 12-5-2019, various political parties put their advertisement in various leading news papers in which they had made appeals in favor of the party as well as the candidates, whereas the same was prohibited after 6 P.M. of 10-5-2019. Accordingly, the election petitioner wrote to the Election Commission repeatedly pointing out the open violation of Section 126 of The Representation of People Act, 1951 and a request was made to take strict action against everyone who had deliberately violated the Act, 1951. It was

also pleaded that although, the Election Commission of India is vested with the power of Superintendence, Direction and Control over the entire election process but no action was taken and since, the provisions of Section 126 of the Act, 1951 were violated by various political parties, therefore, the present election petition has been filed seeking the above mentioned relief(s).

3. I.A. No. 4818/2019 has been filed by respondent no. 4 under Order 7 Rule 11 C.P.C for dismissal of the election petition as barred by law.

4. I.A. No.4716/2019 has been filed by respondent no. 4 under Section 81 read with Section 86(1) of Act, 1951 for dismissal of Election Petition.

5. I.A. No. 43331/2019 has been filed by Election Commission of India for releasing the Electronic Voting Machines and VVPATs involved in the Election.

6. Another I.A. No. 4717/2019 has been filed by respondent no. 4 under Order 7 Rule 11 C.P.C. For dismissal of the Election Petition.

7. During the Course of arguments, this Court found that the Election Petitioner has neither filed the copy of the Election Result, nor has prayed for setting aside the election of the returned candidate/respondent no.4. On the contrary, the relief(s) have been sought seeking issuance of mandamus to the Election Commission of India.

8. Accordingly, the Election Petitioner was also heard on the question that whether the present Election Petition is maintainable in absence of relief for declaration of the election of respondent no.4 as void and whether the Election Petition is maintainable in the light of the provisions of Order 7 Rule 11 CPC or not?

9. It is submitted by the Election Petitioner, that he has no legal knowledge, therefore, defect(s) if any, may be ignored and the Election Petition may be decided on merits.

10. Heard the Election Petitioner.

11. Order 7 Rule 11 C.P.C. reads as under :

> **11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—
>
> (*a*) where it does not disclose a cause of action;
>
> (*b*) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(*c*) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(*d*) where the suit appears from the statement in the plaint to be barred by any law;

(*e*) where it is not filed in duplicate;

(*f*) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

12. Section 81 of Act, 1951 reads as under :

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [Omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

13. Section 100 of Act, 1951 reads as under :

100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(*a*) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(*b*) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(*c*) that any nomination has been improperly rejected; or

(*d*) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(*a*) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) [Omitted];

(*c*) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

> (*d*) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,
>
> then the High Court may decide that the election of the returned candidate is not void.

14. Section 101 of Act, 1951 reads as under :

> **101. Grounds for which a candidate other than the returned candidate may be declared to have been elected**.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—
>
> (*a*) that in fact the petitioner or such other candidate received a majority of the valid votes; or
>
> (*b*) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,
>
> the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

15. The case of the Election petitioner is that all the political parties had violated the provisions of Section 126 of Act, 1951. Therefore, it is the case of the petitioner that in the light of the provisions of Section 100 (1)(iv) of Act, 1951, the violation of Section 126 of Act, 1951 would be a ground to challenge the election. Whereas in I.A. No. 4717 of 2019, it has been pleaded by the respondent no. 4, that the non-compliance of Section 126 of Act, 1951 would not provide any ground to declare the election as void but as per the provisions of Section 126(2) of Act, 1951, the violation would be punishable.

16. In this petition, the Election Petitioner has not prayed for declaration of the election of the respondent no.4 as void. Even the copy of the Election Result has not been annexed with the Election Petition. Thus, this Court is of the considered opinion, that in absence of challenge to the election of the respondent no.4, this Court cannot declare his election as Member of Parliament from Gwalior, as void. Therefore, the question that whether the violation of provisions of Section 126 of Act, 1951 would amount to non-compliance of provision of this Act as provided under Section 100(1)(iv) of Act, 1951 or not, has become an academic issue in this petition.

17. Therefore, the moot question for consideration is that in absence of consequential relief of declaration of election of respondent no.4 as void, whether this Election Petition is barred under Section 34 of Specific Relief Act or not?

18. Section 34 of Specific Relief Act, 1963 reads as under :

> **34. Discretion of court as to declaration of status or right.**—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
>
> *Explanation.*—A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

19. The Supreme Court in the case of *Arulmigu Chokkanatha Swamy Koil Trust v. Chandran,* reported in (2017) 3 SCC 702 has held as under :

> **35.** The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. The plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit .....

20. The Supreme Court in the case of *Venkataraju Vs. Vidyane Donreradjapernmal* reported in (2014) 14 SCC 502 has held as under :

> **23.** The very purpose of the proviso to Section 34 of the 1963 Act, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission of India, 1958, had suggested certain amendments in the proviso, according to which the plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the court to make his subsequent claim in

another suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the 1963 Act.

24. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide *Parkash Chand Khurana* v. *Harnam Singh* and *State of M.P.* v. *Mangilal Sharma.)*

25. In *Muni Lal* v. *Oriental Fire & General Insurance Co. Ltd.* this Court dealt with declaratory decree, and observed that:

"4. ... mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse the grant of declaratory relief."

26. In *Shakuntla Devi* v. *Kamla,* this Court while dealing with the issue held:

"*21*. ... a declaratory decree simpliciter does not attain finality if it has to be used for obtaining any future decree like possession. In such cases, if suit for possession based on an earlier declaratory decree is filed, it is open to the defendant to establish that the declaratory decree on which the suit is based is not a lawful decree."

27. In view of the above, it is evident that the suit filed by the appellant-plaintiffs was not maintainable, as they did not claim consequential relief.....

21. Thus, it is held that in absence of consequential relief of declaration of election of respondent no.4 as void, this Court is of the view that the Election Petition filed by the petitioner is hit by the provisions of Section 34 of Specific Relief Act.

22. Further, under Section 81 of Act, 1951, an Election Petition can be filed calling in question, the election of a candidate on any ground as mentioned in Sections 100 and 101 of Act, 1951. In the present case, the election petitioner has not challenged the election of the respondent no.4, but has merely prayed for a direction to the Election Commissioner of India, for the quashment of the entire

election process. This Court, while entertaining the election petition under Section 81 of Act, 1951, cannot exercise its powers under Article 226 of the Constitution of India, but has to merely consider the fact that whether the election of the candidate is void due to non-compliance of any provision of the Act or not?

23. Since, the petitioner has not questioned the election of the respondent no.4 and has not filed the election result also, therefore, this Court is of the considered opinion, that not only this petition is barred under Section 34 of Specific Relief Act, but is also not maintainable under Section 81 of Act, 1951 as no relief has been claimed for declaration of the result of respondent no. 4 as void.

24. Accordingly, this Election Petition is **rejected/dismissed** under Order 7 Rule 11 C.P.C.

All other pending I.A.s are also disposed of accordingly.

No order as to costs.

Petition dismissed

I.L.R. [2020] M.P. 2139
ELECTION PETITION

Before Mr. Justice B.K. Shrivastava

E.P. No. 14/2019 (Jabalpur) decided on 22 July, 2020

RADHESHYAM DARSHEEMA …Petitioner

Vs.

KUNWAR VIJAY SHAH & ors. …Respondents

***A. Representation of the People Act (43 of 1951), Section 100(1) & 123 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice – Contestant & Candidate* – Held – In respect of corrupt practice, term "Candidate" has been used in law – Contestant becomes a candidate only after filing his nomination – Bhagwat Katha was organized during 26.10.2018 to 01.11.2018 whereas respondent filed his nomination later on 05.11.2018, thus during the period of Katha, he was not a "Candidate" and hence cannot be considered as Corrupt Practice – No triable issue found – Election Petition dismissed. (Paras 37 to 43)**

क. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1) व 123 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – भ्रष्ट आचरण – प्रतिद्वंदी व प्रत्याशी – अभिनिर्धारित – भ्रष्ट आचरण के संबंध में, विधि में ''प्रत्याशी'' शब्द का उपयोग किया गया है – प्रतिद्वंदी केवल उसके नामांकन दाखिल करने के पश्चात् ही एक प्रत्याशी बनता है – दिनांक 26.10.2018 से 01.11.2018 के दौरान भागवत कथा का

आयोजन किया गया था जबकि प्रत्यर्थी ने बाद में दिनांक 05.11.2018 को अपना नामांकन दाखिल किया था, अतः कथा की अवधि के दौरान, वह ''प्रत्याशी'' नहीं था एवं इसलिए भ्रष्ट आचरण के रूप में नहीं माना जा सकता – कोई विचारणीय विवाद्यक नहीं पाये गये – निर्वाचन याचिका खारिज।

B. ***Representation of the People Act (43 of 1951), Sections 83(1)(a), 86, 100(1) & 123 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Material Facts* – Held – Details of employees who were influenced by respondent is not provided in petition – Neither name of any employee is mentioned nor it is shown that how they affected election process in favour of respondent – Similarly, how respondent, as a Minister, misused his power and influenced voters is not mentioned – Source of information regarding expenditure of Bhagwat Katha is not mentioned, expenditures stated by petitioner is self imaginary calculation and presumption – Material facts are absent in pleadings – No triable issue found – Election petition dismissed.**

(Paras 33 to 36)

ख. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 83(1)(a), 86, 100(1) व 123 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – तात्विक तथ्य – अभिनिर्धारित – उन कर्मचारीगण का विवरण याचिका में नहीं दिया गया है जिन्हें प्रत्यर्थी द्वारा प्रभावित किया गया था – न तो किसी कर्मचारी के नाम का उल्लेख किया गया है न ही यह दर्शाया गया है कि कैसे उन्होनें प्रत्यर्थी के पक्ष में निर्वाचन प्रक्रिया को प्रभावित किया – उसी प्रकार, प्रत्यर्थी ने, एक मंत्री के रूप में, कैसे अपनी शक्ति का दुरूपयोग किया तथा मतदाताओं को प्रभावित किया, का उल्लेख नहीं है – भागवत कथा के खर्च के संबंध में जानकारी के स्त्रोत का उल्लेख नहीं है, याची द्वारा बताये गये खर्चे स्वयं द्वारा की गई काल्पनिक गणना और उपधारणा है – अभिवचन में तात्विक तथ्य अनुपस्थित हैं – कोई विचारणीय विवाद्यक नहीं पाये गये – निर्वाचन याचिका खारिज।

C. ***Representation of the People Act (43 of 1951), Section 83(1)(a) & 86 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Rejection of Plaint* – Grounds where principles of Order 7 Rule 11 CPC is applicable under given circumstances and stages – Discussed & enumerated. (Para 19)**

ग. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 83(1)(a) व 86 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – वाद–पत्र का खारिज किया जाना – वे आधार जहां दी गई परिस्थितियों एवं प्रक्रमों के अंतर्गत सि.प्र.सं. के आदेश 7 नियम 11 के सिद्धांत लागू होते हैं – विवेचित व प्रगणित।

Cases referred :

AIR 1986 S.C. 1253 = 1986 Supp SCC 315, AIR 1977 S.C. 2421 = (1977) 4 SCC 467, (1998) 2 SCC 70, (2003) 1 SCC 557, (2004) 3 SCC 137, (2004) 9 SCC 512, 2007 AIR SCW 3456 = (2007) 5 SCC 614, I.L.R. 2009 M.P. 3167, AIR 2012 S.C. 3912 = (2012) 8 SCC 706, AIR 2017 S.C. 2653 = (2017) 13 SCC 174, C.A.

No. 9519/2019 order passed on 09.07.2020 (Supreme Court), AIR 2000 S.C. 694 = (2000) 2 SCC 294, AIR 2001 S.C. 3689 = (2001) 8 SCC 233, AIR 2006 S.C. 713 = (2005) 13 SCC 511, AIR 2007 S.C. 581 = (2007) 3 SCC 617, 2009 AIR SCW 6812 = (2009) 9 SCC 310, 2010 AIR SCW 32 = AIR 2010 SC (Supp) 102 = (2010) 4 SCC 81, 2014 AIR SCW 5649 = (2014) 10 SCC 545 = 2014 SCC online SC 710, AIR 1975 S.C. 2299, AIR 1994 S.C. 2277 = 1994 AIR-SCW 2155 = 1994 Supp (2) SCC 446, 1975 (Supp) SCC I : (AIR 1975 SC 2299), AIR 1996 S.C. 826 = 1996 AIR-SCW 189 = (1996) 1 SCC 399.

Mansoori Shakeel Ahmad, for the petitioner.

Mrigendra Singh with *Lal Hitendra Singh* and *Nevtej Singh Ruprah,* for the respondent No. 1.

O R D E R

B.K. SHRIVASTAVA, J.:- This order shall govern the disposal of **I.A. No. 8710 of 2019** filed by Respondent No.1 Kunwar Vijay Shah on 16.07.2019 under Order 7 Rule 11 of CPC read with section 86(1) of **"Representation of the People Act, 1951"** (referred to as **"Act 1951")** for dismissal of the Election Petition No.14 of 2019 as not maintainable under section 86 of the Act, 1951 read with Order 7 Rule 11 of CPC.

2. Notification U/s 30 of R.P. Act,1951 was issued by Election Commission for Legislative Assembly election. Voting was held on 28.11.2018 and the result was declared on 11.12.2018. Respondent No.1 Kunwar Vijay Shah, Sponsored by the "Bhartiya Janta Party", is the returned candidate for **Constituency No.176, Harsood, District Khandwa** (Received 80556 votes). Petitioner Radheshyam, sponsored by "Gondwana Gantantra Party", who is the looser in that election (Received only 709 votes), filed main election petition under section 80 read with section 100 of the Act, 1951 on 25.01.2019.

3. As per petitioner, respondent no.1 organized a function of *Bhagwat Katha* during the period of 26.10.2018 to 01.11.2018 and also celebrated his birthday on 01.11.2018. The Election Code of Conduct was implemented from 14.10.2018 and during the existence of Election Code of Conduct, the aforesaid function was organized by the respondent no.1. Approximate expenditure has been mentioned by the petitioner in Para 11(1) to 11(18). The petitioner also wrote a letter Annexure P-34 to transfer the officers, who were posted more than 5 years to 25 years. But as the respondent was holding the post of Minister, therefore, he misused his power therefore any employee was not transferred. The information regarding EVM machines was also sought by the petitioner vide Annexure A-35 but the aforesaid information was not given. The respondent no.1 organized the party meeting in the aforesaid *Bhagwat Katha* function. Therefore, the petitioner filed the petition for declaring :-

(i) the election of respondent no.1 as void and,

(ii) to declare the petitioner as a returned candidate, and

(iii) the respondent no.1 be debarred for 6 years to contest any election.

4. The notice was served upon respondent no.1, then he filed I.A. No.8710 of 2019 on 16.07.2019 under Order 7 Rule 11 of the CPC read with section 86(1) of the Act, 1951. As per respondent, the petition is liable to be dismissed as not maintainable under section 86 of the Act, 1951 read with Order 7 Rule 11 of CPC. The respondent submitted that :-

(i) The election petition has been filed only upon the ground of **commission of corrupt practice** as stipulated under section 123 of the Act, 1951. The instant petition lacks in material fact constituting the cause of action required under the Act, 1951. The present petition does not fulfill the mandatory requirement of the law. The petition **does not contain a concise statement of material fact** on which the petitioner relies and therefore **does not disclose a triable issue** or **cause of action.** The so called specific allegations of corrupt practice as contained in Para 6 to 17 do not meet out the basic requirement, which could constitute cause of action as required by law. **The material facts as to how the information came to the knowledge of the petitioner pertaining to various incidents, as mentioned in the referred paras, is absolutely missing;** whereas the same is preliminary requirement for maintainability of the petition. Even the **material particulars are absent in the election petition.** Thus, it suffers from non- compliance of the provisions contained under 83(1)(b) of the Act, 1951. The averments made in the petition are completely vague and lacking in material particulars. No trial or inquiry is permissible on the basis of such vague, indefinite, imprecise averments. The petition does not disclose a triable issue or cause of action, therefore, liable to be dismissed. Para 11(1) to Para 11(18) deserve to be struck out as they are having no nexus at all with the election in question. In fact the pleadings of the Paras are related to the religious function held with effect from 26.10.2018 to 01.11.2018. However, the petitioner has not disclosed the same as election expenses to the Election Commission.

(ii) The petitioner has not disclosed the source of information upon which the allegations have been leveled in the petition.

(iii) The copy of election petition, served upon the answering respondent, has not been attested by the petitioner under his own signature to be a true copy of the petition.

(iv) The memo of petition bears such attestation, but the documents filed along with the election petition do not bear any such attestation.

(v) Bhagwat Katha commenced with effect from 26.10.2018 to 01.11.2018; whereas the answering respondent submitted his nomination form on 05.11.2018 i.e. after the end of Bhagwat Katha. When the Katha

was organized, at that time & up to 03.11.2018, the respondent was not the sponsored candidate of the "Bhartiya Janta Party". Therefore, no question of disclosing the existence of said Bhagwat Katha, as alleged by the petitioner as election expenses, arises. The Katha was not organized by the respondent. "Chain Biharilal Seva Samiti" organized the aforesaid Katha and the entire expenses were borne by the said committee and not by the answering candidate. Pleading under Para 11(1) to Para 11(18) is scandalous and vexatious, which does not disclose even remote cause of action to launch the election petition.

(vi) The petitioner did not disclose that how the Government officials help the respondent in the election, only vague allegations have been made.

(vii) Petitioner filed an affidavit of Santosh by saying that he is the member of Chain Biharilal Seva Samiti. The respondent filed the affidavit of Chairman of the aforesaid Samiti named Anil Kumar in which it has been stated that Santosh was not the member of the aforesaid Samiti.

5. The petitioner filed the reply of the aforesaid application on 15.10.2019. It is submitted that he disclosed the entire details in his petition. He draws attention towards the Para 1 to Para 19 and said that the sufficient details have been given. The facts, required to be proved by the evidence, are not required to be disclosed in the pleading. The petitioner will prove the entire ground which are raised in the petition. The petitioner complied all provisions at the time of filing the petition. He duly attested and verified the petition. Copy supplied to the respondent was also attested by the petitioner, therefore, the petitioner requested to dismiss the aforesaid interim application.

6. No doubt, the **powers of Order 7 Rule 11 can be used in the election petition** filed under Act,1951. In *Azhar Hussain Vs. Rajiv Gandhi,* AIR 1986 S.C. 1253 = 1986 Supp SCC 315 , the Apex Court said in para 8 and 9 that Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a). The Court said in Para 8 :-

> **"8.** The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, noncompliance with which entails dismissal of the election. petition, it follows that noncompliance with the requirements of Section 83 (1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of section 87 of the Act. Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a)."

7. It will be useful to refer **Rule 11 of Order VII of CPC,** which is as under:-

> ***"11. Rejection of plaint****.-The plaint shall be rejected in the following cases:-*
>
> ***(a)*** *where it does not disclose a cause of action;*
>
> ***(b)*** *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> ***(c)*** *where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> ***(d)*** *where the suit appears from the statement in the plaint to be barred by any law;*
>
> ***(e)*** *where it is not filed in duplicate;*
>
> ***(f)*** *where the plaintiff fails to comply with the provisions of rule 9.*
>
> ***Provided*** *that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevent by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

8. In *T. Arivandandam Petitioner Vs. T. V. Satyapal and another*, AIR 1977 S.C. 2421 = (1977) 4 SCC 467, while considering the provision of Order 7 Rule 11 and the duty of the trial court the Apex Court has reminded the trial Judges with the following observation:

> "The learned Munsif must remember that if on a meaningful, not formal , reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi." "It is dangerous to be too good."

9. In *I.T.C. Ltd. Vs. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

10. In *Saleem Bhai Vs. State of Maharashtra* [(2003)1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that -

> " 9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage,..." (SCC p. 560, para 9).

11. In *Sopan Sukhdeo Sable Vs. Asstt. Charity Commr.* [(2004) 3 SCC 137] this Court held thus: (SCC pp. 14647, para 15)

> " 15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair splitting technicalities."

12. In *Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success I & Anr.,* (2004) 9 SCC 512, The Court said:-

> "139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

13. In *Hardesh Ores Pvt. Ltd Vs. M/s. Hede and Co., [With Sociedade de Fomento Industrial Pvt. Ltd Vs. M/s. Hede and Co.]* 2007 AIR SCW 3456 = (2007)5 SCC 614, the Apex Court said that whether a plaint discloses a cause of

action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Cl. (d) of R. 11 of O. 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense.

14. In the case of *Karim Bhai Vs. State of Maharashtra & Ors*., I.L.R. 2009 M.P. 3167, the Court held that the instances as given in Order VII Rule 11 cannot be regarded as exhaustive of all the cases, in which the Court can reject the plaint or is limiting the inherent powers of the Court in respect thereof. The provisions are procedural and enacted with an aim and object to prevent vexatious and frivolous litigation. The Court also said that it is required to see that the vexatious and frivolous litigation should not be allowed to proceed so as to kill the time of Court for nothing. Where the plaint does not disclose the cause of action, mere writing by the plaintiff that he is having cause of action, would not itself sufficient to hold that plaintiff has disclosed the cause of action.

15. Apex Court in *The Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman Vs. M/s. Ponniamman Educational Trust rep. by its Chairperson / Managing Trustee,* AIR 2012 S.C. 3912 = (2012) 8 SCC 706, observed in para 6 as follows: -

> "6..... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII, Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem Bhai and Ors. v. State of Maharashtra and others, (2003) 1 SCC 557 : (AIR 2003 SC 759 : 2003 AIR SCW 174).

16. In paragraph 8 (of AIR) of the *Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, AIR* 2017 S.C. 2653 = (2017) 13 SCC 174, the Apex Court has succinctly restated the legal position as follows: -

> "8. The plaint can be rejected under Order VII, Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII, Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and merit -less in the sense of not disclosing any right to sue, the court should exercise power under Order VII, Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII, Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII, Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

17. It may be useful to refer para 12 of *Azhar Hussain Vs. Rajiv Gandhi,* AIR 1986 S.C. 1253 = 1986 Supp SCC 315 in which the Apex Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

> **"12**. ..... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. "

18. Recently on 09.07.2020 in Civil Appeal No. 9519/2019 *(Dahiben Vs. Arvindbhai Kalyanji Bhanusali(Gajra)(D) through LRS & others),* the Apex Court considered the provision of Order 7 Rule 11 with the provision of Order 7 Rule 14(A), which is related to the production of documents on which the plaintiff places reliance in his suit, and said in Para 12.4, that the aforesaid documents may also be taken into consideration at the time of deciding the application filed under

Order 7 Rule 11(a) of CPC. The Court said as under:-

> "Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint."

19. **Therefore, upon perusal of the provision of Order 7 Rule 11 of CPC and aforesaid pronouncements, it can be said that** :-

[i] The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out.

[ii] The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial.

[iii] If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

[iv] The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

[v] The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

[vi] At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and can not be adverted to, or taken into consideration.

[vii] The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.

[viii] The averments made in the plaint in their entirety must be held to be correct.

[ix] The averments made in the plaint as a whole have to be seen to find out whether Cl. (d) of R. 11 of O. 7 is applicable. It is not permissible

to cull out a sentence or a passage and to read it out of the context in isolation. Documents on which the plaintiff places reliance in his suit, may also be taken into consideration at the time of deciding the application filed under Order 7 Rule 11(a) of CPC.

[x] If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

20. It is appropriate to mention hear that the respondent mainly used three points i.e. **"absence of concise statement" "lacking in material particulars"** and **"not discloser of a triable issue or cause of action".** The aforesaid objections are related to election petition, which has been filed by Petitioner before the High Court. Section 81 to 86 of Act, 1951 says :-

"81. Presentation of petitions.—

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2)....[Omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

"82. Parties to the petition.—A petitioner shall join as respondents to his petition :

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and,

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

"83. Contents of petition.- **(1) An Election petition -**

(a) **shall contain a concise statement** of the material facts on which the petitioner relies;

(b) shall set forth **full particulars of any corrupt practice** that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and,

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexe to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

"84. Relief that may be claimed by the petitioner.—

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

"86. Trial of election petitions.—

(1) The High Court **shall dismiss** an election petition which **does not comply with the provisions of section 81 or section 82 or section 117.**

Explanation.—An order of the High Court dismissing an election petition under this subsection shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."

117. Security for costs.—

(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct."

21. It appears that Section 83 of the Act deals with contents of petition. Clause (a) of Sub Section 1 of Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies. Clause (b) of Sub Section 1 of Section 83 further, provides that such an election petition shall set forth full particulars of any corrupt practices that the petitioner alleges, including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Clause (c) of Sub Section 1 of the Section 83 provides that the election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (v of 1908) for the verification of pleadings. The proviso of Sub Section 1 further mandates that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Sub Section 2 of Section 83 provides that any schedule or annexure to the petition shall also be signed by the petitioner and verified

in the same manner as the petition. Section 86 of the Act deals with trial of election petition. Sub Section 1 of Section 86 specifically provides that the High Court shall dismiss an election petition which does not comply with the provision of Section 81 or Section 82 or Section 117.

22. In *Azhar Hussain v. Rajiv Gandhi,* AIR 1986 S.C. 1253 = 1986 Supp SCC 315 [25.04.1986] it has been said that the whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court election petition can be summarily dismissed if it does not furnish cause of action. Basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. The omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. The Court said :-

> **"11.** In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant's case (1969) 3 SCC 238 : (AIR 1969 SC 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh's case (1977) 1 SCC 311 : (AIR 1977 SC 744) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of, Section 83(1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. ...
>
> **12**. .....The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the

mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose."

23. In *V. Narayanaswamy Vs. C. P. Thirunavukkarasu,* AIR 2000 S. C. 694 = (2000) 2 SCC 294 the Apex Court said that Primary responsibility is on petitioner to furnish full particulars of corrupt practice and file petition in full compliance of law, in its absence, petition can be dismissed. No any duty is cast on High Court to sou-motu direct the furnishing of better particulars etc.because if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. The Court highlighted "material facts""material particulars" and said :-

> **"24.** It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 31, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the Court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. .....To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt pratices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of

> Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of the Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure.....Where the petition does not disclose any cause of action it has to be rejected. Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.
>
> **27. Material facts** and **material particulars** certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter, if proved not only that the candidate suffers ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8A of the Act. It was for this purpose that proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. September 20, 1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the Rules."

24. In *Hari Shanker Jain Appellant Vs. Sonia Gandhi,* AIR 2001 S.C. 3689 = (2001) 8 SCC 233, the court said that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Material facts would include positive statement of facts as also positive averments of a negative fact, if necessary. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition. The Court said :-

> **"22.** Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other

words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See *Samant N. Balakrishna, etc. v. George Fernandez,* (1969) 3 SCR 603; *Jitender Bahadur Singh v. Krishna Behari, (1969) 2 SCC 433.* Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis,* (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

23. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

25. In *Harkirat Singh v. Amarinder Singh,* AIR 2006 S.C. 713 = (2005) 13 SCC 511, the court said that it is not expected from the High Court to stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable. The Court tried to give various meanings of "material facts". The relevant paragraph 48 of the said judgment is reproduced as under :-

"The expression 'material facts', has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third Edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What

particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

The Court observed :-

"81. As we have already observed earlier, in the present case, 'material facts' of corrupt practice said to have been adopted by the respondent had been set out in the petition with full particulars. It has been expressly stated as to how Mr. Chahal who was a Gazetted Officer of Class I in the Government of Punjab assisted the respondent by doing several acts, as to complaints made against him by authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, Mr. Mehra, who was holding the post of Superintendent of Police helped the respondent by organizing a meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. Though at the time of hearing of the appeal, the allegation as to projecting himself as 'Maharaja of Patiala' by the respondent had not been pressed by the learned counsel for the appellant, full particulars had been set out in the election petition in respect of other allegations. The High Court, in our opinion, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court, in our considered view, stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable.

26. In *Virender Nath Gautam v. Satpal Singh and Ors.,* AIR 2007 S.C.581 = (2007)3 SCC 617, the Apex Court defines the expression **'material facts'** and said :-

"30. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is,

however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

33. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

34. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

27. *Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar,* 2009 AIR SCW 6812 = (2009)9 SCC 310, it has been said that if the Election petition is filed upon the ground corrupt practices by returned candidate, than facts essential to clothe election petitioner with complete cause of action are **"material facts"** which must be pleaded. Failure to place even single material fact amounts to disobedience of mandate of S.83(1)(a). Election petition lacking materials facts and not disclosing any cause of action is liable to be dismissed. Court also refereed the *Harkirat Singh's case* (supra) and said :-

"62. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition.

63. The election petition must contain a concise statement of "material facts" on which the petitioner relies. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action.

> **64.** This Court in *Harkirat Singh*'s *case* (supra) tried to give various meanings of **"material facts"**. .....
>
> **65.** In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (respondent herein) is bound to substantiate before he can succeed on that charge. It is also well-settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.
>
> **67.** The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act."

28. In *Laxmi Kant Bajpai Vs. Hazi Yaqoob and Ors.,* 2010 AIR SCW 32 = AIR 2010 SC (Supp) 102 = (2010)4 SCC 81, the Court said that in the absence of material facts and insufficient cause of action, the election petition is liable to be dismissed. The Court observed :-

> **"28.** An election petition has to disclose all the material facts on which the election petitioner relies to establish the existence of a cause of action. Material facts essentially refer to all the relevant facts which an appellant relies upon during the course of the trial. In the absence of material facts and insufficient cause of action, the election petition is liable to be dismissed. There is a catena of cases decided by this Court which have discussed as to what constitutes material facts for the purpose of Section 100 of the Representation of the People Act, 1951....
>
> **"38**. .....The averments also do not disclose any material facts. As observed by the High Court, the main concern of the appellant in effect is the addition of the 21 colonies into the Meerut Constituency and not in relation to addition or deletion of names in the electoral roll. But yet there has been no specific pleading in this regard in the election petition. The pleading should have been with respect to the said inclusion of the 21 colonies into the Meerut Municipality Constituency which was later incorporated into the 381 Meerut Municipality Constituency. In the absence of such pleadings, it can safely be said that the election petition does not disclose any material facts and, therefore, High Court was right in summarily dismissing the election petition."

29. In *C. P. John v. Babu M. Palissery Ors,* 2014 AIR SCW 5649 = (2014)10 SCC 545 = 2014 SCC online SC 710, the Apex court said that it is required in the Petition based upon corrupt practice to state material facts and full particulars of

corrupt practice because the object is to prevent waste of precious time of elected candidate which otherwise would have been used for public welfare. The Court observed :-

> **"18.** When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an Election Petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1) (b) it is stipulated that the Election Petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said sub-clause 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.
>
> **19.** To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st class or a Notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form No. 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made

based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form No. 25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

30. It is submitted by respondent that :-

[i] The election petition has been filed only upon the ground of commission of corrupt practice as stipulated under section 123 of the Act, 1951. The instant petition lacks in material fact constituting the cause of action required under the Act, 1951. The present petition does not fulfill the mandatory requirement of the law.

[ii] The petition does not contain a concise statement of material fact on which the petitioner relies and therefore does not disclose a triable issue or cause of action. The so called specific allegations of corrupt practice as contained in Para 6 to 17 do not meet out the basic requirement, which could constitute cause of action as required by law. Even the material particulars are absent in the election petition.

[iii] The material facts as to how the information came to the knowledge of the petitioner pertaining to various incidents, as mentioned in the referred paras, is absolutely missing; whereas the same is preliminary requirement for maintainability of the petition. Thus, it suffers from non-compliance of the provisions contained under 83(1)(b)

of the Act, 1951.

[iv] The averments made in the petition are completely vague and lacking in material particulars. No trial or inquiry is permissible on the basis of such vague, indefinite, imprecise averments.

[v] The petition does not disclose a triable issue or cause of action, therefore, liable to be dismissed.

[vi] Para 11(1) to Para 11(18) deserve to be struck out as they are having no nexus at all with the election in question. In fact the pleadings of the Paras are related to the religious function held with effect from 26.10.2018 to 01.11.2018. However, the petitioner has not disclosed the same as election expenses to the Election Commission.

31. It is stated in Para 4(C) of the application that the copy of election petition, as served upon respondent no.1, has not been attested by the petitioner under his own signature to be a true copy. The aforesaid allegation is not supported by the document itself. The respondent no.1 filed the copy of petition, served upon him, which clearly shows that the petitioner himself attested the entire petition as "true copy" with his signature and seal.

32. Another objection raised by the respondent no.1 that the memo of petition bears such attestation but the documents filed along with the election petition do not bear any such attestation. But this allegation is also not supported by the documents. The petition and the documents show that each and every page has been verified by the petitioner with a note of verification and signature of the petitioner.

33. In Para 14 of the petition, it is mentioned by the petitioner that on 03.11.2018 he made a representation to respondent no.9, regarding transfer of the employees who were posted for more than 5 to 25 years in the Harsood Constituency No.176. As per petitioner, they should be transferred, but respondent by his influence made sure that no employee shall be transferred and accordingly influences the employees to work for his election. It appears from the aforesaid para that name of any employee has been mentioned. The requirement of law mandate to explain the material facts. Neither the name of any employee has been mentioned nor it is mentioned that how those employees effect the election process and how they acted in the election to get the respondent elected. Any details are not given in this regard. The details of employees, who were influenced by the respondent no.1 is not provided in the petition. Therefore, it can be said that the material facts have not been stated by the petitioner in his petition.

34. It is stated in para 16 of application that petitioner on 07.12.2018 sought the information from Chief election officer regarding booth wise issuing and using of the EVM machines with the details of machines found defective with panchna etc. The aforesaid allegation is not complete. He has not furnished any

details that how it affects the election of Harsood. Details of any booth has not been mentioned where the machine was found defective and replaced. Therefore, it cannot be treated as a triable issue.

35. The petitioner also mentioned that the respondent no.1 was holding the post of Minister of the State and he misused the position as Minister. The details are missing in the pleading. How the respondent no.1 misused his power and how he influenced the voters by using his capacity as a Minister, is not mentioned in the petition. Therefore, material facts in this regard are also absent in the pleading.

36. It appears from the entire petition that the main allegations of corrupt practice are based upon *Bhagwat Katha* organized between the period from 26.10.2018 to 01.11.2018. In Para 11(1) to 11(18) the details of expenditure has been mentioned. But this is only a self imaginary calculation and presumption drawn by the petitioner. No any specific source of information has been disclosed. Any document has not been filed/annexed in support of that alligation (sic : allegation). It is submitted by the respondent no.1 that the aforesaid Katha was not organized by him, the ***Chain Biharilal Samiti*** was the organizer of the aforesaid function. The Petitioner filed an affidavit of Santosh S/o Shankarlal by showing him as a member of Samiti, but the Respondent No.1 also filed the affidavit of "Chairman" of the aforesaid Samiti for showing that the Santosh was not the Member of aforesaid Samiti. It is not clearly mentioned in the petition that how the respondent no.1 influenced the voters by organizing the aforesaid *Bhagwat Katha.* It is also alleged that Respondent No. 1 spent 50 lacs in the aforesaid religious function. But it appears that the source of the information is not mentioned. How the petitioner came to know about the said fact is missing. It is not clarify that which Government accommodation was used for that purpose. Therefore, primafacie it appears that material facts are missing regarding the expenditure of that function.

37. The question whether the Bhagwat Katha was organized by the respondent no.1 or by the Chain Biharilal Samiti, is the secondary question. The most important question involved in this petition is **"whether the Bhagwat Katha organized between the period of 26.10.2018 to 01.11.2018 may be considered as "corrupt practice" adopted by the respondent ?"** It is an admitted position that the petitioner was the Minister at that time, but the **Election Code of Conduct was implemented since 14.10.2018.** The respondent no.1 nominated by the concerned party on **04.11.2018** and he **filed his nomination on 05.11.2018.** The corrupt practice has been defined in section 123 of the Act, 1951. In section 100 of the Act various grounds have been provided upon which the High Court may set aside the election as void. Relevant part of S.100 says :-

> ***"100. Grounds for declaring election to be void -***
>
> ***(1)*** *Subject to the provisions of sub-section (2) if the High Court is of opinion -*

(a) ……

(b) that any corrupt practice has been committed by a returned ***candidate*** *or his election agent or by any other person with the consent of a returned* ***candidate*** *or his election agent;*

……

the High Court shall declare the election of the returned ***candidate*** *to be void.*

……"

38. It appears that in relation to the corrupt practice, the word **"candidate"** has been used in the entire law. **When a contestant of the election becomes a candidate?,** for this purpose it may be useful to refer some case laws.

39. In *Smt. Indira Nehru Gandhi vs. Shri Raj Narain, and Raj Narain v. Smt. Indira Nehru Gandhi,* AIR 1975 S.C. 2299, a **Five Judges bench** of Apex Court held that the returned candidate became candidate only on the date of filing of her nomination paper. Court considers the Corrupt practice contemplated by S. 123 (7),by a 'Candidate', and said that Corrupt practice cannot be committed by any person before he become a 'candidate' for an election. The Court observed that there is nothing to indicate that the word "candidate" in clause (7) of Section 123 has been used merely to identify the person who has been or would be subsequently nominated as a candidate. A definition clause in a statute is a legislative device with a view to avoid making different provisions of the statute to be cumbersome. Where a word is defined in the statute and that word is used in a provision to which that definition is applicable, the effect is that wherever the word defined is used in that provision, the definition of the word gets substituted. Reading the word "candidate" in Section 123 (7) in the sense in which it has been defined as a result of the amendment made by Act 40 of 1975, the only reasonable inference is that the person referred to as a candidate in that clause should be a person who has been or claims to have been duly nominated as a candidate at an election and not one who is yet to be nominated . Court also said there can be no doubt that Section 100 (1) (b), when it speaks of commission of corrupt practice by a returned candidate, it can only mean commission of corrupt practice by a candidate before he became a returned candidate. Any other reading of the sub-section would be absurd. But there is no such compulsion to read the word 'candidate' in Section 123 (7) in the same manner. It is the context that gives colour to a word. A word is not crystal clear. Section 79 of the Act indicates that the definitions therein have to be read subject to the context. The legislature must fix some point of time before which a person cannot be a 'candidate' in an election, and a wide latitude must be given to the legislature in fixing that point. It will useful to refer para 146 and 387 :-

> **"146.** The 1951 Act uses the expression "candidate" in relation to several offences for the purpose of affixing liability with reference to a person being a candidate. If not time be fixed with regard to a person being a candidate it can be said that from the moment a person is elected he can be said to hold himself out as a candidate for the next election."
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> " **387.** I would therefore hold that even if it be assumed that the finding of the High Court that the appellant obtained or procured the assistance of Shri Yashpal Kapur during the period from January 7 to 24, 1971, is correct, the appellant shall not be deemed to have committed corrupt practice under Section 123 (7) of the Representation of the People Act, 1951, as she became a candidate only on February 1, 1971. The learned Chief Justice has also dealt with the contention urged by counsel for respondent that Clause 8 (b) of the Election Laws Amendment Act, 1975 suffers from the vice of excessive delegation and is arbitrary. I agree with his reasoning for repelling the same."

40. Again in *Subhash Desai v. Sharad J. Rao and others,* AIR 1994 S.C. 2277 = 1994 AIR-SCW 2155 = 1994 Supp(2) SCC 446 a **Three Judges bench** followed the Indira Nehru Gandhi v. Raj Narain, 1975 (Supp) SCC I : (AIR 1975 SC 2299) and said that allegations of Corrupt practice relating to period prior to filing of nomination cannot be taken into consideration for judging legality or validity of election. Court said :-

> **"18.** On behalf of the appellant, it was then pointed out that in election petition, while alleging corrupt practices, reference has been made in respect of the speeches and publications, of period prior to 31-1-1990, which was the date when nomination papers were filed The publications and speeches alleged to have been made prior to 31-1-1990 have to be ignored because the framers of the Act required the High Court to judge the conduct of the candidate, his agent or persons with the consent of the candidate or his election agent, only after a person becomes a candidate for the particular election. A person becomes a candidate for the election in question only after filing the nomination paper. In this connection, reference may be made to Section 79(b) of the Act which defines 'candidate' to mean a person, who has been or claims to have been duly nominated as a candidate at any election. Section 34 of the Act says that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited the amounts prescribed in the said section. When a person becomes a candidate, was examined by this Court in the well known case of *Indira Nehru Gandhi v. Raj Narain,* 1975 (Supp) SCC I : (AIR 1975 SC 2299), and it was held (at p. 2334, Para. 146 of AIR):
>
> > "The 1951 Act uses the expression "candidate" in relation to several offences for the purpose of affixing liability with reference to a person being a candidate. If no time be fixed with regard to a person

being a candidate it can be said that from the moment a person is elected he can be said to hold himself out as a candidate for the next election."

Recently, this Court in the case of Mohan Rawale v. Damodar Tatyaba alias Dadasaheb, (Special Leave Petition (Civil No.5594 of 1992 disposed of on August 6, 1992), has said :

"We hold that all the averments in paragraphs 1 to 20 of the memorandum of election petition in so far as they refer to a period prior to 23-4-1991 cannot amount to allegations of corrupt practice."

This cut off date 23-4-1991, was fixed with reference to the date when nomination papers were filed by the appellant concerned, because since that date the appellant will be deemed to have legally acquired the status of a candidate. According to us, any allegation of corrupt practice against the appellant made by the respondent in respect of the period prior to the filing of nomination by the appellant on 31-1-1990. cannot be taken into consideration for judging the legality or validity of his election. [underlined by me]

41. Again another **Three Judges bench** in *Ramakant Mayekar vs. Smt. Celine D'Silva (with three other cases),* AIR 1996 S.C. 826 = 1996 AIR-SCW 189 = (1996)1 SCC 399, considered the 'corrupt practice' alleged to be committed through speeches. The Court said that speech given prior to date returned candidate filed his candidature for election cannot form basis for alleged corrupt practice. The Court observed :-

"9. As for speeches alleged to have been made on 29-1-1990, it may be stated at the outset that they have to be excluded from consideration since they cannot form the basis of any corrupt practice at the election, inasmuch as they relate to a period prior to the date on which Ramakant Mayekar became a candidate at the election as defined in Section 79(b) of the R.P.Act. This is the settled position in law. [See *Subhash Desai v. Sharad J. Rao, 1994 Supp (2)SCC 446 : (1994 AIR SCW 2155); Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1 : (AIR 1975 SC 2299); Mohan Rawale v. Damodar Tatyaba, 1994 (2)SCC 392 : (1994 AIR SCW 2028)].* This was the undisputed position at the hearing of these appeals before us since the speeches made on 29-1-1990 were prior to the date on which Ramakant Mayekar became a candidate at the election. It follows necessarily that the impugned judgment as well as the subsequent notices issued under Section 99 of the R.P. Act, are unsustainable to the extent they are based on the speeches alleged to have been made on 29-1-1990. No further discussion is necessary for holding that part of the impugned judgment dated 5th/6th August, 1991, notices under Section 99 of the R.P.Act and the subsequent order dated 6th January, 1992 as contrary to law and, therefore, liable to be set aside for this reason alone."

42. Therefore, it is the clear position of the law that a **contestant becomes a "candidate" only after filing his nomination for the election.** In this case, the respondent no.1 filed his nomination on 05.11.2018; while the Bhagwat Katha was organized before the aforesaid date during the period of 26.10.2018 to 01.11.2018. For the sake of arguments, if we presume that the Katha was organized by respondent no.1, then it may be said that the **aforesaid act cannot be considered as 'corrupt practice' adopted by him, because during the aforesaid period, he was not the 'candidate' of the election. He became the candidate only on 05.11.2018.**

43. **Therefore,** in the light of aforesaid observation, it appears that material facts have not been stated by the petitioner in his petition. No triable issue has been found. The petition based upon the so called "corrupt practice" adopted during the period 26.10.2018 to 01.11.2018, is not tenable because during that period, the respondent was not the "candidate" as he filed his nomination after the aforesaid period on 05.11.2018.

44. Hence, **I.A. No. 8710/2019 is allowed.** As a result, the **Election Petition No. 14 of 2019, filed by the petitioner is dismissed** as not maintainable. Both parties shall bear their own costs.

Petition dismissed

I.L.R. [2020] M.P. 2166
MISCELLANEOUS PETITION
Before Mr. Justice G.S. Ahluwalia
M.P. No. 39/2020 (Gwalior) decided on 10 January, 2020

RAJENDRA SINGH KUSHWAH …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Section 172 – Commercial Use of Land – Permission & Diversion* – Held – Land was used by petitioner for marriage and other functions without diversion and without obtaining any permission – Petitioner also failed to discharge the burden to prove that he was not charging any rent – Marriage garden is being run contrary to provisions of law – Impugned order was rightly passed – Petition dismissed. (Para 8)**

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 172 – भूमि का वाणिज्यिक उपयोग – अनुज्ञा व अपयोजन – अभिनिर्धारित – याची द्वारा भूमि का उपयोग, बिना अपयोजन एवं बिना किसी अनुज्ञा अभिप्राप्त किये, विवाह व अन्य कार्यक्रमों हेतु किया गया था – याची, साबित करने के इस भार का निर्वहन करने में भी असफल रहा कि वह कोई

भाड़ा प्रभारित नहीं कर रहा था – विवाह उद्यान, विधि के उपबंधों के विपरीत चलाया जा रहा है – आक्षेपित आदेश उचित रूप से पारित किया गया था – याचिका खारिज।

***B. Land Revenue Code, M.P. (20 of 1959), Section 59(12) & 172 and General Clauses Act, M.P. 1957 (3 of 1958), Section 10 – Penalty – Repeal of Provision – Applicability* – Held – Section 59(12) cannot be made applicable to appeals filed by assessee – Where penalty has been imposed prior to omission of Section 172 of Code, the said order would not automatically stand abated on the ground that during pendency of appeal, Section 172 has been repealed – Proceedings be initiated for recovery of penalty, if not yet deposited – Petition dismissed. (Para 14 & 15)**

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 59(12) व 172 एवं साधारण खण्ड अधिनियम, म.प्र. 1957 (1958 का 3), धारा 10 – शास्ति – उपबंध का निरसन – प्रयोज्यता – अभिनिर्धारित – धारा 59(12), निर्धारिती द्वारा प्रस्तुत अपीलों के लिए प्रयोज्य नहीं बनाई जा सकती – जहां संहिता की धारा 172 को लोपित किये जाने के पूर्व शास्ति अधिरोपित की गई है, उक्त आदेश का इस आधार पर अपने आप उपशमन नहीं होगा कि अपील लंबित रहने के दौरान, धारा 172 निरसित की गई है – शास्ति की वसूली हेतु कार्यवाहियां आरंभ की जाए, यदि अभी तक जमा न की गई हो – याचिका खारिज।

***C. Land Revenue Code, M.P. (20 of 1959), Section 172 – Show Cause Notice – Abatement of Proceedings* – Held – Notice u/S 172 issued on 21.12.15 whereas Section 172 has been omitted by M.P. Act No. 23/2018 – Show Cause notice rightly issued. (Para 9)**

ग. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 172 – कारण बताओ नोटिस – कार्यवाहियों का उपशमन – अभिनिर्धारित – धारा 172 के अंतर्गत नोटिस, 21.12.15 को जारी किया गया था जबकि धारा 172 को म.प्र. अधिनियम क्र. 23/2018 द्वारा लोपित किया गया – कारण बताओ नोटिस उचित रूप से जारी किया गया।

Chandra Pratap Singh, for the petitioner.
R.K. Soni, G.A. for the respondents/State.

O R D E R

G.S. AHLUWALIA, J.:- This petition under Article 226 of the Constitution of India has been filed against the order dated 13/4/2016 passed by the SDO (Revenue) Lashkar, District Gwalior in case No.10/2015-16/172 (4), order dated 16/4/2018 passed by the Collector, District Gwalior in case No.4/2017-18/Appeal, order dated 21/5/2019 passed by the Commissioner, Gwalior Division, Gwalior in case No.409/2017-18/Appeal as well as the order dated 3/12/2019 passed by the Commissioner, Gwalior Division, Gwalior in case No.17/Review/19-20.

2. The necessary facts for disposal of the present petition in short are that a show-cause notice dated 21/12/2015 was issued to the petitioner on the ground

that he is running a marriage garden on survey nos.222, 223, 224, total area 0.209 hectares without getting the land diverted as well as without taking permissions and thus, the petitioner was called upon to show-cause under Section 172 (1) of M.P. Land Revenue Code (in short "the Code") as to why the proceedings under Section 172 (4) of the Code be not initiated against him. The petitioner filed his reply. Paragraphs 6 and 9 of the reply submitted by the petitioner reads as under:-

> 6– यहकि मुझ प्रतिप्रार्थी के अन्य भाईयो ने अपने हिस्से की भूमि में मकान बना लिये है इस प्रकार मुझ प्रतिप्रार्थी की उक्त भूमि आवादी क्षेत्र के अन्दर है खाली भूमि होने के कारण मोहल्ले के लोग शादी एव अन्य उत्सव हेतु मुझ प्रतिप्रार्थी की खुली भूमि का उपयोग कर लेते है जबकि प्रतिप्रार्थी उनसे कोई किराया नही लेता है।
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> 9– यह कि यदि निकट भविष्य में प्रतिप्रार्थी द्वारा निर्माण अथवा अन्य किसी कार्य हेतु उपयोग के लिए परिवर्तित किया जाता है तो प्रतिप्रार्थी उक्त कार्य हेतु डायवर्सन स्वतः करायेगा यदि श्रीमान जी चाहे तो स्वंय मौका निरीक्षण कर सकते है। जिससे भूमि की वास्तविकता का पता चल सके।

3. The statements of the witnesses including that of the petitioner were recorded. The statement made by the petitioner is reproduced as under:-

> 14. मैं शपथ पूर्वक कथन करता हूॅ कि ग्राम गुढा मै मेरे भूमि स्वामी स्वत्व की भूमि सर्वे क्र. 222 मिन–2 रकवा 6 विस्वा, सर्वे क्र. 225 मिन–3 रकवा 0.005 आरे इस प्रकार कुल किता–3 कुल रकवा 0.073 हैक्टेयर का मैं भूमि स्वामी हूॅ। उपरोक्त भूमि मुझको बंटवारे मे प्राप्त हुई है। मेरे अन्य भाईयों में बंटवारे में प्राप्त भूमि पर भवन बना लिये है मेरी भूमि खुली पड़ी है। सर्वे क्र. 222, 223 ,224, कुल रकवा 0.209 हैक्टेयर मेरे स्वत्व स्वामित्व व अधिपत्य का नहीं है। मैंने अपनी भूमि की सुरक्षा हेतु तार फैंसिग लगा ली हैं पानी के अभाव से मौके पर पढ़त पड़ी हुई है। मैने उक्त भूमि का मैरिज गार्डन के रूप में कभी उपयोग नही किया है। मौहल्ले में जब कोई कार्यक्रम होते है तो मौहल्ले वाले मेरे से पूछकर उपयोग कर लेते है। मैं उनसे किराया नहीं लेता हूॅ.
>
> कथन पढा, सुना, स्वीकार

4. Considering the material available on record as well as considering the admissions made by the petitioner, the SDO (Revenue) Lashkar, District Gwalior by its order dated 13/4/2016 passed in case No.10/2015-16/172 (4) came to the conclusion that the petitioner is running the marriage garden on survey no.222 min-2 admeasuring 0.063 hectares without getting the land diverted and without obtaining due permissions under the law and since the marriage garden is being run contrary to the provisions of law, therefore, the penalty of Rs.13,23,000/- was imposed and the petitioner was also directed to restore the land to its original condition as per the provisions of Section 172 (5) of the Code.

5. Being aggrieved by the order of the SDO (Revenue), Lashkar, District Gwalior, the petitioner filed an appeal before the Collector, which too was

dismissed by order dated 16/4/2018. The order of the appellate authority was challenged by the petitioner by filing an appeal before the Commissioner, Gwalior Division, Gwalior and the appeal too was dismissed by order dated 21/5/2019. Thereafter, the petitioner filed a review against the order of the Commissioner and the review has also been dismissed by order dated 3/12/2019 by the Commissioner, Gwalior Division, Gwalior.

6. Challenging the orders passed by the Tribunals below, it is submitted by the counsel for the petitioner that the order under Section 172 of the Code has been passed without there being any evidence that the petitioner is running a marriage garden on the land in dispute. Initially the show-cause notice was issued in respect of three survey numbers, but thereafter the order was passed in survey no.222 min-2 only and, therefore, it appears that the show-cause notice was issued on incorrect facts. Further, Section 172 of the Code was omitted from the Code and as per the provisions of Section 59 of the Code, all the proceedings have stood abated.

7. Heard learned counsel for the petitioner.

8. It is the case of the respondents that the petitioner is running a marriage garden on survey no.222 min-2 without obtaining due permission as well as without getting the land diverted and the marriage garden is being run contrary to the provisions of law. The petitioner in his reply to the show-cause notice as well as in his statement has admitted that the marriage functions and other functions are being organized, however, the only dispute which the petitioner has raised is that for allowing the persons to organize the function, he has never charged any rent, therefore, the land is not being used for commercial purposes. When the petitioner has admitted that the marriage and other functions are being organized on the land in question, then the burden was on the petitioner to prove that the petitioner was allowing the persons to organize the functions without charging rent. Since the petitioner has failed to prove the same, therefore, this Court is of the considered opinion that the respondents did not commit any mistake in holding that the petitioner is running a marriage garden without getting the land diverted as well as without obtaining permissions and the marriage garden is also being run contrary to the provisions of law.

9. So far as the contention of the petitioner regarding abatement of the proceedings is concerned, the show-cause notice under Section 172 of the Code was issued on 21/12/2015, whereas Section 172 of the Code has been omitted by MP Act No.23/2018. Thus, it is clear that the show-cause notice was rightly issued under Section 172 of the Code.

10. Now the next question for consideration is that-

"Whether the proceedings which were initiated in the year 2015 under Section 172 of the Code stood abated due to the omission of Section 172 of the Code or not?"

11. Section 59 (12) of the Code reads as under:-

"59 (12) All proceedings under this section pending before the Board or any Revenue Officer prior to commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 shall stand abated and the Sub-Divisional Officer shall impose premium and assess the land revenue on account of diversion in accordance with the provisions of this section."

12. It appears that the petitioner had not raised any objection with regard to the abatement of the proceedings, but the said objection was raised before the Commissioner in a review filed by him. The Commissioner has considered the submissions made by the petitioner and has relied upon the circular dated 25/1/2019 passed by Revenue Department, State of MP and has held that the appeals which were pending against the order passed under Section 172 of the Code shall be considered in the same manner as if Section 172 of the Code has not been omitted.

13. Section 10 of the M.P. General Clauses Act reads as under:-

"10. Effect of repeal.- Where any Madhya Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Madhya Pradesh Act had not been passed."

14. If Section 59 (12) of the Code is read in the light of Section 10 of M.P. General Clauses Act, then it is clear that Section 59 (12) of the Code cannot be made applicable to the appeals filed by the assessee. Where the penalty has already been imposed prior to omission of Section 172 of the Code, then the said order would not automatically stand abated on the ground that during pendency of the appeal, Section 172 of the Code has been repealed. Under these circumstances, this Court is of the considered opinion that the Tribunals below after considering the evidence available on record have rightly held that the petitioner is running the marriage garden contrary to the provisions of law and accordingly, has rightly imposed the penalty to the extent of 20% of the market value of the said land and has rightly directed that the petitioner must restore the land in its original condition.

15. Under these circumstances, the petition is **dismissed** with a direction to the respondents to ensure that the land is not permitted to be used as a marriage garden and the respondents shall ensure that in case if the penalty imposed by the SDO (Revenue) Lashkar, Gwalior is not deposited, then the proceedings be initiated for the recovery of the same.

16. Accordingly, the petition fails and is hereby **dismissed.**

Petition dismissed.

I.L.R. [2020] M.P. 2171
MISCELLANEOUS CIVIL CASE
Before Mr. Justice Sujoy Paul

M.C.C. No. 62/2020 (Jabalpur) decided on 04 September, 2020

AARTI SAHU (SMT.) ...Applicant

Vs.

ANKIT SAHU ...Non-applicant

A. Civil Procedure Code (5 of 1908), Section 24 and Hindu Marriage Act (25 of 1955), Section 13 – Transfer of Proceeding – Grounds – **Held – Merely because short dates are given to parties, no malice can be attributed on Court – Nothing to show, how short dates given by Court has adversely affected or have prejudiced the applicant – Mere apprehension of not getting an order in his/her favour without any proof thereof cannot be ground to order transfer of a case – Application dismissed. (Para 8 & 9)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 एवं हिन्दू विवाह अधिनियम (1955 का 25), धारा 13 – कार्यवाही का अंतरण – आधार – अभिनिर्धारित – मात्र चूंकि पक्षकारों को अल्पकालीन तिथियॉ दी गई थीं, न्यायालय पर दुर्भावना का आरोप नहीं लगाया जा सकता – यह दर्शाने हेतु कुछ नहीं है, कि कैसे न्यायालय द्वारा दी गई अल्पकालीन तिथियों से आवेदक विपरीत या प्रतिकूल रूप से प्रभावित हुआ है – बिना किसी सबूत के अपने पक्ष में आदेश न मिलने की आशंका मात्र किसी प्रकरण को अंतरित करने के आदेश का आधार नहीं हो सकती – आवेदन खारिज।

B. Practice – Date of Hearings – Discretion of Court **– Held – Presiding Officer is the guardian of judicial time and has complete discretion to fix dates of hearing/proceedings. (Para 8)**

ख. पद्धति – सुनवाई की तिथि – न्यायालय का विवेकाधिकार – अभिनिर्धारित – पीठासीन अधिकारी न्यायिक समय का संरक्षक है तथा उसे सुनवाई / कार्यवाहियों की तिथि तय करने का संपूर्ण विवेकाधिकार होता है।

Sourabh Singh, for the applicant.
Shivam Hazari, for the non-applicant.

O R D E R

SUJOY PAUL, J.:- This is an application filed under Section 24 of the Code of Civil Procedure, 1908 (CPC) for transfer of RCSHM Case No.153/2019 filed under Section 13 of the Hindu Marriage Act from Family Court, Sagar to the Court of District & Sessions Judge, Sagar.

2. Shri Sourabh Singh, learned counsel for the applicant submits that in the manner the Family Court is proceeding in the matter, the applicant has no faith in the said Court. The matter may either be transferred to the Court of District & Sessions Judge, Sagar or Family Court, Damoh.

3. In order to point out the alleged impropriety on the part of the Family Court, Shri Singh urged that on 15.7.2019, the notices were issued by the Family Court on the application filed by the other side under Section 13 of the Hindu Marriage Act, 1955. The present applicant appeared before the Family Court on 08.08.2019. Thereafter, the Family Court is proceeding on day to day basis which is arbitrary and is against the interest of applicant. In last five months, 13 hearings have taken place before the Family Court. It is further urged that the applicant preferred a complaint before Registrar(Vigilance) of this Court raising allegations about the improper interest shown by the Court in the instant case. Shri Singh further urged that in many other cases pending before the Family Court for more than one year, no such interest was shown by the Family Court but the extra-ordinary interest shown in the instant case became the reason to approach this Court. Lastly, it is urged that if matter is not transferred from Family Court, non-applicant will get an order any how which will be travesty of justice.

4. The prayer is opposed by Shri Hazari by contending that the orders on which reliance is placed by the applicant shows that in those cases the parties were not local. In other words, since parties' addresses were out of Sagar, the Court in its wisdom might have given longer date to ensure service of notice whereas, in the instant case, both the parties are residing at Sagar.

5. In rejoinder submission, Shri Singh submits that in few cases, where both the parties were residing at Sagar also the Court below has not shown such haste in those cases.

6. No other point is raised by learned counsel for the parties.

7. I have heard the learned counsel for the parties at length.

8. Merely because short dates are given to the parties, no malice can be attributed on the Court. It is not pointed out to this Court as to how short dates have caused prejudice to the applicant. The applicant has not pointed out anything which shows that because of short date given by the court below, her right to defend herself in any way is adversely affected. This is trite that the Presiding Officer is the guardian of the judicial time and has complete discretion to fix the dates of hearing/proceeding. Unless the procedure adopted by the Court amounts to manifest propriety which caused prejudice to any party, this Court is not obliged to interfere. In other words, it is not pointed out from any order-sheet that Court below has committed any error of law or procedure which has caused injustice to the respondents. At the cost of repetition, no inference can be drawn against the Court merely because short dates were given by the Court in a particular matter. I am not inclined to compare the dates of hearing given in this case with other cases because that cannot be a ground to interfere in the matter unless something more is shown. Something which shows that fixing of nearby dates has resulted into injustice to the other side. The applicant appears to have preferred complaint on apprehension before the Registrar(Vigilance). Merely because any complaint is preferred, the matter cannot be directed to be transferred. Similarly, it cannot be left on the choice of the litigant to decide when his/her matter should be heard/decided. Mere apprehension of not getting an order in his/her favour without any proof thereof cannot be a ground to order transfer of a case.

9. In view of foregoing analysis, I find no reason to order transfer of RCSHM Case No.153/2019. Needless to emphasize that Court below shall hear and decide the instant matrimonial matter strictly in accordance with law. The application sans substance and is hereby dismissed.

Application dismissed

I.LR. [2020] M.P. 2174
MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Atul Sreedharan

M.Cr.C. No. 13123/2020 (Jabalpur) decided on 7 August, 2020

HYAT MOHD. SHOUKAT ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 167(2), 436A & 439 and Penal Code (45 of 1860), Section 380 – Bail – Grounds* – Held – Investigation still in progress despite passage of 3½ years of arrest – Applicant served more than the maximum sentence in custody, which JMFC can impose upon him under the said offence – Applicant entitled for relief u/S 436A – Bail granted and Guidelines laid down to be followed by the Courts below in cases where 167(2) and 436A becomes applicable.**

(Paras 3, 5, 9 & 10)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), 436A व 439 एवं दण्ड संहिता (1860 का 45), धारा 380 – जमानत – आधार – अभिनिर्धारित – गिरफ्तारी के 3½ वर्ष बीत जाने के बावजूद अन्वेषण अभी चल रहा है – आवेदक ने, उक्त अपराध हेतु उस पर न्यायिक मजिस्ट्रेट प्रथम श्रेणी द्वारा अधिरोपित किये जा सकने वाले अधिकतम दण्डादेश से अधिक अवधि अभिरक्षा में भुगती है – आवेदक, धारा 436A के अंतर्गत अनुतोष हेतु हकदार – जमानत दी गई तथा ऐसे प्रकरणों में जहां धारा 167(2) व 436A लागू होती हैं, निचले न्यायालयों द्वारा पालन किये जाने हेतु दिशा–निर्देश अधिकथित किये गये।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 436A and Penal Code (45 of 1860), Section 380 – Detention – Computation of Time* – Held – Period of computation of one half of maximum sentence u/S 436A commenced from the date of arrest of applicant – Maximum jail sentence u/S 380 IPC is seven years and detention undergone by applicant is more than 3½ years – Applicant ought to have been released on bail mandatorily on his personal bonds with or without surety – Bail granted. (Paras 7 to 9)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 436A एवं दण्ड संहिता (1860 का 45), धारा 380 – निरोध – समय की संगणना – अभिनिर्धारित – धारा 436A के अंतर्गत अधिकतम दण्डादेश के आधे की संगणना की अवधि, आवेदक की गिरफ्तारी की तिथि से आरंभ हुई – धारा 380 भा.दं.सं. के अंतर्गत अधिकतम कारावास दण्डादेश सात वर्षों का है और आवेदक द्वारा भुगता गया निरोध, 3½ वर्षों से अधिक है – आवेदक को उसके स्वीय मुचलके पर, प्रतिभूति के साथ अथवा उसके बिना, जमानत पर छोड़ा जाना चाहिए – जमानत प्रदान की गई।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2)(a)(ii) – Grant of Bail* – Held – Section 167(2)(a)(ii) provides for release of person where investigation does not conclude within a period of 90 days or 60 days depending upon nature of offence – He can only be held in further custody where he is unable to furnish bail or does not furnish bail. (Para 6)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2)(a)(ii) – जमानत प्रदान की जाना – अभिनिर्धारित – धारा 167(2)(a)(ii), व्यक्ति को छोड़ा जाना उपबंधित करती है जहां अन्वेषण अपराध के स्वरूप के आधार पर, 90 दिन या 60 दिन की अवधि के भीतर समाप्त नहीं होता है – उसे केवल तब और आगे अभिरक्षा में रखा जा सकता है जब वह जमानत देने में अक्षम है या जमानत नहीं देता है।

Sameer Seth, for the applicant.
Utkarsh Agrawal, P.L. for the non-applicant/State.

O R D E R

(Through Video Conferencing)

ATUL SREEDHARAN, J.:- This application has been filed on behalf of the applicant under section 439 of the Cr.P.C. for an offence under section 380 of the IPC, registered vide Crime No.405/2016, at P.S. G.R.P, Bhopal.

2. The applicant is in judicial custody since 18/07/16 in the aforesaid case. The offence he is charged of is Section 380 IPC for which there is no minimum sentence and maximum sentence can extend up to 7 years rigorous imprisonment. It is an offence triable by the Court of the Judicial Magistrate First Class. It is relevant to state here that this is the first application for grant of bail that has been filed before this Court

3. This Court carefully went through the rejection order dismissing the bail application of the applicant by the Court of the learned 15th ASJ, Bhopal. It is relevant to mention here that the first application for grant of bail was moved before the learned Court below in March 2020, which is a little more than 3½ years after the arrest of the applicant in the aforementioned case, which shows that the applicant may not have had the financial and legal wherewithal of approaching even the District Court on an earlier date. While dismissing the said application vide order dated 6.3.2020, the learned 15th ASJ Bhopal observes "वर्तमान प्रकरण में आरोपी पर रेलवे स्टेशन भोपाल में डोरमेट्री में ठहरे हुए यात्री का समान चोरी का आक्षेप है. प्रकरण अभी अनुसन्धान की अवस्था में है." This clearly reveals that the investigation is still in progress against the applicant despite the passage of 3½ years. The other reason which appears to have weighed in the mind of the learned court below is that the applicant is a native of the State of Jammu and Kashmir and that there is another case registered at P.S Pulwama, in Jammu and Kashmir under section 420, 467,468 and 471 IPC. No details of the said case have been

reproduced in the order of the learned court below. Further, the learned Court below believed the applicant may abscond if enlarged on bail. Thereafter, the present application, being the first application before this Court, has been filed on 20/07/2020.

4. This case was listed on 23/07/2020 before this Court and the matter was adjourned as the case diary was not available and the same was called for. Thereafter it was listed again on 31/07/2020 when again, the case was adjourned as the case diary was not made available. Today again, the learned counsel for the State has submitted that the case diary is not available. This application is being heard and decided today notwithstanding the absence of the case diary.

5. This case shocks the conscience of this Court and severely indicts the criminal justice administration in our state. Undisputedly, the offence that the applicant was booked for does not have a minimum jail sentence and the maximum sentence does not exceed seven years rigorous imprisonment. The offence is triable by the Court of the Judicial Magistrate First Class (hereinafter referred to as the 'JMFC') and as on date, the applicant has served more than the maximum sentence that the Court of the JMFC can impose upon him.

6. The first occasion on which the justice administration system of this State failed the applicant was that it did not take into consideration the fact that the investigation against the applicant was not concluded even after a passage of over 3½ years as clearly recorded in the rejection order of the Ld. Court below. This Court, on date does not have the record relating to the remand proceedings of the applicant before the Ld. JMFC's and therefore cannot be critical of the order of remand passed by them or, pass any observation against the Magistrates for mechanically remanding the applicant to judicial custody without applying their mind with the utmost insensitivity, unless this Court goes through the record of the remand proceedings and satisfies itself of lapses on the part of the Magistrates. Calling for the record of the remand proceedings now would be prolonging the incarceration and agony of the applicant. Undoubtedly, Proviso (a)(ii) of Sub-Section (2) of Section 167 Cr.P.C provides for the release of the person where investigation does not conclude within a period of 90 days or 60 days depending upon the nature of the offence, can only be held in further custody where he is unable to furnish bail or does not furnish bail.

7. The second occasion on which the justice administration of the State was further indicted was on account of non-compliance with the provisions of section 436A Cr.P.C where even after the completion of more than one half of the maximum period of imprisonment specified for the offence under section 380 IPC was over, it did not come to the notice of the sentinels of justice, that the applicant ought to have been released on bail mandatorily on his personal bonds with or without sureties. The proviso to section 436A Cr.P.C does give the extraordinary

power to the Court to order the continued detention of the accused for a period beyond one half of the maximum jail term provided for the offence , after hearing the public prosecutor. The explanation to section 436A Cr.P.C also provides that in computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded. In the case at hand, the applicant, by no stretch of imagination can be held responsible for the delay in proceedings as he has been in judicial custody continuously all this while and it is the police which has not concluded the investigation till date, as has been held by the Ld. Court below in its rejection order.

8. The learned Court below while passing the order dated 6.3.2020 does not even fleetingly refer to section 436A Cr.P.C. Merely because the applicant was a resident of Jammu & Kashmir was grossly inadequate to have kept him in custody for such a minor offence in violation of section 436A Cr.P.C.

9. The increasing insensitivity of the criminal justice administration in our State to extended (sic : extend) the incarceration of under trials is disturbing. As far as the computation of time under section 436A is concerned, it commences from the time where accused is arrested for an offence and takes into account the period of investigation, enquiry, or trial in the Court. Thus, the period of computation of one half of the maximum sentence under section 436A commenced from 18/07/16 i.e., from the time the applicant was arrested in the said offence. Thereafter, the judicial custody/detention undergone by the applicant as an under trial is more than 3½ years. The maximum jail sentence that can be imposed for an offence under section 380 is seven years. Therefore, the applicant was entitled to be released by the Court on his personal bond with or without surety in the month of February 2020. The applicant though a resident of State of Jammu and Kashmir is still a citizen of this country and is entitled to the same protection and benefit of section 436A Cr.P.C, which was never given to him and sadly was never even considered by the Ld. Court below, whether he as (sic : is) eligible for it. This Court feels it essential to lay down certain guidelines to be followed by the Courts below in such cases:

1) Where the investigation of an offence does not conclude within the time stipulated in section 167(2) Cr.P.C and the accused becomes eligible to statutory bail, it shall be the duty of the State to inform the Magistrate about the same and also it shall be the duty of the Magistrate to bring it to the notice of the under Trial that he has a right to statutory bail provided he can furnish the bail bonds.

2) In the event the under trial on account of his indigency or financial backwardness is unable to provide for bail bonds, it shall be the duty of the Magistrate to bring the same to the notice of the District Legal

Services Authority, who shall take the assistance of Non-Governmental Organizations (NGO's) where available, in assisting the under trial to secure statutory bail. The financial backwardness or indigency of the under trial must not come in the way of him securing a statutory bail.

3) When bail applications are moved before the learned Court below, be it under section 437 or 439 Cr.P.C, it shall be the solemn duty of the Court to examine in each and every case whether the provision of section 436A Cr.P.C, even if not raised by the accused, would apply in a given case. Where it becomes evident to the Court that the right under section 436A Cr.P.C had accrued to the under trial, it shall release the under trial on his personal bond with or without sureties as provided under section 436A Cr.P.C unless, for compelling reasons to be recorded by the learned Court below, the period of incarceration is to be extended beyond one half of the total sentence which could be imposed upon the under trial for the commission of the said offence.

10. Looking at the facts and circumstances of the case, as the applicant is eligible to relief under section 436A Cr.P.C, **the application is allowed and it is directed that the applicant shall be released forthwith upon his furnishing a personal bond in the sum of Rs.10,000/-(Rupees Ten Thousand only) to the satisfaction of the Trial Court.** The jail authorities shall have the applicant checked by the jail doctor to ensure that he is not suffering from the coronavirus and if he is, he shall be sent to the nearest hospital designated by the State for treatment. If not, he shall be transported to his place of residence by the jail authorities.

Certified copy as per rules.

Application allowed