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**For Indian Law Report (MP) Committee, Jabalpur, under the  
Authority of the Governor of M.P., Madhya Pradesh Shasan, Bhopal.**

## **THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

**Hon'ble Shri Justice Mohammad Rafiq**  
**Chief Justice**

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**Justice Mohammad Rafiq**  
CHIEF JUSTICE



## **Message**

*The Indian Law Reports is the only official journal often cited in the Courts. It is indeed a matter of pride that Indian Law Reports (M.P. Series), under the guidance of ILR (MP) Committee is publishing the Digest of Full Bench decisions of the High Court of Madhya Pradesh since the formation of the High Court of M.P. in the Year 1956 till 2020, having references of overruled/approved cases in subsequent decisions of either Supreme Court or the High Court of Madhya Pradesh. This Digest covers even those Full Bench judgments which have not been published in any regular law journal.*

*In the present times, with the advent of the IT tools and legal software, a Digest of Full Bench judgments of the High Court would give complete picture and clarity on the trend of law dealing with different legal issues. Use of such Digest makes search of law much easier. I am sure, this Digest would fulfill the long felt need of compiling all Full Bench decisions of M.P. High Court in one book. This would prove to be useful for dissemination of the legal knowledge and would be helpful in enhancing quality of justice. This Digest will not only be useful for the Advocates but also for the Judges of the Madhya Pradesh High Court and Judicial Officers of Subordinate Judiciary.*

*I extend my good wishes and felicitations to all those who had remained associated with the task of covering the long journey of 64 years of the Madhya Pradesh High Court through the Full Bench decisions.*

Jabalpur  
February 11, 2021

(Justice Mohammad Rafiq)

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## **CONTENTS**

---

<b>Contents of Headings</b>	.....	<i>1 to 10</i>
<b>Nominal Index</b>	.....	<i>11 to 30</i>
<b>Digest of Cases</b>	.....	1 to 268
<b>Personal Notes</b>	.....	269

---

## CONTENTS OF HEADINGS

	Page No.
<b>A</b>	
Abolition of Jagirs Act (XXVIII of 1951)	1
Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, M.P., 1950, (I of 1951)	2
Accommodation (Requisition) Act, C.P. and Berar (LXIII of 1948)	2
Accommodation Control Act, (Madhya-Bharat Sthan Niyantaran Vidhan) (XV of 1950)	4
Accommodation Control Act, M.P. (XLI of 1961)	4
Accommodation Control Act, M.P. (XXIII of 1955)	12
Actionable Claim	13
Administrative Tribunal Act (XIII of 1985)	13
Admission	14
Adverse Possession	14
Agricultural Service (Gazetted) Recruitment Rules, M.P., 1966	14
Anugrahik Tatha Sevarth Nagad Anudan Samapti Adhiniyam (II of 1982)	15
Anusuchit Jati Avam Anusuchit Janjati, Rini Sahayata Adhiniyam, M.P. (XII of 1967)	15
Appeal	15
Arbitration and Conciliation Act (XXVI of 1996)	15
Arms Act (LIV of 1959)	16
Ashaskiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ke Sanday) Adhiniyam, M.P. (XX of 1978)	16
Auction	16
<b>B</b>	
Bal Adhiniyam, M.P. (XV of 1970)	17
Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyogita Ke Adhikaron Ka Arjan) Adhiniyam, (M.P.) 2012 (V of 2013)	18
Bonded Labour System (Abolition) Act (XIX of 1976)	18
Burden of Proof	19

## CONTENTS OF HEADINGS

	<b>Page No.</b>
<b>C</b>	
Ceiling on Agricultural Holdings Act, M.P. (XX of 1960)	19
Central Excise Act (I of 1944)	22
Civil Courts Act, Madhya Pradesh (XIX of 1958)	22
Civil Procedure Code (Amendment) Act (CIV of 1976)	23
Civil Procedure Code (V of 1908)	23
Civil Services (Classification, Control and Appeal) Rules, M.P., 1966	37
Civil Services (General Conditions of Service) Rules, M.P., 1961	39
Civil Services (Pension) Rules, M.P., 1976	40
College Code	40
Commercial Tax Act, M.P., 1994 (V of 1995)	40
Company Act (I of 1956)	41
Constitution of India	42
Construction of Statute	70
Contract Act, Indian (IX of 1872)	70
Co-operative Bank Employees Service Rules	70
Co-operative Societies Act (II of 1912)	71
Co-operative Societies Act, M.P., 1960 (XVII of 1961)	71
Co-owners	73
Copyright Act (XIV of 1957)	73
Country Spirit Rules, M.P., 1995	74
Court Fees Act (VII of 1870)	74
Criminal Procedure Code (V of 1898)	75
Criminal Procedure Code, 1973 (II of 1974)	78
<b>D</b>	
Dakaiti Prabhavit Kshetra Adhyadesh, M.P., 1981	84
Debts Recovery Tribunals Regulation of Practice Rules, 1998	85
Decree	85
Deed	85
Delegated Legislation	86
Delegation	86
Deputy Commissioner	86

## CONTENTS OF HEADINGS

	<b>Page No.</b>
Divorce Act, Indian (IV of 1869)	86
Doctrine of Merger	94
Doctrine of stare decisis	94
<b>E</b>	
Election	95
Electricity Duty Act, M.P. (X of 1959)	95
Electricity Tariff	95
Enactment	96
Essential Commodities (Price Exhibition and Price Control) Order, M.P. 1977	96
Essential Commodities Act (X of 1955)	97
Estate Duty Act (XXXIV of 1953)	97
Estoppel	99
Evidence Act, Indian (I of 1872)	100
Excise (Amendment and Validation) Act, M.P. (XX of 1964)	101
Excise Act, M.P. (II of 1915)	101
Excise Policy, 2010-2011	104
<b>F</b>	
Finance Act (XXXII of 1994)	104
Foreign Liquor Rules, M.P., 1996	104
Forest Contract Rules	105
Fundamental Rules, M.P.	105
<b>G</b>	
General Clauses Act (X of 1897)	105
General Clauses Act, M.P., 1957 (III of 1958)	105
General Sales Tax (Amendment) Act, M.P. (XX of 1964)	106
General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959)	106
General Sales Tax, Rules, M.P., 1959	112
Government of India Act, 1915	112
Gwalior State Protection of Children Act	112



## CONTENTS OF HEADINGS

	Page No.
<b>H</b>	
High Court	112
High Court of Madhya Pradesh Rules, 2008	112
High Court Rules and Orders (Civil)	114
High Court Rules and Orders, M.P.	114
High Court Superintendence Rules (M.P.), 1998	115
Hindu Law	115
Hindu Succession Act (XXX of 1956)	116
Hindu Widow's Remarriage Act (XV of 1856)	116
Hindu Women's Right to Property Act (XVIII of 1937)	116
<b>I</b>	
Income Tax Act, Indian (XI of 1922)	117
Income Tax Act, Indian (XLIII of 1961)	117
Indore Stamp Act (II of 1907)	120
Industrial Disputes Act (XIV of 1947)	121
Industrial Disputes Rules, M.P., 1957	122
Industrial Employment (Standing Orders) Act, Madhya Pradesh (XXVI of 1961)	123
Industrial Employment (Standing Orders) Rules, M.P., 1963	124
Industrial Relations Act, M.P. (XXVII of 1960)	124
Insurance Act (IV of 1938)	125
Interpretation of Statutes	125
Iron and Steel (Control of Production and Distribution) Order, 1941	132
Iron and Steel (Scrap Control) Order, 1953	132
<b>J</b>	
Jiwaji University Act, M.P. (XV of 1963)	133
Jurisdiction	134
<b>K</b>	
Khudkasht	134
Krishi Upaj Mandi Adhiniyam, M.P. (XXIV of 1973)	134

## CONTENTS OF HEADINGS

	Page No.
<b>L</b>	
Land Acquisition Act (I of 1894)	135
Land Revenue Act-Central Provinces, (II of 1917)	135
Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)	136
Land Revenue Code, M.P. (XX of 1959)	136
Law	143
Legislation	143
Legislature	143
Letters Patent (Nagpur)	143
Limitation Act, Indian (IX of 1908)	147
Limitation Act, Indian (XXXVI of 1963)	149
Local Government Act, C.P. and Berar (XXXVIII of 1948)	149
Lok Parisar (Bedakhali) Adhinyam, M.P. (XLVI of 1974)	150
Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P., 1994	150
<b>M</b>	
Madhya Bharat High Court of Judicature Act (VIII of 1949)	151
Madhya Pradesh Govt. Servants (Temporary and Quasi-Permanent Service) Rules, 1960	151
Madhyastham Adhikaran Adhinyam, M.P. (XXIX of 1983)	152
Master and Servant	158
Maxim	158
Medical and Dental Postgraduate Entrance Examination Rules, Madhya Pradesh, 1999	159
Medical Colleges	159
Medico-Legal Institute (Gazetted) Service Recruitment Rules, M.P., 1987	160
Mines Act, Indian (XXXV of 1952)	160
Mines and Minerals (Regulation and Development) Act (LXVII of 1957)	161
Minor Mineral Rules, M.P., 1996	161
Money Lenders Act, C.P. and Berar (XIII of 1934)	166
Motor Vehicle Rules, 1949	167

## CONTENTS OF HEADINGS

	<b>Page No.</b>
Motor Vehicles (Taxation of Passengers) Act, Madhya Pradesh (XVII of 1959)	168
Motor Vehicles Act (IV of 1939)	169
Motor Vehicles Act (LIX of 1988)	178
Motor Yan Karadhan Adhiniyam, M.P. (XXV of 1991)	186
Municipal Corporation Act, Madhya Pradesh (XXIII of 1956)	186
Municipalities (Election of Vice-President) Rules, M.P., 1998	190
Municipalities (Election Petition) Rules, M.P., 1962	190
Municipalities Act, C.P. and Berar (II of 1922)	190
Municipalities Act, M.P. (XXXVII of 1961)	192
Muslim Women (Protection of Right on Divorce) Act (XXV of 1986)	200
<b>N</b>	
Nagar Tatha Gram Nivesh Adhiniyam, M.P. (XXIII of 1973)	200
Nagariya Sthawar Sampatti Kar Adhiniyam, Madhya Pradesh (XIV of 1964)	200
Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)	201
National Security Act (LXV of 1980)	202
Natural Justice	204
Negligence	204
Negotiable Instruments Act (XXVI of 1881)	204
Notification	205
<b>O</b>	
Obiter Dicta	205
Octroi Rules	205
Official Languages Act (XIX of 1963)	205
Opium Act, Indian (I of 1878)	205
Order	205
<b>P</b>	
Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice- President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994	206
Panchayat (Sarpanch, Up-Sarpanch, President, Vice President) Nirvachan Niyam, 1995	206

## CONTENTS OF HEADINGS

	<b>Page No.</b>
Panchayat Act, M.P. (XXXV of 1981)	206
Panchayat Act, Madhya Pradesh (VII of 1962)	207
Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993 (I of 1994)	207
Panchayat Service (Discipline and Appeal) Rules, M.P., 1999	210
Partition	210
Partnership	210
Payment of Bonus (XXI of 1965)	210
Penal Code Indian (XLV of 1860)	212
Police Regulations, Central Province & Berar, 1961	213
Police Regulations, Madhya Bharat	214
Policy Matters	214
Practice	214
Practice & Procedure	214
Practice and Rule	214
Precedent	215
Presumption	215
Prevention of Food Adulteration Act (XXXVII of 1954)	215
Prevention of Food Adulteration Rules, 1955	216
Price Fixation	216
Provincial Small Cause Courts Act (IX of 1887)	216
Public Interest Litigation	216

## R

Railways Act, Indian (IX of 1890)	217
Ravishanker University Act (XIII of 1963)	218
Recovery of Debts Due to Banks and Financial Institutions Act (LI of 1993)	218
Reference made by Division Bench to Full Bench	219
Reformatory Schools Act (VIII of 1897)	220
Registration Act, Indian (XVI of 1908)	220
Registration Manual	221
Regulation of Letting of Accommodation Act, Central Provinces and Berar, 1948	221

## CONTENTS OF HEADINGS

	<b>Page No.</b>
Release of Prisoners on Probation Act, M.P. (XVI of 1954)	221
Release of Prisoners on Probation Rules, M.P., 1964	222
Relief of Indebtedness Act, Central Provinces and Berar (XIV of 1939)	224
Rent Control Order	224
Rent Controller	224
Representation of the People Act (XLIII of 1951)	224
Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)	224
Review	225
Revision of Pay Rules, M.P., 1983	225
Revision of Pay Rules, M.P., 1990	225
Revocation of Land Revenue Exemption Act, C.P. & Berar (XXXVII of 1948)	225
Road Transport Corporation Act (LXIV of 1950)	226
Road Transport Corporation Employee's Service Regulations M.P.	227
Rules	228

## S

Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1965	228
Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1977	228
Sales Tax (Central) Act (LXXIV of 1956)	228
Sales Tax Act, C.P. and Berar (XXI of 1947)	229
Samaj Ke Kamjor Wargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapne Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, M.P. (III of 1977)	230
Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (XXXIII of 1989)	230
Selection for Post-Graduate Courses in Medical College of M.P., Rules, 1984	231
Selection Process	231
Service Law	232
Shaskiya Sevak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, M.P. (XXVIII of 1998)	236
Societies Registrikan Adhiniyam, M.P. (XLIV of 1973)	236
Sovereign Ruler	237

## CONTENTS OF HEADINGS

	<b>Page No.</b>
Special Marriage Act (XLIII of 1954)	237
Stamp Act, Indian (II of 1899)	237
Stamp Rules, M.P., 1942	243
States Reorganization Act (XXXVII of 1956)	244
Statute	247
Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam M.P. (LII of 1976)	248
Succession Act Indian (XXXIX of 1925)	249
Suit	249
Supersession of Municipal Committee by Government	249
Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P., 1972	249
<b>T</b>	
Tax	250
Tax and Fee	250
Telegraph Wires (Unlawful Possession) Act (LXXIV of 1950)	251
Tenancy Act, Central Provinces (I of 1920)	252
Tendu Patta (VyaparViniyaman) Adhiniyam, Madhya Pradesh (XXIX of 1964)	252
Tendu Patton Ke Nirvartan Hetu Nyuntam Dar Nishchayan Adhyadesh, Madhya Pradesh (II of 1972)	253
Tort	253
Town Improvement Trust Act, M.P. (XIV of 1961)	254
Transfer of Property Act (IV of 1882)	254
<b>U</b>	
Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P., 2005 (XIV of 2006)	255
Uchha Nyalyalaya (Letters Patent Appeal Samapti) Adhiniyam, M.P. (XXIX of 1981)	257
University Grants Commission Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, Regulation 2010	258
Upkar Adhiniyam, M.P., 1981 (I of 1982)	258

**CONTENTS OF HEADINGS**

	<b>Page No.</b>
<b>V</b>	
Veterinary (Gazetted) Recruitment Rules, Madhya Pradesh, 1966	258
Vidyut Shulk Adhiniyam, M.P. (XVII of 2012)	259
Vindhya Pradesh Application of Laws Ordinance (IV of 1948)	259
Vishwavidyalaya Adhiniyam, M.P. (XXII of 1973)	259
<b>W</b>	
Wealth Tax Act (XXVII of 1957)	261
Wild Life (Protection) Act (LIII of 1972)	261
Words and Phrases	262
Work Charged and Contingency Paid Employees Pension Rules, M.P., 1979	266
Workmen's Compensation Act (VIII of 1923)	266
Writ of Certiorari	267
<b>Z</b>	
Zamindari Abolition Act, Madhya Bharat (XIII of 1951)	267
Zamindari Abolition Act, Madhya Bharat (XVI of 1959)	268

## NOMINAL INDEX

### A

A.N. Apte Vs. Mohammad Amir Khajarana	... .. 215, 216
Abdul Taiyab Abbas Bhai Malik Vs. Union of India	... .. 42, 47, 48
Achchelal Vs. The Janapada Sabha, Sihora	... .. 42, 149
Additional Commissioner of Sales Tax Vs. M/s. S. Kumar Limited	... .. 41
Addl. Commissioner of Sales Tax, Vs. M/s. Moujilal Das Singh	... .. 111, 143
Administrator, Municipal Corporation, Durg, Vs. M/s Jainco, Designers	... .. 190
Ajay Dhakad Vs. State of M.P.	... .. 203
Alyson Vs. Rodney Valentine D'bras	... .. 89
Amar Singh Vs. Chandrashekhar Rao	... .. 33
Anand Kumar Dubey Vs. Jabalpur Co-operative Milk Producers Union Ltd.	... .. 54
Anand Ram Vs. The Regional Transport Authority	... .. 170
Anand Swaroop Tiwari Vs. Ram Ratan Jatav	... .. 231
Anand Upadhyay Vs. State of Madhya Pradesh	... .. 231
Anandilal Chourasia Vs. State of M.P.	... .. 42
Anandrao Vs. Board of Revenue	... .. 1
Andrias Soni Vs. Mr. Joyce Prasad Soni	... .. 93
Anil Kumar Gulati Vs. State of M.P.	... .. 197
Anil Kumar Ojha Vs. Appellate Authority, Dist. Co-oper. Land Development Bank Ltd.	... .. 61
Anni @ Ramesh Vs. State of M.P.	... .. 83, 222, 224
Arun Kumar Lath Vs. R.T.A., Bilaspur	... .. 172, 262
Arvind Kumar Jain Vs. State of M.P.	... .. 257
Ashiq Miyan Vs. The State of M.P.	... .. 77, 205
Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P.	... .. 66, 67, 265
Ashok Kumar Vs. Baboolal	... .. 11
Ashok Tiwari Vs. M.P. Text Book Corporation	... .. 234



## NOMINAL INDEX

Ashutosh Pawar Vs. High Court of M.P.	... .. 39, 54, 150, 214
Asif Mohd. Khan Vs. State of M.P.	... .. 38, 105, 130
Ayyub Khan Vs. Fundilal	... .. 130, 136, 268

## B

B. B. Verma Vs. State of M.P.	... .. 155
Babulal Vs. Dattatraya	... .. 23, 95, 159, 190, 192
Babulal Vs. Ramesh Babu Gupta	... .. 23
Badrilal (Shri) Vs. Smt. Sita Bai (Dead) Through L.Rs. Birdi Chand Joshi	... .. 7
Balkrishna Vs. The Board of Revenue, M.P.	... .. 85, 238, 239, 241, 242
Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University	... .. 14, 56, 100, 204, 260
Balkishan Muchhal Vs. The Controller of Estate Duty, M.P.	... .. 13, 98, 99, 131
Balkishandas Vs. Harnarayan	... .. 60, 114, 205, 246, 247, 263
Balkrishana Das Vs. Perfect Pottery Co. Ltd.	... .. 257
Balu Deochand Vs. Fundibai	... .. 75
Balu Vs. Amichahd	... .. 74, 75, 131, 263
Bank of Maharashtra Vs. Manoj Kumar Deharia	... .. 232, 233
Benzamin Vs. Smt. Rundhbai	... .. 92, 94
Bhagwan Singh Ramcharan Vs. Mst. Kallo Maula	... .. 11
Bhagwanti Bai Vs. State of M.P.	... .. 18
Bhagwat Sharma Vs. State of M.P.	... .. 223
Bhanwarlal Chandmal Vs. State of M.P.	... .. 56, 134
Bhaskarrao Vs. Lilavati	... .. 24
Bhav Singh Vs. Smt. Savirani	... .. 180
Bhawna Kale Vs. State of M.P.	... .. 113
Bhonde Ganpat Vs. RamdayalGovindram	... .. 116
Bhulin Dewangan Vs. State of M.P.	... .. 206, 208
Bipatlal Jaiswal Vs. Regional Transport Authority	... .. 169, 170, 171

## NOMINAL INDEX

Bitiya Charles Vs. Samuel	... .. 88
Brij Gopal Vs. State of M.P.	... .. 64, 70
Brijlal Sachdeva & Brothers Vs. Commissioner of Sales Tax, M.P.	... .. 110
Brijlal Vs. Dau Mohanlal	... .. 73
Budhulal Vs. Chhotelal	... .. 24, 26, 30, 32, 147

## C

Central Co-Operative Bank Vs. Shibbulal	... .. 72, 228
Chandra Bhan Singh Vs. State	... .. 62, 206, 210, 265
Chandrapal Yadav Vs. State of M.P.	... .. 210
Chaturbhuj Das Vs. State of M.P.	... .. 239
Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan	... .. 7, 8, 9, 10
Chhotelal Bhailal Patel Vs. Akbarali	... .. 5
Chingalal Yadav Vs. State of M.P.	... .. 44, 74, 104, 127, 128, 214
Col. Harbans Singh Vs. Smt. Margrat Bhingardive	... .. 11, 12, 127
Col. Lal Rampal Singh Vs. State of M.P.	... .. 55, 237, 238, 259
Commissioner of Income Tax M.P. Vs. M/s R.S. Banwarilal, Bilaspur	... .. 120, 118
Commissioner of Income Tax Vs. M/s Udhoji Shri Krishandas, Satna	... .. 118, 119, 262, 265
Commissioner of Income Tax Vs. Mandsaur Electric Supply Co. Ltd	... .. 120
Commissioner of Sales Tax Vs. Hukumchand Mills	... .. 37, 111
Commissioner of Sales Tax Vs. Hukumchand Mills Ltd., Indore	... .. 107
Commissioner of Sales Tax Vs. M/s Indore Iron Traders	... .. 107

## D

Damodar Haridas Sharma Vs. Nandram Deviram	... .. 13
Damodardas Sitaldas Vs. Regional Transport Authority, Rewa	... .. 169, 173
Damumal Vs. Smt. Shevantibai	... .. 5, 100

### NOMINAL INDEX

Daniel John Vs. Rajmaya	... .. 89
Daryaobai Vs. Surajmal	... .. 15, 129
Deorao Jadhav Vs. Ramchandra	... .. 267
Deva Vs. Durgashankar	... .. 145
Devi Singh Vs. Vikram Singh	... .. 184
Devisingh Vs. State of M.P.	... .. 17
Dhaniram Vs. Janapada Sabha, Janjgir	... .. 149
Dhanna Singh Vs. State Transport Appellate Tribunal, Gwalior	... .. 126, 128, 129, 168
Dilip Kaushal Vs. State of M.P.	... .. 189
Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit	... .. 55, 60, 71
Dinkarrao Gangaram Vs. State of M.P.	... .. 67, 68, 214
Director General, Indian Council of Medical Research Vs. Dr. S.C. Dixit	... .. 219
Diwan Singh Vs. Bhaiya Lal	... .. 115
Dr. Jaidev Siddha Vs. Jaiprakash Siddha	... .. 256
Dr. Kirti Deshmankar Vs. Union of India	... .. 49, 126, 231, 232
Dr. Mahesh Chandra Choubey Vs. Shri M.M. Dubey	... .. 146
Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal	... .. 76, 77, 78, 263
Durga Prasad Verma Vs. K. P. Dixit	... .. 12
Dwarka Dhish Bhargava Vs. State of M.P.	... .. 19, 44, 46, 258, 259
Dy. C.M.E./Sub Area Manager, Ramnagar R.O., SECL Vs. Union of India	... .. 122

### F

Farooq Mohammad Vs. State of M.P.	... .. 113, 190, 196
Filomina Anthony Vs. Robert Anthony	... .. 87, 92
Firm Ladhuram Vs. K.U.M. Samiti	... .. 147
Firm Ratanchand Darbarilal Vs. Rajendra Kumar	... .. 7, 8, 9, 10, 130
Food Inspector, Nagar Palika Vs. Devilal	... .. 216

## NOMINAL INDEX

### G

Gangacharan Vs. State of M.P.	... .. 221, 222
Gaya Prasad Vs. Suresh Kumar	... .. 180, 185
Geeta Rani Gupta (Dr.) Vs. State of M.P.	... .. 160, 232, 235
Girja Shanker Shukla Vs. Sub Divisional Officer	... .. 106, 137, 193, 196
Gokul Prasad Vs. Laxmansingh	... .. 71
Gopal Vs. State of M.P.	... .. 82
Goverdhan Gurjar Vs. State of Madhya Pradesh	... .. 141
Govind Das Vs. Lala Parmeshwaridas	... .. 134
Govindrao Vs. Bhavarlal	... .. 5, 126
Gram Panchayat Gorakhpur Vs. Khushali	... .. 141
Great Galleon Ltd. Vs. Union of India	... .. 54
Gulab Bai (Smt.) Vs. Subhash Chandra	... .. 12
Gulabchand Vs. Rukmani Devi	... .. 125, 126, 244, 245
Gulabchand Vs. Seth Kudilal	... .. 48, 151
Gulabchand Vs. State of M.P.	... .. 46, 47, 70, 84, 85
Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare	... .. 238, 242, 243, 244

### H

Hajari Ghasiram Vs. State of M.P.	... .. 135
Hanumantsing Kubersing Vs. State of M.P.	... .. 19
Harbans Rai Vs. Board of Revenue	... .. 21
Harbhajansingh Vs. State of M.P.	... .. 97
Harinarayan Dubey Vs. State of M.P.	... .. 213
Hariprasad Vs. The State of Madhya Pradesh	... .. 150
Harishankar Tiwari Vs. Jagru	... .. 175
Hasan Khan Vs. Ishwardas	... .. 242
Hastimal Vs. State of M.P.	... .. 72
Heavy Electricals Mazdoor Trade Union Vs. State of M.P.	... .. 46
Hemlata (Dr.) Vs. State of M.P.	... .. 240, 254
Hiralal Deepchand Oswal Vs. Babu Shiv Prasad	... .. 2

## NOMINAL INDEX

### I

Imrat Vs. Lanjua	... .. 230
In Reference	... .. 84
Indore Development Authority Vs. M/s. Shriram	... .. 200
Indore Nagar Nigam Karamchari Congress Vs. State of M.P.	... .. 188
Indrajit Singh Vs. Board of Revenue	... .. 20

### J

J.S.J. Real Estate Pvt. Ltd Vs. Collector, Dewas	... .. 113, 128
Jabalpur Bus Operator Association Vs. State	... .. 48, 50
Jabalpur Development Authority Vs. Y. S. Sachan	... .. 26, 36, 61, 144
Jagannath Prasad Vs. State of M.P.	... .. 250
Jagdish Narain Vs. Collector, Damoh	... .. 3, 4
Jagdish Prasad Tripathi Vs. State	... .. 44, 49, 235
Jai Prakash Mudaliar Vs. A. C. Choubey	... .. 55, 158, 215, 218
Jaina Bai Vs. State of M.P.	... .. 241
Jamna Prasad Vs. State of M.P.	... .. 14, 38, 61, 63, 80, 81, 82
Jamuna Bai Vs. Chhote Singh	... .. 35, 36, 185
Jenet Mary James Vs. Vinod Kumar James	... .. 91
Jeviyar Cleman Vs. Ashalata	... .. 89
Jivrakhan Vs. Shivcharandas	... .. 179
Jonathan Allen Vs. Zoom Developers Pvt. Ltd.	... .. 41
Juel Topo Vs. Nirmala Noorgadi	... .. 89
Jugal Kishore Vs. Ramlesh Devi	... .. 178, 180, 183
Junior Labour Inspector (Central) Jabalpur Vs. Authority under The Payment of Wages Act	... .. 210, 211
Jyotsna Ram Vs. Subhash Ram	... .. 93

### K

K. C. Bokadia Vs. Dinesh Chandra Dubey	... .. 73, 74
K. P. Choudhary Vs. The State of Madhya Pradesh	... .. 105

## NOMINAL INDEX

K. P. Govil Vs. Jawaharlal Nehru Krishi Vishwavidyalaya Jabalpur	... .. 247
Kala Bai (Smt.) Vs. State of M.P.	... .. 137, 215
Kallu Maharaj Vs. Meena Bai	... .. 175
Kamal Kumar Jain Vs. Tazuddin	... .. 179, 266
Kanhaiyalal Vs. The Collector, Damoh	... .. 2, 3, 4, 46, 55
Kanhan Valley Coal Company Pvt. Ltd. Vs. Janapada Panchayat, Chhindwara	... .. 44
Kanhayyalal Vs. Deputy Commissioner of Sales Tax, M.P., Nagpur	... .. 229, 262
Kashiram Vs. Nathu	... .. 14, 148
Kedia Distilleries Ltd. Vs. General Secretary, Chhattisgarh Chemical Mill Mazdoor Sangh	... .. 68
Kishanlal Shrilal Patwa Vs. Union of India	... .. 218
Komalchand Vs. The State of MP	... .. 158, 220, 221, 240, 241
Kowa Spinning Ltd. Vs. Debt Recovery Tribunal	... .. 61, 85, 219
Kunjulal Yadu Vs. Parasram Sharma	... .. 11, 43, 265

## L

Lal Sahab Bairagi Vs. State of M.P.	... .. 40
Lalit Lazarus Vs. Smt. Lavina Lazarus	... .. 86, 87, 90
Lalji Vs. State of M.P.	... .. 56, 222
Lalla Vs. The State	... .. 112, 213
Lamuel Torne Vs. Kamalabati Lamuel	... .. 92
Laxmi Narayan Hayaran Vs. State of M.P.	... .. 39
Laxmi Narayan Nayak Vs. Ramratan Chaturvedi	... .. 146
Laxmi Narayan Vs. Shiv Lal Gujar	... .. 145
Lilasons Breweries Ltd., Bhopal (M/s.) Vs. Commissioner of Income Tax, Bhopal	... .. 119
Liyakat Ali Vs. Board of Revenue, Gwalior	... .. 73

## M

M.P. Badalkar Vs. Shanta Sarojini	... .. 90
M.P. Electricity Board, Jabalpur Vs. S.K. Dubey	... .. 130, 232, 236

### NOMINAL INDEX

M.P. Electricity Board Jabalpur Vs. Additional Assistant Commissioner of Sales Tax	... ..	111
M.P. Lime Manufacturers' Association, Katni Vs. State of M.P.	... ..	61, 161, 258
M.P. State Co-operative Dairy Federation Vs. Madan Lal Chourasia	... ..	43, 55
M.P. State Electricity Board, Jabalpur Vs. Pandey Construction Co.	... ..	49, 157
M.P. State Road Transport Corporation Vs. Heeralal	... ..	64, 123, 124, 227, 228
M.P. State Road Transport Corporation Vs. Narain Singh Rathore	... ..	124
M.P. State Road Transport Corporation, Bhopal Vs. Ramchandra	... ..	227
M.P. State Road Transport Corporation, Bhopal Vs. Regional Transport Authority, Jabalpur	... ..	58, 172
M/s. Ayodhya Prasad Parmeshwaridas Vs. Commissioner of Income-Tax	... ..	118
M/s. Bundelkhand Motor Transport Company, Nowgaon, Vs. The State Transport Appellate Authority, M.P., Gwalior	... ..	23, 127, 128, 132, 170, 173
M/s. Channulal Motilal Vs. The Commissioner of Sales Tax	... ..	107, 109, 111, 132, 215
M/s. Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax	... ..	70, 118
M/s. Govindji Jamunadas, Gwalior Vs. The Commissioner of Sales Tax, M.P.	... ..	70, 228, 229
M/s. Hukumchand Mills Vs. Commissioner of Sales Tax, M.P.	... ..	106
M/s. Jaiprakash Associates Ltd Vs. State of Madhya Pradesh	... ..	41
M/s. Jagdamba Industries Vs. State of M.P.	... ..	51, 99, 109
M/s. Mohta Ispat Ltd. Vs. The Chief Municipal Officer	... ..	199
M/s. Mullaji Jamaluddin Vs. The State of M.P.	... ..	66, 229

### NOMINAL INDEX

M/s. N.K. Doongaji Vs. State of M.P.	... ..	47, 101, 102, 103, 104, 250, 251, 265
M/s. N.M. Goyal, Rajnandgaon Vs. Sales-Tax Officer, Rajnandgaon	... ..	248
M/s. P.C.C. Construction Co. Vs. Debts Recovery Tribunal	... ..	45, 219
M/s. R.M.E. Works, Raipur Vs. The Commissioner of Sales Tax M.P.	... ..	112
M/s. Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji	... ..	31
M/s. Shri Ganesh Trading Co. Vs. State of M.P.	... ..	70, 108, 131, 252, 253, 266
M/s. Sukhu Ram Tamrakar, Durg Vs. State of M.P.	... ..	111, 132
Maa Sharda Wine Traders (M/s), Garhakota, Sagar Vs. Union of India	... ..	22, 104
Madhukar Rao Vs. State of M.P.	... ..	50, 262
Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Regional Transport Authority, Rewa	... ..	174
Magan Vs. State of M.P.	... ..	213
Mahabir Prasad Vs. Samaroo	... ..	252
Mahajan Dwarka Prasad Vs. The Sub-Registrar	... ..	210, 239
Mahant Ishwari Sharan Deo Vs. State of M.P.	... ..	237, 238, 242
Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior	... ..	133
Malam Singh Vs. Collector, Sehore	... ..	207
Mamta Shukla (Smt.) Vs. State of M.P.	... ..	124, 128, 235, 266
Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd Vs. Sita Ram Patel	... ..	25, 49, 232
Mangal Singh @ Mangu Vs. State of M.P.	... ..	203
Mangilal Ganpat Vs. Union of India	... ..	177
Mangilal Surat Singh Vs. Board of Revenue	... ..	95, 136
Mangilal Vs. Parasram	... ..	19, 176, 204, 264
Maniram Vs. Mst. Fuleshwar	... ..	24, 27, 35



### NOMINAL INDEX

Manohar Kunwarbai Vs. State of M.P.	...	...	243
Manoharlal Vs. State of M.P.	...	...	47, 61, 139, 142
Manoj Kumar Purohit Vs. State of M.P.	...	...	234
Manoj Kumar Vs. Board of Revenue	...	...	49, 50, 57, 59, 256
Mary G. Sunny Vs. Sunny George	...	...	90, 92, 94
Masood Akhtar (Dr.) Vs. R.K. Tripathi	...	...	40
Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.	...	...	233
Messrs Chhotelal Keshoram, Rajnanadgaon, M.P. Vs. The Union of India	...	...	147
Mitthulal Vs. Badriprasad	...	...	26, 34, 36
Mohamad Sagir Vs. Bharat Heavy Electrical	...	...	62
Mohammad Ismail Vs. Presiding Officer	...	...	122
Mohan Singh & Sons Vs. Commissioner of Sales Tax, M.P.	...	...	248, 249
Mohanlal Vs. State of M.P.	...	...	149
Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior	...	...	169, 210
Moolchand Vs. Maganlal	...	...	85
Mst. Lukai Vs. Niranjan	...	...	116, 249
Mst. Sarswatibai Vs. Govindrao	...	...	26, 33, 34
Mujahid Faridi Vs. State Transport Appellate Tribunal	...	...	173
Municipal Committee, Kareli Vs. The State of M.P.	...	...	191, 249
Municipal Corporation, Bhopal Vs. Arvind Jain	...	...	189, 264
Municipal Council, Khandwa Vs. Santosh Kumar	...	...	28, 198, 199
Municipal Council, Pandhurna Vs. Shri R.P. Dube	...	...	191, 192, 205
Munnalal Vs. B.S. Baswan	...	...	200, 201
Munshi Khan Vs. Maya Devi	...	...	6, 7
Munshi Singh Vs. Nagar Panchayat Jaura	...	...	122

### N

N. S. Lad Vs. State of M.P.	...	...	15
Nagjiram Vs. Mangilal	...	...	140

## NOMINAL INDEX

Nahar Vs. Mst. Dukalhin	... .. 116, 139
Nanadram Kushwah Vs. State of M.P.	... .. 235
Nandkumar Singh Vs. State Industrial Court Indore	... .. 124, 125
Naravadi Bai Choudhary Vs. State of M.P.	... .. 194, 195
Narayan Lal Vs. Rukmani Bai	... .. 204, 228, 253, 264
Narayan Prasad Vs. State of M.P.	... .. 82
Narbada Prasad Vs. State of M.P.	... .. 20, 21
Narsingh Vs. Kamandas	... .. 25, 26, 131, 262, 263
Nathu Prasad Vs. Singhai Kapoorchand	... .. 29, 30, 31, 36, 129, 130
Nathulal Vs. Ratansi	... .. 221, 224
National Insurance Co. Ltd., Gwalior Vs. Shrikant	... .. 183, 185, 186
National Insurance Company Ltd. Vs. Kansram	... .. 176, 183
Naval Vs. Jagdish Prasad	... .. 249
Neena Vs. John Pormer	... .. 89
New India Assurance Co. Ltd. Vs. Smt. Savita Sen	... .. 266, 267
New India Assurance Company Ltd Vs. Nafis Begum	... .. 174
New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan	... .. 27, 63, 182, 184, 185, 186
Nihalkaran Vs. Commissioner of Wealth-Tax	... .. 261
Nirbhay Singh Vs. State of M.P.	... .. 83
Nitesh Rathore Vs. State of M.P.	... .. 142, 161, 163, 164, 165
Nitin Pathak Vs. State of M.P.	... .. 54

## O

Om Kar Mahole Vs. State of M.P.	... .. 209
Om Prakash Vs. State of M.P.	... .. 225
Om Shanti Shiksha Samiti Vs. State of M.P.	... .. 261
Omprakash Baburam Sharma Vs. State of M.P.	... .. 69, 70
Onkarsingh Vs. Meharbansingh	... .. 148

## NOMINAL INDEX

### P

Pankaj Kumar Rai (M/s.) Vs. State of M.P.	... .. 162, 166
Panne Khushali Vs. Jeewanlal Mathoo	... .. 30
Paraschand Vs. Hemant Kumar	... .. 7
Patience Williams (Dr) Vs. Ashok	... .. 89
Pawan Rana Vs. State of M.P.	... .. 209, 210
Phaloudi Constructions & Infrastructures Pvt Ltd. Vs. State of M.P.	... .. 162
Poster J.S. Singh Vs. Smt. Jyotsana Singh	... .. 87
Prabhakar Narayan Menjoge Vs. State of M.P.	... .. 68
Prabhulal Vs. Gram Panchayat	... .. 207
Prakramchand Vs. Chuttan	... .. 36, 178
Pratibha Chouhan Vs. State of M.P..	... .. 16
Precision Technofab and Engineering Pvt Ltd. Vs. State of M.P.	... .. 146
Prem Masih Vs. Smt. Kumudanibai	... .. 87, 91
Prem Narayan Vs. Prabhudayal	... .. 4
Prem Prakash Rubin Vs. Smt. Sarla Rubin	... .. 93
Prem Shankar Sharma Vs. The Collector, Khandwa	... .. 15, 191, 192, 228
Premchand Jain Vs. Regional Transport Authority	... .. 174, 263
Principal, Maharshi Vidya Mandir Vs. Labour Court, Sagar	... .. 123, 127
Pulikkottial Cheru Vs. Mary Zechariah	... .. 88

### R

Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa	... .. 16, 55, 129, 247, 259, 260
Raghubar Singh Vs. State of Madhya Pradesh	... .. 2, 142
Raghvendra Prasad Gautam Vs. Union Bank of India	... .. 70, 205
Rahul Vs. State	... .. 45, 51
Rajaram Bhiwaniwala Vs. Nandkishore	... .. 94, 166, 126, 167
Rajeev Dalela Vs. State of M.P.	... .. 159

### NOMINAL INDEX

Rajeev Khandelwal Vs. Arun Pannalal	... .. 25, 33, 131
Rajendra Kumar Vs. State Govt. of M.P.	... .. 222
Rajendra Singh Vs. State of M.P.	... .. 202
Rajesh Dass Vs. Usha Dass	... .. 93
Rajesh Shukla Vs. Smt. Meena	... .. 28, 79
Rajkumar Sahu Vs. State of M.P.	... .. 164, 165
Rajmal Vs. State Transport Appellate Tribunal	... .. 170, 172
Rajnandgaon Roadways Vs. The Tax officer	... .. 168, 169
Rajni Singh Vs. Santosh Singh	... .. 93
Raju Bai (Smt.) (Dead) Through L.R. - Dimak Chand Vs. Collector, Balaghat	... .. 141
Ram Lal Puri Vs. State of Madhya Pradesh	... .. 47, 76, 77, 212
Ram Milan Vs. Bansilal	... .. 86, 224
Ram Pratap Vs. State of M.P.	... .. 114
Ram Ratan Gupta Vs. State of Madhya Pradesh	... .. 16, 51, 66, 70, 99, 102, 103, 130, 143
Ram Ratan Sharma Vs. State of M.P.	... .. 192
Ram Sewak Mishra Vs. State of M.P.	... .. 235
Rama Rao Vs. Shantibai	... .. 31, 32, 33, 126, 262, 263
Rambharose Anant Prasad Vs. State Transport Appellate Authority, Gwalior	... .. 169
Ramchandra Jagannath Vs. Dattatraya Shankarrao	... .. 28
Ramdayal Vs. Central Narcotic Bureau	... .. 201, 202
Ramdayal Vs. Manaklal	... .. 115, 116
Ramdharlal Vs. Nagendra Prasad Sao	... .. 34
Ramgopal Vs. Chetu Batte	... .. 142
Ramjilal Vs. Municipal Committee, Pipariya	... .. 125, 131, 192
Ramjiya @ Ramjilal Vs. State of M.P.	... .. 223, 224
Ramlali Tiwari (Smt.) Vs. Vrindavan Tiwari	... .. 183
Ramnarayan Trivedi Vs. State of M.P.	... .. 145, 146
Ramnarayan Vs. Anandilal	... .. 147, 148, 263

### NOMINAL INDEX

Ramratan Vs. The Controller of Estate Duty	... .. 97
Ramsingh Vs. Shankarlal	... .. 132, 137, 139, 264
Ramswarup Gupta Vs. M.P. Co-operative Marketing Federation Ltd	... .. 43, 58
Rana Natwar Singh Vs. State of M.P.	... .. 53, 193
Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.	... .. 137, 138, 159, 264
Rao Mahendra Singh Vs. Sub-Registrar, Indore	... .. 239
Rao Shankar Pratapsingh Vs. The State of Madhya Pradesh	... .. 2, 128, 134, 136, 262
Rasal Singh Vs. State of M.P.	... .. 52
Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. Vs. The Presiding Officer	... .. 65, 71, 121
Ratanlal Vs. Bardi Bai	... .. 27, 35, 37, 262
Ratanlal Vs. Purushottam	... .. 257
Ravi Kant Bansal Engineers & Contractors Vs. M.P. Audyogik Kendra Vikas Nigam Limited	... .. 153
Ravishankar Vs. Board of Revenue	... .. 15, 20, 21, 22, 136, 137, 158
Raymond Limited Vs. M.P.E.B.	... .. 96

### S

S.C. Jain (Dr.) Vs. State of M.P.	... .. 40, 236, 258, 261
S.C. Verma Vs. Central Govt. Industrial Tribunal	... .. 14
S.P. Anand Vs. Hon'ble Mr. S.K. Jha, C.J. High Court of M.P.	... .. 214, 244
S.P. Anand Vs. Prime Minister & Head of The Council of Ministers, namely Shri Atal Bihari Vajpai	... .. 47
S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur	... .. 52, 75, 112, 114, 217, 247
S.S. Harischandra Jain Vs. Dr. Captain Indersingh Bedi	... .. 6, 9, 126, 130
Sakhi Gopal Vs. State of M.P.	... .. 64, 197, 198
Samaru Das Banjare Vs. State of M.P.	... .. 48, 125, 151, 152, 204, 214, 265

### NOMINAL INDEX

Samuel Bahadur Singh Vs. Smt. Roshni Singh	... .. 88, 92, 94
Sanjay Dubey Vs. State of M.P.	... .. 156
Santosh Chandra Vs. Smt. Gyansundarbai	... .. 74
Santosh Vs. State	... .. 81
Santsingh Vs. Madandas	... .. 204, 238
Sardar Amar Singh Vs. Smt. Surinder Kaur	... .. 100, 220, 221
Sardar Deorao Jadhav Vs. State of M.P.	... .. 243
Sardar Govindrao Vs. The State of Madhya Pradesh	... .. 42, 226, 267
Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur	... .. 177, 178
Sardarilal Vs. Narayanlal	... .. 132, 254, 255
Sarmaniya Bai Vs. M.P. Rajya Parivahan Nigam	... .. 177
Saroj Bai Vs. Jai Kumar Jain	... .. 79
Satya Pal Anand Vs. Registrar General, High Court of M.P.	... .. 55
Savita Devi Vs. Sukhvinder Kaur	... .. 114
Sebestain Vs. Smt. Kunti Divya	... .. 91
Seth Surajmal Vs. The State of Madhya Pradesh	... .. 56, 112, 205
Sevaram Vs. Board of Revenue, M.P. Gwalior	... .. 71, 72
Shailendra Kumar Vs. Divisional Forest Officer	... .. 256, 257
Shailendra Kumar Vs. Smt. Chandra Prabha	... .. 91
Shakir Vs. State of M.P., Through Collector	... .. 203
Shantabai Vs. Chokhelal	... .. 32
Shantilal Vs. Town Improvement Trust	... .. 254
Sharadchand Vs. Vishnupant	... .. 4, 8, 10, 129
Sheel Chand Jain Vs. State of M.P.	... .. 250
Sher Singh Vs. State of M.P.	... .. 83, 84
Shri Babulal Sharma Vs. Shri Brijnarayan Brijesh	... .. 224
Shri Ballabh Vs. The State of M.P.	... .. 190, 191, 263
Shri Digambar Jain Tera Panthi Mandir Vs. Sub-Registrar, Stamps	... .. 85, 120
Shri Gouri Ganesh Shri Balaji Constructions Vs. Executive Engineer, PWD	... .. 15, 152, 153

### NOMINAL INDEX

Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur	... .. 11, 132
Shri Shankaranarayana Construction Company Vs. State of M.P.	... .. 155
Shrish Agrawal Vs. State	... .. 60, 81
Shyama Charan Shukla Vs. State of M.P.	... .. 66, 110, 229, 230, 247
Shyamlal Vs. Umacharan	... .. 12, 13, 128, 265
Sibbu Vs. The State of Madhya Pradesh	... .. 220
Sindh Transport Co. Vs. State Transport Authority	... .. 172
Sindhi Sahiti Multi Purpose & Transport Co-Operative Society Vs. State of M.P.	... .. 65, 188
Sitaram Vs. State of M.P.	... .. 130, 242
Smt. Archana Kumar v. Purendu Prakash Mukherjee	... .. 23, 27, 31, 144, 265
Smt. Bhagwati Bai Vs. Bablu Alias Mukund	... .. 183
Smt. Hirakumari Wife of Thakur Jaipal Singh Vs. State of Madhya Pradesh	... .. 20
Smt. Jagrani Vs. Jorawal	... .. 5
Smt. Jankibai Vs. Ratan	... .. 130, 167
Smt. Mankunwar Bai Vs. Sunderlal Jain	... .. 4, 5, 6, 7, 8, 9, 10, 30, 126, 263
Smt. Meena Agrawal Vs. Chief Municipal Officer	... .. 150
Smt. Mitali Choudhary Vs. State of M.P.	... .. 160
Smt. Mustaq Bi Vs. State Transport Appellate Tribunal, Madhya Pradesh, Gwalior	... .. 167
Smt. Nalini Vs. C.H. Issac	... .. 91
Smt. Rambati Vottery Vs. Shivprasad Vottery	... .. 75
Smt. Rampyari Vs. Shri Ramautar	... .. 5
Smt. Seema Mitra Vs. Smt. Lotika Mitra	... .. 144
Smt. Shashibai Vs. Smt. Revabai Agrawal	... .. 255
Smt. Sunita Lokhande Vs. The New India Assurance Company Limited	... .. 181, 182, 183
Smt. Susmita Joesph Vs. Limson	... .. 92, 237

## NOMINAL INDEX

Smt. Usha Baghel Vs. United India Insurance Company Limited	... ..	181
Smt. Usha Jain Vs. Manmohan Bajaj	... ..	34
State Vs. Haidarali	... ..	132
State (Union of India) Vs. V.L. Jain	... ..	80, 160, 161
State of M.P. Vs. Balveer Singh	... ..	138, 142, 264
State of M.P. Vs. Devilal	... ..	136, 253, 254
State of M.P. Vs. Jiwan Mathura Prasad	... ..	238, 241
State of M.P. Vs. Kamal Kishore Sharma	... ..	155
State of M.P. Vs. Khoda Bhai	... ..	24
State of M.P. Vs. Laxman Prasad Raikwar	... ..	233
State of M.P. Vs. M/s Chahal & Company	... ..	158, 159, 264
State of M.P. Vs. Maharaja Martand Singh Joo Deo	... ..	243
State of M.P. Vs. Mahendra Kumar Saraf	... ..	193, 194, 195, 196, 265
State of M.P. Vs. Manorama Gaur	... ..	186, 187
State of M.P. Vs. Miland Joshi	... ..	15
State of M.P. Vs. P.N. Raikwar	... ..	39
State of M.P. Vs. Premlal	... ..	100
State of M.P. Vs. Puran Lal Nahir	... ..	38, 129
State of M.P. Vs. Rakesh Kumar Gupta	.....	129, 186
State of M.P. Vs. Seth Goverdhandas	... ..	135
State of M.P. Vs. Yugal Kishore Sharma	... ..	131, 236
State of Madhya Pradesh Vs. Chandra Shekhar Azad Shiksha Prasad Samiti	... ..	237
State of Madhya Pradesh Vs. Hukum Singh	... ..	77
State of Madhya Pradesh Vs. M/s Shekhar Constructions	... ..	59, 157, 262
State of Madhya Pradesh Vs. R.K. Chaturvedi	... ..	60, 105, 225
State of Madhya Pradesh Vs. Ramcharan	... ..	86, 100, 143, 205, 216, 251
Subhash Chand Jain Vs. The Chairman, M.P.E.B.	... ..	29, 30, 74
Sudha Gupta Vs. State of M.P.	... ..	19, 53, 253, 264



### NOMINAL INDEX

Sudhir Kumar Mishra Vs. Municipal Corporation	...	...	187, 188
Sunder Mahila Vs. Prahlad	...	...	140
Sunderlal Patwa Vs. Union of India	...	...	57
Sunderlal Vs. State of M.P.	...	...	80
Sunil Masih Vs. Smt. Elizabeth Daisy Masih	...	...	90, 92
Sunil Radhelia Vs. Awadh Narayan	...	...	74
Superintending Engineer, PWD, Vs. Dev Prakash Shrivastava	...	...	123
Surajdin Vs. Shriniwas	...	...	148
Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior	...	...	169, 171, 173, 186, 193
Suresh Chandra Sharma Vs. State	...	...	56, 197, 105
Suresh Singh Sikarwar Vs. State of M.P.	...	...	113
Surjeet Singh Saloja Vs. The State of Madhya Pradesh	...	...	97
Sushila Bhadoriya Vs. M.P. State Road Transport Corporation	...	...	184

### T

Technofab Engineering Ltd. (M/s.) Vs. Bharat Heavy Electricals Ltd.	...	...	74
Tejkumar Vs. Subhash Chandra	...	...	34
Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority	...	...	152, 156
Thakur Himmatsingh Vs. Board of Revenue	...	...	2, 225
Thakur Kisansingh Vs. The State of Madhya Pradesh	...	...	191
Than Singh Vs. State of M.P.	...	...	208
The Additional Commissioner of Income-Tax, Vs. M/s Kuber Singh Bhagwandas	...	...	117
The C.P. Syndicate Ltd. Vs. Firm Hasan Ali	...	...	148, 263
The Central Co-Operative Bank Ltd, Raisen Vs. Board of Revenue	...	...	228
The Collective Farming Society Ltd. Lilakheri Vs. State of M.P.	...	...	71, 73, 86, 96, 134

### NOMINAL INDEX

The Commissioner of Income Tax Vs. M/s Narbharam Popatbhai & Sons	... .. 117, 119
The Commissioner of Income Tax, Jabalpur Vs. M/s Simplex Metalica, Jabalpur	... .. 119
The Commissioner of Income Tax, M.P. Vs. K.L. Rajput	... .. 94, 120
The Commissioner of Income Tax, M.P. Vs. Parmanand Bhai Patel	... .. 117
The Commissioner of Sales Tax Vs. Lalloobhai	... .. 108, 110, 112
The Commissioner of Sales Tax Vs. M/s Dinesh Kumar	... .. 109, 111
The Commissioner of Sales Tax Vs. M/s Narang Industries	... .. 100, 107
The Commissioner of Sales Tax Vs. M/s Rameshlal Keshavlal	... .. 106, 108, 110
The Commissioner of Wealth-Tax Vs. Smt. Tarabai Kanakmal	... .. 261
The Controller of Estate Duty Vs. Kewalram	... .. 96, 125
The Controller of Estate Duty, M.P. Vs. Smt. Rani Bahu	... .. 98, 99, 115, 116
The Nimar Cotton Press Vs. The Sales Tax–Officer	... .. 229
The Oriental Insurance Company Limited Vs. Annamma Abraham	... .. 175, 180
The Oriental Insurance Company Limited Vs. Chintaman	... .. 179
The Oriental Insurance Company Limited Vs. Saraswati Bai	... .. 178
The Ratlam Bone and Fertilizer Company Vs. State of M.P.	... .. 43, 108, 127, 131, 143
The State of M.P. Vs. Beni Pd. Rathore	... .. 196, 197
The State of M.P. Vs. Ramesh Nai	... .. 17, 64, 76, 78, 105, 134
The State of M.P. Vs. Sharad Kumar Phillips	... .. 91
The State of Madhya Pradesh Vs. Chhotekhan	... .. 100, 216
Tikaram Vs. Bhaiyalal	... .. 36, 217
Trinity Infrastructure (M/s.) Vs. State of M.P.	... .. 59, 129, 163

## NOMINAL INDEX

### U

Udaya Pratap Singh Chandel Vs. State	...	...	78
Union of India Vs. Registrar General, High Court	...	...	63, 115, 131
Union of India Vs. Sharmanand	...	...	24, 25, 67
Union of India Vs. Smt Kanti Sharma	...	...	225
United India Fire and General Insurance Co. Ltd., Indore Vs. Natwarlal	...	...	175
Usha Devi Vs. State of M.P.	...	...	22
Usha Narawariya (Dr.) Vs. State of M.P.	...	...	68

### V

Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd.	...	...	95, 160, 259
Vijay Singh Vs. Competent Authority (SDO)	...	...	21
Vikram Cement Vs. Commissioner of Commercial Tax	...	...	94, 110
Vimalchand Vs. State of M.P.	...	...	237, 240
Vimla Bai Vs. Sharif Khan	...	...	182
Vimla Devi Vs. Dayaram	...	...	177
Vishnu Madhava Bhagvat vs. Ramadevi	...	...	6
Vishnu Vs. State of M.P.	...	...	46
Viva Highways Vs. M.P. Road Development Corporation Ltd.	...	...	125, 153, 154

### W

Wali Mohd. Vs. Batul Bi	...	...	48, 51, 79, 80, 84, 125, 200
-------------------------	-----	-----	---------------------------------

### Y

Yashwant Rao Vs. Sampat	...	...	29
-------------------------	-----	-----	----

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M.P. SERIES  
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**(A)**

**Abolition of Jagirs Act (XXVIII of 1951)**

– **Sections 28, 34(2) & 39** –Word “Court” – Order passed by Collector – Revision – Board of Revenue – Jurisdiction – Held, the words ‘any Court’ in section 34(2) of the Act are not intended to mean ‘any Civil Court’ only but include even Revenue Court and consequently powers of revision rested in the Board under section 39 of the Act are excluded – The words ‘any Court’ can by their wider import mean either a civil Court or a revenue Court or a court contemplated under the Act i.e. the Court of Tehsildar, the Collector, the Commissioner and the Board of Revenue – When therefore no challenge of the orders of the authorities mentioned in the Act is permissible anywhere all the authorities have to be specifically provided u/s 28 and 29 the phrase ‘except as otherwise provided in this Act’ is inserted in this sub-section – Revenue Board was right in refusing to entertain the revision petition: *Anandrao Vs. Board of Revenue, AIR 1965 MP 237: 1965 MPLJ 238: 1965 JLJ 307.*

– **Section 29(1) & 30** and Madhya Bharat Revenue Administration and Ryotwari Land and Tenancy Act, 1950, Section 40 – Power of Review – Held, under the Act of 1951, the Board of revenue has no power to review its own decision given in an appeal u/s 29 of the Act – The contents of the power conferred u/s 30 of the Act of 1951 is not wide enough to include the conferment of the power of review – Section 30 nowhere makes Chapter IV of the Tenancy Act applicable in its entirety to the proceedings before the Jagir Commissioner or any other officer, or the Board of revenue or the Collector under the Abolition of Jagirs Act – Section 30 does not attracts the provisions of Section 40 of the Tenancy Act of 1950 so as to confer such power of review on the Board of Revenue – Section 30 of the Act of 1951 gives to the authorities mentioned therein only that power which a Revenue Officer has in relation to original or appellate proceedings

under the Tenancy Act of 1950: *Thakur Himmatsingh Vs. Board of Revenue, M.P. & Anr.*, 1966 MPLJ 170: AIR 1966 MP 43: 1966 JLJ 119.

**Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands)**  
**Act, M.P., 1950, (I of 1951)**

– **Section 2(b)** – Does not contemplate modification of definition of khudkasht by taking the meaning of “Agriculture” as given in the C.P. Tenancy Act, 1920 – Fiction created in Section 2 (5) of the Land Revenue Act attaches to the process and not to the land – Created only for purpose of enabling proprietor to claim Sir rights in such khudkasht lands: *Rao Shankar Pratapsingh Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 639: 1960 JLJ 1: AIR 1960 MP 86: 1959 MPLJ 1100.*

– **Section 3 & 4(1)(a)** – These best proprietary rights in State but save certain non proprietary or possessory or usufructuary interest in favour of ex proprietor or other person: *Raghubar Singh Vs. State of M.P., I.L.R.(1973) M.P. 385: AIR 1971 MP 209: 1971 MPLJ 594: 1971 JLJ 387.*

– **Section 5(f)** – Saves to the ex proprietor, the non proprietary or usufructuary of possessory right in respect of tank in which no other person except the proprietor has any right of irrigation – Land Revenue Code, M.P., 1959 – Section 57(1) – Saves right of a person existing at the time of commencement of the act – Section 251 – Provides for abolition of certain kinds of rights in tanks which were saved under section 5(e), (f) and (g) of the abolition Act – Words “vesting of tanks” in – Meaning of – Abolishes rights in tanks situated on unoccupied lands in which villagers had right of irrigation or nistar – Abolition of Proprietary Rights Act, M.P. – Section 3 and 4(1)(a) – These best proprietary rights in state but save certain non proprietary or possessory or usufructuary interest in favour of ex proprietor or other person: *Raghubar Singh Vs. State of M.P., I.L.R.(1973) M.P. 385: AIR 1971 MP 209: 1971 MPLJ 594: 1971 JLJ 387.*

– **Sections 24, 27, 28 & 33(C)** – Scope and effect of – Exclusion of jurisdiction has reference to section 24 and not section 27: *Hiralal Deepchand Oswal Vs. Babu Shiv Prasad, I.L.R. (1972) M.P. 973: 1970 MPLJ 937: AIR 1971 MP59: 1970 JLJ 972: 1979 MPWR 885.*

**Accommodation (Requisition) Act, C.P. and Berar (LXIII of 1948)**

– **Section 3** – Conditions to be satisfied for exercise of power thereunder: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R.(1961) M.P. 450.*

– **Section 3**–Word “public purpose”–Meaning – Whether justiciable in Court – Requisition of premises for stocking food grains by Government – Whether for Public purpose: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R.(1961) M.P. 450.*

– **Section 3 & 14** – Vires of: *Kanhaiyalal Vs. The Collector, Damoh., I.L.R.(1961) M.P. 450.*

– **Section 3 & 14**– Vires of– Conditions to be satisfied for exercise of power under section 3 – section 14 – Power of State Government to delegate all powers including the power to form opinion as to necessity of requisition – Formation of opinion and the requisition – Form one composite act to be performed by the same authority – Delegation of power to requisition and connected duty of forming opinion by State – Validity – Section 3 – Word “public purpose” in – Meaning – Whether justiciable in court – Requisition of premises for stocking food grains by Government – Whether for public purpose – Constitution of India, Articles 19(1)(b) and 31(2) – Former provides safeguards to Indian citizen – Later provides general safeguards to all – Constitution of India, Article 226 – Decision of authority erroneous. No ground of interference unless decision is mala fide: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450.*

– **Section 3 & 14** – Requisition of Land by State – Delegation of Power–Held, State Government can validly delegate its power to requisition as well as the connected duty to form an opinion as to the necessity of requisition: *Jagdish Narain Vs. Collector, Damoh, AIR 1962 MP 146: 1962 MPLJ 363: 1962 J LJ 533.*

– **Section 3 & 14** and Constitution, Article 19(1)(f), 31(1) & (2)– Vires of – Requisition by State Government – Requirements –Held, requisition has to be in accordance with law, it is to be for a public purpose and it cannot be without payment of compensation – Provisions of Article 31(2) thus form an integral code about requisition of land by State – Article 31(1) is independent of Article 31(2) thereof – In a case of requisition under Article 31(2), all that has to be seen is that the requirements in that clause are satisfied – Article 31(2) is not controlled by Article 19(1)(f) – Deprivation of property by state is a subject completely provided for in that Article and must satisfy the three requirements of Article 31(2) – It need not satisfy any other test in addition – Act do not infringe Article 19(1)(f) of Constitution and thus cannot be struck down as *ultra vires* in as much as it gives power to State Government to requisition any property without laying down anything to control the exercise of that power in a reasonable manner: *Jagdish Narain Vs. Collector, Damoh, AIR 1962 MP 146: 1962 MPLJ 363: 1962 J LJ 533.*

– **Section 3 & 14** and Constitution, Article 31(2) – Public Purpose – Determination– Held, Article 31(2) of Constitution makes the existence of a public purpose a condition precedent to every acquisition or requisition of property – Existence of a public purpose is justiciable – Unless the pre-requisites exist, the acquisition or requisition would be unconstitutional irrespective of anything contained in the relevant statute – Validity of requisition can be questioned on ground of non-existence of a public purpose, notwithstanding that the relevant statute makes it final: *Jagdish Narain Vs. Collector, Damoh, AIR 1962 MP 146: 1962 MPLJ 363: 1962 JLJ 533.*

– **Section 14** – Power of State Government to delegate all powers including the power to form opinion as to necessity of requisition – Formation of opinion and the requisition – Form one composite act to be performed by the same authority – Delegation of power to requisition and connected duty of forming opinion by state – Validity: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450.*

### **Accommodation Control Act, (Madhya-Bharat Sthan NiyantranVidhan) (XV of 1950)**

– **Section 7(2)** –Notice –If the giving of the notice under the Act was a condition precedent to the invitation of proceedings, then the absence of a notice does not give jurisdiction to the Tribunal to proceed with the case and the decision is inflagrant violation of law: *Prem Narain Vs. Prabhoodayal, 1959 JLJ 430.*

### **Accommodation Control Act, M.P. (XLI of 1961)**

– **Object and Scope of:** *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676: 1978 MPLJ 405: 1978 JLJ 326: AIR 1978 MP 165.*

– **Principle** – Principle that suit includes appeal does not apply in the context of various provisions in the M.P. Act: *Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227.*

– **Section 2(e)** –“Member of Family” – Categories– Held, there are three categories, one consisting of spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, parental uncle, parental uncle’s wife or widow; second category is that of brother’s son or unmarried daughter and the third category is of any other relations – In view of the Rule of Last Antecedent, term “living jointly with” qualifies only brother’s son or unmarried daughter and the term “dependent on him” qualifies only any other relations – Further, “living jointly with” or “dependent

on him” does not govern relations enumerated in category one: *Govindrao Vs. Bhavarlal*, 2011(4) MPLJ 362: 2012(1) JLJ 9.

– **Section 7** – Provisions relating to increase in– Applicable to clauses 1 and 2 of the section: *Smt. Jagrani Vs. Jorawal*, I.L.R. (1969) M.P. 339: 1967 MPLJ 683: AIR 1968 MP 24: 1967 JLJ 745: 1967 MPWR 318.

– **Section 9(4)** – Assessment list register– Not inadmissible because it did not contain certain particulars which were not required by the enactment: *Damumal Vs. Smt. Shevantibai*, I.L.R. (1966) M.P. 689: 1965 MPLJ 496: 1965 JLJ 557: AIR 1965 MP 223.

– **Section 9(4)** – Entry in Assessment Note-book – Relevance of, in determining the rent as shown in municipal assessment register or as actually paid on 1-1-41 – Assessment List register – Not inadmissible because it did not contain certain particulars which were not required by the enactment – Evidence Act – Section 76 – Certified copy of Entry in Assessment List Register Admissibility: *Damumal Vs. Smt. Shevantibai*, I.L.R. (1966) M.P. 689: 1965 MPLJ 496: 1965 JLJ 557: AIR 1965 MP 223.

– **Section 12 & 13** – Do not bestow new benefit upon landlord – Not also enlarge his rights conferred under Transfer of property Act: *Smt. Mankunwar Bai Vs. Sunderlal Jain*, I.L.R. (1979) M.P. 676: 1978 MPLJ 405: 1978 JLJ 326: AIR 1978 MP 165.

– **Section 12(1)** – Arising of Ground of Eviction in Pending Suit–Held, a ground for eviction u/s 12(1) of the Act, which was not in existence at the time of filing of the suit, but came into existence during the pendency of the suit, can be made a ground for eviction by amendment of the plaint – A Decree of eviction can be passed on such ground, if that ground is established by the plaintiff: *Chhotelal Bhailal Patel Vs. Akbarali & Anr.*, 1982 MPLJ 754: AIR 1983 MP 50: 1983 JLJ 107: 1983 MPRCJ 47.

– **Section 12(3)**, Proviso – Default spoken of in – Does not refer to default in the same suit itself – Refers to default before institution of suit: *Smt. Rampyari Vs. Shri Ramautar*, I.L.R. (1969) M.P. 543: AIR 1968 MP 87: 1968 MPLJ 1: 1968 JLJ 146. (Approved by Larger Bench in *Vishnu Madhava Bhagvat vs. Ramadevi*, 1981 JLJ 527.)

– **Section 12(1)(a)** – Expression “arrears of rent legally recoverable from him” – Excludes arrears which had been barred by time – Provision does not competent to pay or tender arrears of rent which are time barred – Section 13 (1) – Expression “for the period for which payment is made” in – Refers to two periods – Expression “Period for which the tenant may have made default” in – Has only one meaning – Section 13 – Does not constitute a new source or foundation of right to claim time barred rent – Section 13(2) –



Dispute contemplated by – Is referable to those arrears which are legally recoverable and are not time - barred – Section 13(1) – Tenant not obliged to deposit time barred arrears of rent: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 JIJ 6: AIR 1978 MP 54.*

– **Sections 12(1)(a), 12(3), 13(1) & 13(5)** – Suit for ejectment under section 12(1)(a) – Compliance of section 13 by the tenant in the trial court – Dismissal of the suit under sections 12(3) and 13(5) – Tenant not required to comply with section 13(1) in the appeal court: *S.S. Harishchandra Jain Vs. Dr. Captain Indersingh Bedi, I.L.R. (1978) M.P. 811: AIR 1977 MP 199: 1977 JIJ 312: 1977 MPLJ 417.*

– **Sections 12(1)(a), 12(3), 13(1) & 13(5)** – Compliance of Section 13 by Tenant – Held, Section 12(3) provides that a decree for eviction on the ground specified in Section 12(1)(a) shall not be made, if there is a compliance of Section 13(1) and (5) of the Act by tenant – For availing the protection, the tenant has to comply with Section 13(1) which comprises of two limbs: first, that tenant must within one month of service of summons on him or within such further time as extended by Court, deposit in the Court or pay to landlord an amount calculated at the rate of rent at which it was paid for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made and, secondly, that he is required to continue to deposit or pay, month by month, by the 15<sup>th</sup> of each succeeding month a sum equivalent to the rent at that rate. When these two limbs are satisfied a decree for eviction shall not be made against the tenant: *Vishnu Madhava Bhagvat vs. Ramadevi, 1981 JIJ 527. (Smt. Rampyari Vs. Shri Ramautar, I.L.R. (1969) M.P. 543: AIR 1968 MP 87: 1968 MPLJ 1: 1968 JIJ 146. Approved)*

– **Sections 12(1)(e), 12(1)(f) & 12(4)** and Civil Procedure Code, 1908, Order 6 Rule 17 & Order 7 Rule 8 – Eviction Suit – Addition of Ground – Held, Uncodified procedural doctrine must not be allowed to prevail to defeat any substantive statutory right of any litigant – It is one of the cardinal principles of civil jurisprudence that procedures are handmaids of justice and it is equally also fundamental that no vested right can be claimed in respect of a procedural matter – Joinder of “grounds” for the same relief or “eviction” of any tenant is expressly contemplated in Section 12 (1) – Addition of a “new ground” in a such for eviction already filed is not forbidden by Section 12 (1) – Provisions neither or Order VI, Rule 17, CPC nor of Order VII, Rule 8, bar his right to do so: *Munshi Khan Vs. Maya Devi, 1992(II) MPJR 101.*

– **Sections 12(1)(e), 12(1)(f) & 12(4)** and Civil Procedure Code, 1908, Order 6 Rule 17 – Doctrine of “Relation Back” – Held, the doctrine of relation back has no

statutory sanction – Neither Section 12(4) nor any other provision inheres any strain of that doctrine: *Munshi Khan Vs. Maya Devi, 1992(II) MPJR 101.*

– **Section 12(1)(e), (f) & 23-A** and Accommodation Control (Amendment) Act, M.P. 1983, Section 12(1) & (2) – Bonafide Requirement–Held, Section 12(1) of Amending Act relates to all those suits for eviction of tenants, wherein grounds of eviction includes the ground of bonafide requirement – Unless the landlord withdraws the ground of bonafide requirement in relation to relief of eviction, such suits shall be heard and disposed by Civil Courts as if the Amending Act has not been passed: *Paraschand Vs. Hemant Kumar, 1987 MPLJ 137: AIR 1987 MP 50: 1987 MPRCJ 79: 1987 JLJ 23.*

– **Section 12(1)(f) & 23-A** and Accommodation Control (Amendment) Act, M.P. 1983, Section 12(1) & (2) – Bonafide Requirement–Held, language of Section 12(2) of Amending Act does not mean that the suit pending in Civil Court has to be exclusively on ground of bonafide requirement – It merely permits that if an eviction suit is pending on different grounds including ground of *bonafide* requirement and if landlord wishes to evict tenant on ground of bonafide requirement, he may withdraw the suit in relation to ground of bonafide requirement with leave of Court and proceed against tenant u/s 23-A in Chapter III-A as inserted by Amending Act: *Paraschand Vs. Hemant Kumar, 1987 MPLJ 137: AIR 1987 MP 50: 1987 MPRCJ 79: 1987 JLJ 23.*

– **Section 12(1)(f)** – Right of eviction in respect of non-residential accommodation is not restricted to the landlord for his own business – There is a scope for a liberal interpretation of the phrase "his business" so as to include the business of spouse and closely dependent member of the family covered by Section 2(e) of the Act: *Badrilal (Shri) Vs. Smt. Sita Bai (Dead) Through L.Rs. Birdi Chand Joshi, I.L.R. (2011) M.P. 586: AIR 2011 MP 181: 2011(1) JLJ 254: 2011(1) MPLJ 682.*

– **Section 13** – Does not constitute a new source or foundation of right to claim time barred rent: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.*

– **Section 13** – Court omitting to fix provisional rent during entire trial – Tenant is not at fault in not complying with section 13: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997: AIR 1976 MP 5: 1975 JLJ 779: 1975 MPLJ 657.*

– **Section 13 & 13(1)** – Appeal filed by Landlord –Section 13 applies and tenant has to comply with Section 13(1) – This is not so in case of appeal filed by tenant: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970*

*MP 1: 1969 JLJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227)*

– **Section 13(1)** – The word “suit” in – Does not include appeal: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969 JLJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227)*

– **Section 13(1)** – Words “suit or proceedings” in M.P. Act – Does not include appeal: *Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227.*

– **Section 13(1)** – Obligation to pay rent arises when provisional rent is fixed: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997: AIR 1976 MP 5: 1975 JLJ 779: 1975 MPLJ 657.*

– **Section 13(1)** – Expression “for the period for which payment is made” in – Refers to two periods: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.*

– **Section 13(1)** – Expression “period for which the tenant may have made default” in – Has only one meaning: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.*

– **Section 13(1)** – Tenant not obliged to deposit time barred arrears of rent: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.*

– **Section 13(1)** – Court has also power to fix time when fixing provisional rent so that party may not be prejudiced by time taken by Court in passing order: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997: AIR 1976 MP 5: 1975 JLJ 779: 1975 MPLJ 657.*

– **Section 13(1) & 13(2)** – Word “proceeding” in – Signify appeal: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969 JLJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227)*

– **Section 13(1) & 13(2)** – Word “suit or proceeding” – Should be interpreted to mean suit or appeal – Does not include appeal at the instance of tenant: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969*

*JLJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227)*

– **Section 13(1) & (2)** – Time barred arrears of rents – Tenants not obliged to deposit the same under these sub-sections: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676: 1978 MPLJ 405: 1978 JLJ 326: AIR 1978 MP 165.*

– **Section 13(1) & (2)** – Suit, Appeal and Second Appeal – Steps in a series of proceedings and constitute one legal proceeding – The word “suit” in Section 13(1) does not include appeal – Section 13(6) – Applicable to appeal also – Section 13(1) and (2) – Word “proceeding” in – Signify appeal – Words “suit or proceeding” – Should be interpreted to mean suit or appeal – Does not include appeal at the instance of tenant – Appeal filed by landlord – Section 13 applies and tenant has to comply with Section 13(1) – This is not so in case of appeal filed by tenant – Interpretation of statute – Reference to language of repealed Act – Cannot be taken in aid to construe provision of repealing Act: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969 JLJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227)*

– **Sections 13(1), (2) & (3)** – Dispute raised as to amount of rent payable by tenant or person to whom payable – Sub Section (1) of section 13 is controlled by these provisions – Obligation to pay rent arises when provisional rent is fixed – Court has also power to fix time when fixing provisional rent so that party may not be prejudiced by time taken by court in passing order – Section 13 – Court omitting to fix provisional rent during entire trial – Tenant is not at fault in not complying with section 13 – Section 13(2) – does not provide the manner of raising the dispute – Dispute raised in written statement – It is sufficient for purpose of sub section (2) of Section 13: *Chhogalal Vs. Idol Of Bhagwan Shri Satyanarayan, Neemuch, I.L.R.(1976) M .P. 997: AIR 1976 MP 5: 1975 JLJ 779: 1975 MPLJ 657.*

– **Sections 13(1),(2),(3) & (5) and 12(1)(a) & 12(3)** – Words “suit or proceedings” in subsection (1) and proceedings in subsection (3) of section 13– Interpretation of – Whether include appeal – Interpretation of Statutes – Principles of – Construction statutes – Cardinal rule of – Intention of enactment to be gathered from the language employed – Duty of Court to give effect to the words used in a statute – Suit for ejectment under section 12(1)(a) – Compliance of section 13 by the tenant in the trial court – Dismissal of the suit under sections 12(3) and 13(5) – Tenant not required to comply with section 13(1) in the appeal court : *S.S. Harishchandra Jain Vs. Dr. Captain*

*Indersingh Bedi, I.L.R. (1978) M.P. 811: AIR 1977 MP 199: 1977 J LJ 312: 1977 MPLJ 417.*

– **Sections 13(1),(2),(5),(6) and 12(1)(a) & 12(3)** – Liability of tenant to deposit arrears of rents – Object and Scope of Act – Sections 12 and 13 – Do not bestow new benefit upon landlord – Not also enlarge his rights conferred under Transfer of Property Act – Interpretation of Statute – Creation of new right – Specific language necessary therefore – Word “Dispute” – Meaning of – Civil Procedure Code – Order 7, rule 11 – Rejection of claim for time barred arrears of rents – Expression “whole of the arrears of rents legally recoverable” – Excludes time barred arrears of rent – Accommodation Control Act, M.P., 1961 – Section 13(1) and (2) – Time bared arrears of rents – Tenant not obliged to deposit the same under these sub-section: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676: 1978 MPLJ 405: 1978 J LJ 326: AIR 1978 MP 165.*

– **Sections 13(1), (6) & 12(1)(a)** and Bihar Building (Lease, Rent and Eviction) Control Act (III of 1947), Section 11-A – Distinction between M.P. and Bihar Acts – Words “At any stage of the suit” in Bihar act includes all stages of litigation – Not so in M.P. Act – Words “suit or proceedings” in M.P. Act – Does not include appeal – Principle that suit includes appeal does not apply in the context of various provisions in the M.P. act – Interpretation of Statute – Intention of legislature – Equitable considerations: *Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 J LJ 227.*

– **Section 13(2)** – Does not provide the manner of raising the dispute: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997: AIR 1976 MP 5: 1975 J LJ 779: 1975 MPLJ 657.*

– **Section 13(2)** – Dispute contemplated by – Is referable to those arrears which are legally recoverable and are not time barred: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517: 1978 MPLJ 143: 1978 J LJ 6: AIR 1978 MP 54.*

– **Section 13(2)** – Dispute raised in written statement – It is sufficient for purpose of sub section (2) of Section 13: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997: AIR 1976 MP 5: 1975 J LJ 779: 1975 MPLJ 657.*

– **Section 13(6)** – Applicable to appeal also: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969 J LJ 859: 1969 MPLJ 672. (Overruled in Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 J LJ 227)*

– **Section 13(6)** – Word “May” in – Has no compulsive force – Not mandatory – Confers discretion on Court to strike out or not to strike out the defence when provision not complied with: *Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur, I.L.R. (1969) M.P. 534: AIR 1968 MP 1: 1967 JLJ 859: 1967 MPLJ 837.*

– **Section 13(6)** – Exercise of power under – Not imperative – Provision is penal – Word “may” in – Has no compulsive force – Not mandatory – Confers discretion on Court to strike out or not to strike out the defence when provision not complied with – Interpretation of Statute – Word “May” – Discretionary and unabling word unless provision using the word made exercise of the power imperative on the authority: *Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur, I.L.R. (1969) M.P. 534: AIR 1968 MP 1: 1967 JLJ 859: 1967 MPLJ 837.*

– **Section 18(3)** – Whether the order is appealable – Held, an order passed on an application u/S 18(3) of the Act of 1961 is appealable as a decree: *Bhagwan Singh Ramcharan Vs. Mst. Kallo Maula Shah & Ors., 1977 MPLJ 583: AIR 1977 MP 257: 1977 JLJ 516: 1977(2) Ren LR 591.*

– **Sections 23-A, 23-E & 23-J** – Revision against order of ejection passed by the Rent controlling Authority – Retired Govt. Servant acquiring accommodation after retirement is a landlord within the meaning of section 23-J of the Act entitled to invoke provision of section 23-A even if the accommodation is required and let out after his retirement – Constitution of India – Article 14 – “Retired Govt. servant” is a separate class itself – Such classification not hit by Article 14 of the Constitution of India – Reference answered accordingly – Words & phrases “Retired Government Servant” – Includes a person retired from defence Services: *Kunjulal Yadu Vs. Parasram Sharma, I.L.R.(2000) M.P. 416: 2000(2) JLJ 105: AIR 2000 MP 235: 2000(3) MPHT 355: 2000(II) MPJR 123: 2000(2) MPLJ 514.*

– **Section 23-J** – Principle of interpretation – Jurisdiction of Civil Court: *Ashok Kumar Vs. Baboolal, I.L.R. (1998) M.P. 1: AIR 1998 MP 267: 1998(1) MPLJ 461: 1998(1) JLJ 311: 1998(1) MPJR 231.*

– **Section 23(J)** – Application by widow alone falling in special category of landlords under section 23(j) for eviction of tenant on ground of bona fide need of herself and that of her married sons and their children is competent before Rent Controlling Authority under section 23-A(a) : *Col. Harbans Singh Vs. Smt. Margrat G. Bhingardive, I.L.R.(1990) M.P. 179: AIR 1990 MP 191: 1990 MPLJ 112: 1990 JLJ 97.*

– **Section 23-J(i), (ii)** – Retired employee of Municipal Corporation – Whether Landlord within the meaning of Section 23-J – (Majority View) – Municipal Corporation

is an elected body and its object is not to carry any business but to administer a particular area from where its members are elected – Corporation cannot be said to be an association of a number of individuals for the purpose of carrying out any trade or business – Corporation is not a company owned or to be controlled by State Government – Respondent is neither a retired servant of any Government nor a retired servant of a company owned or controlled by the Central or the State Government – Retired employee of Municipal Corporation does not fall within the definition of Landlord under Section 23-J of the Act – Reference answered accordingly : *Gulab Bai (Smt.) Vs. Subhash Chandra, I.L.R. (2013) M.P. 1279: 2013(3) JLJ 127: 2013(4) MPHT 276: 2013(3) MPLJ 434: 2014(II) MPJR 188.*

– **Section 23-A(a) & 23(J)** – Suit for eviction – Widow co-owner/landlady can initiate eviction proceedings against tenant – Application by widow alone falling in special category of landlords under Section 23(J) for eviction of tenant on ground of bona fide need of herself and that of her married sons and their children is competent before Rent Controlling Authority under Section 23-A(a) – Interpretation of Statute – Elementary principles of: *Col. Harbans Singh Vs. Smt. Margrat G. Bhingardive, I.L.R. (1990) M.P. 179: AIR 1990 MP 191: 1990 MPLJ 112: 1990 JLJ 97.*

– **Section 39** – Authorised Officer without allotment of accommodation directing sub tenant to vacate it – Order without jurisdiction and liable to be quashed – Proper procedure and action indicated: *Durga Prasad Verma Vs. K. P. Dixit, I.L.R. (1983) M.P. 599: AIR 1984 MP 20: 1984 JLJ 10: 1983 MPLJ 829.*

– **Section 39** – The expression “has fallen vacant or is likely to fall vacant” – Meaning of – Tenant withdrawing his physical possession and unauthorisedly sub-letting Accommodation to a sub tenant – Accommodation is “fallen vacant” entitling Authorised Officer to allot it – Authorised Officer without allotment of accommodation directing sub tenant to vacate it – Order without jurisdiction and liable to be quashed – Proper procedure and action indicated : *Durga Prasad Verma Vs. K. P. Dixit, I.L.R. (1983) M.P. 599: AIR 1984 MP 20: 1984 JLJ 10: 1983 MPLJ 829.*

### **Accommodation Control Act, M.P. (XXIII of 1955)**

– **Section 4** – Applicable to a tenant whose tenancy determined but against whom no suit filed: *Shyam Lal Vs. Umacharan, I.L.R. (1960) M.P. 377: 1960 MPLJ 1002: 1960 JLJ 892: AIR 1961 MP 49.*

– **Section 4(h)** – Eviction of Tenant from Non-residential Accommodation – Requirement– Held, a tenant is liable to be evicted from the shop in his occupation on ground that his landlord requires it for continuing or starting his own business unless it

can be shown that any other non-residential accommodation in occupation of landlord is suitable for said purpose – Ejectment cannot be for future expansion of business of landlord – If landlord’s business has in fact grown and there is felt need to be determined objectively, for additional accommodation for continuing the expanded business, tenant is liable to be ejected: *Damodar Haridas Sharma & Anr Vs. Nandram Deviram*, AIR 1960 MP 345: 1960 MPLJ 925: 1960 JLJ 473.

– **Section 4(h)** – Eviction of Tenant from Non-residential Accommodation – Requirement–Held, landlord is entitled to secure, by ejectment, non-residential accommodation for purpose of continuing or starting his own business in the city even if he vacated other non-residential accommodation in his occupation after the Act of 1955 was extended to his city unless it can be shown that accommodation so vacated was suitable for the purpose of continuing or starting landlord’s own business: *Damodar Haridas Sharma & Anr Vs. Nandram Deviram*, AIR 1960 MP 345: 1960 MPLJ 925: 1960 JLJ 473.

– **Section 16 & 17** – Decree for eviction of tenant– Cannot be passed in pending suit of appeal except on grounds mentioned in section 4: *Shyamlal Vs. Umacharan*, I.L.R. (1960) M.P. 377: 1960 MPLJ 1002: 1960 JLJ 892: AIR 1961 MP 49.

– **Section 16 & 17** – Decree for eviction of tenant– Cannot be passed in pending suit or appeal except on grounds mentioned in section 4 – Decree obtained after 1-1-59 – Not executable except on one or more grounds mentioned in section 4 – Word “tenant” in sections 16 and 17 used in popular sense – Includes an ex-tenant – section 4 – Applicable to a tenant whose tenancy determined but against whom no suit filed – Interpretation of Statute – Hardship – No ground for putting narrow construction: *Shyamlal Vs. Umacharan*, I.L.R. (1960) M.P. 377: 1960 MPLJ 1002: 1960 JLJ 892: AIR 1961 MP 49.

### **Actionable Claim**

–**Amount deposited with bank, firm etc.** – Depositee becomes owner – Depositor owns only a debt also known as obligation or actionable claim – Such right is proprietary right – This amounts to actionable claim: *Balkishan Muchhal Vs. The Controller Of Estate Duty*, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.

### **Administrative Tribunal Act (XIII of 1985)**

– **Section 19** and Constitution of India, Article 227 – Service Law – Termination on ground of conviction in criminal case–Claim of subsistence allowance till decision in appeal by High Court–Penal Code Indian, 1860–Sections 302, 326 and Criminal



Procedure Code, 1973, Sections 374(2) and 387–Appellate Court or revisional Court has power only to suspend execution of sentence–Stay of conviction can be ordered only in exceptional case–Civil Services (Classification, Control and Appeal) Rules 1966 Rule 19–Competent authority can terminate the services after conviction by criminal Court–On termination master and servant relationship comes to an end–Filing of appeal or stay of execution of sentence does not revive the relationship–Employee cannot be taken to be under suspension till decision in appeal–Not entitled to suspension allowance: *Jamna Prasad Vs. State; ILR (2002) MP 809; I.L.R.(2003) M.P. 368; 2003(1) MPHT 77; 2003(1) MPLJ 296; 2003(1) JLJ 158.*

– **Section 28**, Constitution of India, Article 227 and Industrial Disputes Act, 1947, Section 10 – Industrial Tribunal Constituted under the Industrial Disputes Act – Within the Superintendence of the High Court under Article 227 of Constitution – Award passed by the Industrial Tribunal amenable to the jurisdiction of the High Court: *S.C. Verma Vs. Central Govt. Industrial Tribunal, Jabalpur, I.L.R.(1995) M.P. 467; 1995 MPLJ 853; 1995 JLJ 646.*

### **Admission**

– **Admission in examination** – Condition in which a candidate can be refused permission to appear in examination or cancel his examination: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa & Ors., I.L.R. (1979) M.P. 289; 1978 JLJ 182; 1978 MPLJ 172; AIR 1978 MP 86.*

### **Adverse Possession**

–**Right to claim mutation based on adverse Possession** – Whether can be claimed: *Kashiram Vs. Nathu, I.L.R. (1983) M.P. 183; AIR 1980 MP 183; 1980 MPLJ 670; 1980 JLJ 879.*

### **Agricultural Service (Gazetted) Recruitment Rules, M.P., 1966**

– **Rules 14, 15 & 16**, Civil Service (General Conditions of Service) Rules, M.P., 1961, Rule 7, Public Service Commission (Limitation of Functions) Regulations, M.P., 1957 and Constitution of India, article 320(3) – Obligation of Govt. to consult Public Service Commission – Requirement of – Petitioner an Agricultural Assistant promoted to the post of Assistant Director of Agriculture a class II post until further orders – Promotion subject to concurrence of Public Service Commission – Promotion is ad hoc – Departmental Promotion Committee on scrutiny of petitioner’s promotion found him unsuitable – Public Service Commission concurring with the opinion of Committee –

Petitioner reverted as Agricultural Assistant – Reversion Valid: *N. S. Lad Vs. State of M.P., I.L.R. (1982) M.P. 1014: 1981 JLJ 232: 1981 MPLJ 145.*

**Anugrahik Tatha Sevarth Nagad Anudan Samapti Adhiniyam**  
**(II of 1982)**

– **Validity of the Act** – Held, once the Act was struck down by High Court in a previous Judgment and the State Government has taken no action vide appeal or review of the said judgment, the judgment has attained finality – It is not open to the State in a subsequent proceeding to contend that the Act is *intra vires* or the earlier decision required reconsideration for any reason: *State of M.P. Vs. Miland Joshi, 1994 JLJ 495.*

**Anusuchit Jati Avam Anusuchit Janjati, Rini Sahayata Adhiniyam,**  
**M.P. (XII of 1967)**

– **Section 2(4)** – “Debt” – Includes arrears of rent under a decree of otherwise – Section 7(1) – Suit or execution of a decree for arrears of rent is included – Civil Court are Executing Court has no jurisdiction – Interpretation of Statutes – Meaning of the words used in a statute plain – Intention of Legislature has to be gathered from those words: *Daryaobai Vs. Surajmal, I.L.R.(1980) M.P. 920: AIR 1979 MP 114: 1979 MPLJ 413: 1979 JLJ 273.*

– **Section 7(1)** – Suit or execution of a decree for arrears of rent is included – Civil Court or executing Court has no jurisdiction: *Daryaobai Vs. Surajmal, I.L.R. (1980) M.P. 920: AIR 1979 MP 114: 1979 MPLJ 413: 1979 JLJ 273.*

**Appeal**

– **Right of appeal** – Creature of statute: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

– **Appellate judgment under special statute** – Held appealable under general law: *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

**Arbitration and Conciliation Act (XXVI of 1996)**

– **Section 11(6)** – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Sections 2(1)(d), 7-A (1) & (2): *Shri Gouri Ganesh Shri Balaji Constructions “C” Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346: AIR 2018 MP 134: 2018(3) MPLJ 163: 2018(III) MPJR 52.*

### **Arms Act (LIV of 1959)**

– **Sections 13, 14 & 44** and Arms Rules, 1962 Rule 53 & 54 – Arms Licence – Executive Instructions – Power of State Government – Held, State Government or its authorities are competent to issue executive instructions or conditions for issuing, varying or renewing the arms licence as far as the aforesaid conditions or instructions are not contrary to the provisions of the Act of 1959 and Rules of 1962 or statutory order issued thereunder from time to time by Union of India in exercise of power of discretion endowed on authorities under provisions of Act of 1959 and Rules of 1962: *Pratibha Chouhan & Ors. Vs. State of M.P. & Ors.*, 2013(3) MPLJ 219: 2013(4) MPHT 109: 2013(2) JLJ 250: 2013(IV) MPJR 144.

– **Sections 13, 14 & 44** and Arms Rules, 1962 Rule 53 & 54 – Arms Licence – Renewal – Held, licensing authority has the power to fix the criteria within boundaries of the Act of 1959 and Rules of 1962 because it has been given discretion – Further, there is no provision in the Act of 1959 and Rules of 1962 that the authority is bound to renew the licence under whatever circumstances – Authority has been given power to refuse the renewal of licence under certain circumstances: *Pratibha Chouhan & Ors. Vs. State of M.P. & Ors.*, 2013(3) MPLJ 219: 2013(4) MPHT 109: 2013(2) JLJ 250: 2013(IV) MPJR 144.

### **Ashaskiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ke Sanday) Adhiniyam, M.P. (XX of 1978)**

– **Rule 14(1)** – Rules framed thereunder – Requires selection of teachers by committee under chairmanship of Kulpati – Their appointment not made according to it – They are not entitled to be included in teachers electoral roll: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh, Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736.*

### **Auction**

– **Acceptance of bid** – Does not involve any judicial or quasi judicial process: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

**(B)****Bal Adhinyam, M.P. (XV of 1970)**

– **Scheme of the Act** – Words “Enquiry” and “Trial” – Must be construed with regard to particular extent and with regard to the scheme and provision under consideration: *The State of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Sections 2(c), 4 & 6**, Criminal Procedure Code, 1973 (II of 1974), Sections 4, 5 and 27 and Constitution of India, Article 254 and Schedule 7, List III, entry 2 – Child delinquents – Trial of offences – Jurisdiction of Juvenile Courts – Repugnancy between state law and law made by Parliament in relation to subject matter pertaining to concurrent list – Provisions of Bal Adhinyam to the extent of repugnancy void – For offences punishable with death or imprisonment for life – Child delinquents must be tried by Court of Session – Exclusive jurisdiction of Juvenile Court for all offences except those punishable with death or imprisonment for life – Continues after the new code of criminal Procedure, 1973: *Devisingh Vs. State of M.P.*, I.L.R. (1979) M.P. 393: AIR 1978 MP 100: 1978 JLJ 126: 1978 MPLJ 238: 1978 CriLJ 585. (Overruled in *Raghubir Singh v. State of Haryana* AIR 1981 SC 2037: (1981) 4 SCC 210)

– **Section 4** – Overrides Section 27 of Criminal Procedure Code, 1973: *The State Of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 4 & 6** – Contravene Sections 4, 26 and 27 of Criminal Procedure Code, 1973 – Provision void to the extent of repugnancy: *The State of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 6** & Criminal Procedure Code, 1973 (II of 1974), Section 27 – No conflict between two provisions: *The State of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 6(1)** – Does not exclude offences punishable with death or imprisonment for life: *The State of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 67** – Suspends operation of Section 29-B, Criminal Procedure Code, 1898: *The State of M.P. Vs. Ramesh Nai & Ors.*, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

**Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyogita Ke Adhikaron Ka Arjan) Adhiniyam, (M.P.) 2012 (V of 2013)**

– **Sections 2(c), (e) & (f);** Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Section 3(p), and Constitution, Schedule VII, List III, Entry 42 – “Land” – Held, the State Act deals with a ‘portion of earth’s surface’ as defined in section 2 (c) of the Act that mere right of user to lay underground pipeline, cable and duct in the subsoil of the land in question does not deprive the landowner of the title or the right to possess that land – The laying of underground pipeline, cable and duct is not acquisition of property falling in Entry 42 of List III of the 7<sup>th</sup> Schedule – The ‘land’ in the State Act means portion of ‘earth’s surface’. It is only surface of earth over which right of user is exercised by State Act as against Central Act, which takes all benefits to arise out of land and things attached to earth – The land owner is compensated on account of damage to the surface of land and also provided compensation for not raising construction of any building or any other structure; construct or excavate any tank, well, reservoir, or dam; or plant any tree – Therefore, for limited and restricted use of surface of land, the land owner is compensated: *Bhagwanti Bai Vs. State of M.P.*, AIR 2018 MP 168: 2018(3) MPLJ 209: 2018(3) J LJ 6.

– **Sections 2(c), (e) & (f);** Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Section 3(p), 105& Schedule IV and Constitution, Article 254 and Schedule VII – Scope & Jurisdiction – Held, State Act is not repugnant to the Central Act as both operate in different fields – Union Parliament does not have any legislative competence to enact any law in respect of matter which falls in List II of the 7<sup>th</sup> Schedule – Therefore, the fact that the Adhiniyam, 2012 is not found in List IV of the Central Act is of no effect –The Statute mentioned in Schedule IV enacted by the Union Parliament alone could have find mention in the Schedule, as the Union Parliament could not touch any statute for which it has no legislative competence to legislate – Therefore, the Union Parliament could not include any State Act in Fourth Schedule, as it does not have the legislative competence to do so – The non inclusion of State Act in Fourth Schedule is neither permissible nor will render the State Act repugnant to the Central Act: *Bhagwanti Bai Vs. State of M.P.*, AIR 2018 MP 168: 2018(3) MPLJ 209: 2018(3) J LJ 6.

**Bonded Labour System (Abolition) Act (XIX of 1976)**

– **Section 21** and Constitution of India, Arts. 50, 21 and 14– Section 21 confers power on Executive Magistrates to try offences under Act – Executive Magistrates is also Chairman of the Vigilance Committee – Therefore apprehension of bias in trial by

Executive Magistrate is reasonable – Violative of Articles 50, 14 and 21 of the Constitution – Therefore Section 21 of the Act struck down: *Hanumantsing Kubersing Vs. State of M.P.*, I.L.R. (1995) M.P. 526: 1996 MPLJ 389: 1996 JLJ 305.

### **Burden of Proof**

–**Burden upon person alleging violation of equal protection or equal opportunity:** *Dwarka Dhish Bhargava & Ors, Vs. State of M.P. & Ors*, I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.

– **Mere happening of event** – May be proof of negligence – Liability not avoided by providing possible compensation for accident: *Mangilal Vs. Parasram*, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.

– **Medical Negligence** – Held, in cases of medical negligence, it is for the patient to establish his case against the medical man and not for the medical man to prove that he acted with sufficient care and skill – Doctor cannot be held negligent simply because something went wrong – He cannot be held liable for mischance or misadventure or for an error of judgment: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259:1999(1) JLJ 14.

## (C)

### **Ceiling on Agricultural Holdings Act, M.P. (XX of 1960)**

– **Section 2(e)(iii)**– Competent Authorities under the Act – Land Revenue Code, Madhya Pradesh, 1959, Section 44(1) – Competent Authority other than a Revenue Officer – Not a revenue officer – Appeal lies to Board of Revenue – Competent Authority is revenue officer –Appeal lies to authority competent to hear appeals under this provision – Words "*Persona-designata*" – Meaning of – Ceiling on Agricultural Holdings Act, Madhya Pradesh, 1960 –Section 41(1) – Person hearing appeal under Ceiling Act – Cannot function as "*Persona-designata*" – Similar is case with revisional authority – Appeal provided to an established Court –No provision made limiting further right of appeal–Appellate judgment under special statute–Held, appealable under general law–Appeal or revision available in cases arising under Ceiling Act–Orders passed under Sections 41 and 42 of Ceiling Act not final but are subject to appeal or revision–Land Revenue Code, Madhya Pradesh, 1959–Section 44–Words "any order passed in first appeal" are wide enough and include any appellate order whether passed under sub-section (1) or (2)–Conditions under which right of second appeal is available–Order passed in appeal under section 41, Ceiling Act by officers mentioned in sub-section (2) of section 44 of Code–Appealable under that provision–Order passed in revision under

section 41, Ceiling Act–Revisable under section 50 of the Code: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 2(k)**, M.P. Akrishik Jot Uchchatam Seema Adhinyam, 1981 – Section 2(c) –Reference to Larger Bench to consider correctness of decision passed in State of M.P. V. Board of Revenue, Gwalior – Case under Act of 1960 instituted against petitioners and draft statement was published – Petitioners raised objections in regard to certain land as the said land was not agricultural land and trees standing on the said land – Competent Authority after spot inspection declared the said land as agricultural land and declared it to be surplus – Held – Once it is held that land was held in Bhumiswami rights for agricultural purposes provisions of Adhinyam, 1981 are not applicable – No finding either by authorities including learned Single Judge hearing writ petition that petitioners held Bhumiswami rights in respect of forest land – Unless clear finding is recorded that lands in question were held not for agricultural purposes Court cannot render decision that provisions of Act, 1960 are not applicable – Matter to be placed before Learned Single Judge for decision on merits: *Smt. Hirakumari Wife of Thakur Jaipal Singh Vs. State of Madhya Pradesh, I.L.R. (2007) M.P. 1124: 2008(1) MPLJ 49: 2008(III) MPJR 74.*

– **Section 2(p) & 42** and M.P. Land Revenue Code, 1959, Section 11, 50 & 56 – Jurisdiction – Held, by virtue of Section 2(p) of the Ceiling Act r/w Section 11 of the Code, Commissioner exercises jurisdiction u/S 42 of the Ceiling Act as “Revenue Officer” – A Revision will lie from his order to Board of Revenue u/S 50 of the Code r/w its explanation and Section 56 of the Code – Petitioner’s revision lay before the Board of Revenue from the order passed u/S 42 of the Ceiling Act: *Indrajit Singh Vs. Board of Revenue, AIR 1973 MP 22.*

– **Section 4** – As amended by Acts Nos. 13 and 20 of 1974 – Object of amendments: *Narbada Prasad Vs. State of M.P., I.L.R. (1982) M.P. 205: AIR 1981 MP 101: 1981 MPLJ 260: 1981 JLJ 294.*

– **Section 4** – As amended by Acts Nos. 13 and 20 of 1974 – Effect of amendments– Section 4 – Part of – Social Welfare legislation Rules of construction as regards ex-proprietary legislation – Not applicable – Heading of section – Cannot control its plain language – Substitution of date 24th January 1971 by 1st January 1971 by Act No. 13 of 1974 – Has reasonable basis – Object of amendments – Sub-Section (1) – Expressions "in anticipation of" and "to defeat the provisions of the Act" – Meaning and connotation of – Sub-Section (2) – Transfer of land after 1-1-1971 by persons holding lands within ceiling limit under principal Act but more than ceiling area fixed by Act No.

13 of 1974 – Transfer is hit by new sub-Section (1) – Transfer of land permitted under section 5 (3) of principal Act – Also hit by new section 4 – Sub-Section (4) – Expressions "in regard to every transfer to which this section applies" and "in any other manner" – Meaning and connotation of – Includes partitions also covered by sub-Section (1) – Burden of proof thereunder – Is on the transferor – Not a negative burden – Offering plausible explanation for making transfer – Not sufficient to discharge burden – Should be proved by evidence and preponderance of possibilities: *Narbada Prasad Vs. State of M.P.*, I.L.R.(1982) M.P. 205: AIR 1981 MP 101: 1981 MPLJ 260: 1981 JLJ 294.

– **Section 11 & 46** and Civil Procedure Code, 1908, Section 9 – Jurisdiction of Civil Court – Held, competent authority is not vested with the jurisdiction to decide the question of title conclusively or finally – It is subject to the decision of a Civil Court – Decision of Competent Authority is described as “summary” decision – As per Section 46 and in context of Section 11, there is no bar of jurisdiction of the Civil Court: *Vijay Singh Vs. Competent Authority (SDO)*, AIR 1978 MP 72: 1977 JLJ 401: 1977 MPLJ 614.

– **Section 11(3)** and Limitation Act, 1963, Section 5 & 29 – Applicability – Held, for consideration of the question of limitation in regard to an objection filed u/s 11(3) of the Act of 1960, Section 5 of the Limitation Act will be applicable: *Vijay Singh Vs. Competent Authority (SDO)*, AIR 1978 MP 72: 1977 JLJ 401: 1977 MPLJ 614.

– **Section 41** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 44(2) – Order passed in appeal under section 41, Ceiling Act by officers mentioned in sub-section (2) of section 44 of Code – Appealable under that provision: *Ravishankar Vs. Board of Revenue*, I.L.R.(1973) M.P., 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.

– **Section 41** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 50 – Order passed in revision under Section 41, Ceiling Act – Revisable under Section 50 of the Code: *Ravishankar Vs. Board of Revenue*, I.L.R. (1973) M.P., 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.

– **Section 41 & 42** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 44(2) & 50 – Revision – Held, an appeal lay u/S 44(2) of the Code of 1959 against the order of Additional Commissioner passed in appeal u/S 41 of the Ceiling Act – Section 50 of the Land Revenue Code bars a revision against an order which is appealable – Petitioner’s revision was not maintainable but as the law was then somewhat uncertain, the Board should have treated the revision as an appeal: *Harbans Rai Vs. Board of Revenue*, AIR 1973 MP 1.



– **Section 41 & 42** – Orders passed under-not final but are subject to appeal or revision: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P., 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 41(1)** – Appeal provided to an established Court – No provision made limiting further right of appeal: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P., 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 41(1)** – Person hearing appeal under Ceiling Act – Cannot function as persona designata – Similar is case with revisional authority: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P., 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 42** – Revisional Jurisdiction – Suo Motu Powers – Scope & Jurisdiction–Held, *suo motu* power of revision u/s 42 of the Act can be exercised even in case of an appealable order and in a case in which no appeal is filed – State Government is entitle to furnish by way of an application necessary information to Board of Revenue to act *suo motu* u/S 42 and such an application is not to be regarded as an “application” to invoke revisional power thereon – When request made in such an application is accepted and an order is passed manifesting application of mind to the necessary materials made available in such an application of pursuant thereto, it will be a case of exercise *suo motu* of the revisional power: *Usha Devi Vs. State of M.P., 1990 MPLJ 353: AIR 1990 MP 268.*

– **Section 42** – Suo Motu Revisional Powers – Within Reasonable Time– Held, Power of revision *suo motu* u/S 42 of the Act can be, and has to be, exercised within a reasonable time and that is the meaning to be attributed to the term “at any time” used therein – There can be no dispute with that proposition because of the constitutional imperative requiring statutory authorities to act reasonably and not arbitrarily – However, what should be the reasonable time for exercise of the power, must be determined with reference to the facts and circumstances of the case and the nature of the order which is being revised: *Usha Devi Vs. State of M.P., 1990 MPLJ 353: AIR 1990 MP 268.*

### **Central Excise Act (I of 1944)**

– **Section 2(f)** – See – Finance Act, 1994, Section 65(76b) [As amended by Finance Act, 2005]: *Maa Sharda Wine Traders (M/s), Garhakota, Sagar Vs. Union of India, I.L.R. (2009) M.P. 1568: AIR 2009 MP 207: 2009(2) MPLJ 593: 2009(3) MPHT 304: 2009(2) JLJ 298: 2009(II) MPJR 16.*

### **Civil Courts Act, Madhya Pradesh (XIX of 1958)**

– **Section 7(2)** – Statutory powers conferred on District Judge – Can be delegated to Additional District Judge: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JLJ 53.*

– **Section 7(2)** – Words "any of the functions of a District Judge including the functions of the Principal Civil Court of original jurisdiction" in – Wide enough to authorise District Judge to delegate power under M.P. Municipalities Act, Madhya Pradesh, 1961 : *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JLJ 53.*

### **Civil Procedure Code (Amendment) Act (CIV of 1976)**

– **Section 97(2)(a)** and Civil Procedure Code, 1908, Section 2(2), 47, 96, & 100– Held, as the term ‘decree’ has been amended, from 1-2-1977, orders passed in execution proceedings, ceased to become decrees – Right of appeal against an order passed u/S 47 before the Amending Act by virtue of the legal fiction introduced in the definition of the term ‘decree’ as including any order passed in execution proceedings, had been expressly taken away after coming into force of the Amending Act – Unless, therefore, there were compelling reasons to hold that in spite of the fact that orders in execution proceedings ceased to become a decree after coming into force of the Amending Act, they would still be appealable either u/S 96 or u/S 100 of the Code of Civil Procedure –It will further be noticed from the provisions of Section 97(2)(a) that the amendment made to Section 2(2) of the Principal Act by Section 3 of the Amending Act is expressly stated to have been saved only in respect of appeals which were pending on 1-2-1977: *Babulal Vs. Ramesh Babu Gupta, AIR 1990 MP 317: 1990 MPLJ 482: 1990 JLJ 422: 1991(I) MPJR 1.*

– **Order 9, Rule 13** – Legislative intention – Embargo – Remedy of this provision cannot be resorted to when an appeal against such ex parte decree has been disposed of except by way of withdrawal: *Smt. Archana Kumar v. Purendu Prakash Mukherjee, I.L.R. (2000) M.P. 309: AIR 2000 MP 279: 2000(2) MPLJ 491: 2000(3) MPHT 35: 2000(2) JLJ 84: 2000(II) MPJR 14.*

### **Civil Procedure Code (V of 1908)**

– **Applicability of, to proceedings under Chapter 4 of Motor Vehicles Act:** *M/s. Bundelkhand Motor Transport Company, Nowgaon, Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R.(1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 JLJ 811.*

– **Section 9** – Suit for refund of sale-tax illegally recovered – Maintainability: *State of M.P. Vs. Khoda Bhai, I.L.R. (1970) M.P. 529: AIR 1971 MP 254: 1971 MPLJ 858: 1971 JLJ 852.*

– **Section 2 (2)** – "Dismissed for default" in – Refers only to non-appearance of parties and does not include any other default: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **Section 2(2)** – Order dismissing suit for non-payment of costs – Order is appealable: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **Section 2(2), 100**, Order 41 Rules 3A (1), (2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge in appellate decree – Second appeal maintainable against such decree: *Maniram Vs. Mst. Fuleshwar, I.L.R. (1995) M.P. 518: 1996 MPLJ 764: 1996 JLJ 328. (Contrary View taken By Apex Court in Ratan Singh Vs. Vijay Singh AIR 2001 SC 279: (2001) 1 SCC 469: 2001(1) JLJ 283.)*

– **Sections 6, 115 & 151** and Small Cause Courts Act, Madhya Bharat, 1949, Section 18– Jurisdiction – Suit for small cause claim was instituted before the Civil Court – After promulgation of the 1949 ordinance, suit was transferred to Small Cause Court and a decree was passed there – Held, such transfer is illegal and such decree is a nullity for want of jurisdiction– Section 18 of the Act of 1949 gives ample power to High Court to call for a record to satisfy itself that it is in accordance with law and to make any order which it thinks fit – Case sent back to Civil Judge for disposal from the stage of the transfer to small cause court: *Bhaskarrao Vs. Lilavati, AIR 1957 MP 70: 1957 JLJ 429.*

– **Section 11** and Constitution, Article 226 – Scope & Applicability–Held, when a question is not specifically decided in a writ petition and the decision does not show that the Court has applied its mind to that question, it cannot operate as *res-judicata* in a subsequent suit on the ground that the decision of that question is implicit in another question which was actually decided in the writ petition: *Union of India Vs. Sharmanand, 1972 MPLJ 550: 1972 JLJ 348.*

– **Section 11** and Constitution, Article 226 – Scope & Jurisdiction–Held, where the Court assumes jurisdiction which it does not possess, or erroneously decides a question relating to the jurisdiction of the Court, in neither case the decision operates as *res-judicata* in a subsequent litigation between the same parties, whether the cause of

action is same or different – What is *res-judicata* is the “matter decided” and not the reason for such decision: *Union of India Vs. Sharmanand*, 1972 MPLJ 550: 1972 JLJ 348.

– **Section 11** and Constitution, Article 141 – *Res-Judicata* – Held, Apex Court held that in case of dismissal of an SLP *in limine* by a non-speaking order does not culminate in merger of the impugned decision and does not constitute *res judicata*: *Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd Vs. Sita Ram Patel*, 2019(4) MPLJ 367.

– **Section 47** and Order 21 Rules 2 & 3– Decree for eviction –Execution Objection by tenant – Judgment debtor alleging compromise giving up right of eviction under decree in return for promise to pay enhanced rent – Alleged compromise not recorded as certified – Compromise being adjustment of decree and not recorded as certified – Objection to execution not sustainable in view of rule 2 – Interpretation of Statute – Salutory rule of – Two statutory provisions – Not to be so construed as to encourage frivolous litigation or render one of them otiose: *Rajeev Khandelwal Vs. Arun Pannalal*, I.L.R. (1987) M.P. 670: AIR 1987 MP 262: 1987 MPLJ 599: 1988 JLJ 416.

– **Section 60(1)** – Exempts all "implements of husbandry": *Narsingh Vs. Kamandas*, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.

– **Section 60(1)** – Proviso (b) – Exemption from attachment – Expression "as may, in the opinion of the Court be necessary to enable him to earn his livelihood" in – Does not qualify the words "implements of husbandry" – Exempts all "implements of husbandry" are exempted – Term "implements of husbandry" – Meaning of – Electric motor pump fitted in well situated in the field of an agriculturist – is an implement of husbandry exempted from attachment – Cart though an agricultural implement but not proved to be used for agricultural purposes – Cannot be held to be "implement of husbandry" – Not exempted from attachment – Word "Agriculturist" – Meaning of – Interpretation of Statutes – True meaning of a phrase in a Statute has to be judged from the context: *Narsingh Vs. Kamandas*, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.

– **Section 60(1)(b)** – Electric motor pump fitted in well situated in the field of an agriculturist – is an implement of husbandry exempted from attachment: *Narsingh Vs. Kamandas*, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.

– **Section 60(1)(b)** – Expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" in– Does not qualify the words

"implements of husbandry": *Narsingh Vs. Kamandas, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.*

– **Section 73** – Order 21 Rules 11 & 30 – Test to be applied to determine whether execution application is according to law – Order 21 Rule 11(j)(v) – Words "otherwise as the nature of the relief granted may require" are wide – Relief by way of rateable distribution is one of the modes of execution and is within the ambit of this provision: *Mst. Sarswatibai Vs. Govindrao, I.L.R. (1960) M.P. 945: AIR 1961 MP 145: 1961 MPLJ 256: 1961 JLJ 166.*

– **Section 96**, Order 41 Rule 22, Letter Patent, Clause X, XIII & Constitution of India, Articles 227, 226 – Intra-Court Appeal from writ Court order – Different from an LPA from First Appeal under Section 96 CPC – Cross-objection or cross-appeal – Not maintainable – Respondent cannot await service of notice to file cross appeal in LPA – Respondent may prefer LPA subject to Rule XIII for condonation of delay – May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order – Reference answered accordingly: *Jabalpur Development Authority Vs. Y.S. Sachan & Ors., I.L.R. (2004) M.P. 231: 2004(2) MPLJ 178: 2004(2) JLJ 9: 2004(2) MPHT 314.*

– **Section 96 & 100** – Filing application under Order 9 rule 13 – No bar to appeal under section 96 or 100: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **Sections 96, 104 & 115** – One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part – The former part merges into decree and is open to challenge in the appeal filed against the decree – Revision against earlier part not tenable: *Mitthulal Vs. Badriprasad, I.L.R. (1984) M.P. 365: AIR 1981 MP 1: 1980 MPLJ 778: 1981 JLJ 21.*

– **Sections 96, 104 & 115**, Order 22 Rules 3 & 5, Order 43 Rule 1-A – Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry – Suit held to have abated and consigned to record – Order is not appealable – Revision lies against such an order – One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part – The former part merges into decree and is open to challenge in the appeal filed against the decree – Revision against earlier part not tenable: *Mitthulal Vs. Badriprasad, I.L.R. (1984) M.P. 365: AIR 1981 MP 1: 1980 MPLJ 778: 1981 JLJ 21.*

– **Section 96(2)**, Order 9 Rule 13 – Appeal – No bar even if filed after exhausting remedy under Order 9 Rule 13, C.P.C. – Appeal maintainable – Even proceedings of

Appeal under Section 96 and application under Order 9 Rule 13 of the Code can be prosecuted simultaneously – Reference answered accordingly: *Smt. Archana Kumar and another Vs. Purendu Prakash Mukherjee and another*, I.L.R (2000)M.P. 309: AIR 2000 MP 279: 2000(2) MPLJ 491: 2000(3) MPHT 35: 2000(2) JLJ 84: 2000(II) MPJR 14.

– **Section 100**, Order 47 Rule 1 – Second Appeal dismissed holding "no substantial question of law involved for adjudication" – No ground supplied – Can be a ground for appeal but not for Review – Recourse to Review – Misconceived: *Ratanlal Vs. Bardi Bai*, I.L.R(2003) M.P. 1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) MPHT 295: 2003(2) JLJ 86: 2003(I) MPJR 534.

– **Section 100 & 2(2)**, Order 41 Rules 3A (1), (2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge in appellate decree – Second appeal maintainable against such decree: *Maniram Vs. Mst. Fuleshwar*, I.L.R (1995) M.P. 518: 1996 MPLJ 764: 1996 JLJ 328. (Contrary View taken By Apex Court in *Ratan Singh v. Vijay Singh* AIR 2001 SC 279: (2001) 1 SCC 469: 2001(1) JLJ 283.)

– **Sections 100, 101 & 140**, Order 41 Rule 11 and Order 47 Rule 1– Review Application – Review of the Order of Single Bench – Placed before the Full Bench in peculiar fact situation – Power of Full Bench is limited to what the Single Bench could do while exercising power of Review – Review permissible only on three grounds specified- (i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of record and (iii) any other sufficient ground – "Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously – Second Appeal dismissed holding "no substantial question of law involved for adjudication" – No ground supplied – Can be a ground for appeal but not for Review – Recourse to Review – Misconceived: *Ratanlal Vs. Bardi Bai*, I.L.R (2003) M.P. 1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) MPHT 295: 2003(2) JLJ 86: 2003(I) MPJR 534.

– **Section 115** – Revision against award of MACT – Not maintainable on the face of provisions of appeal under the Act of 1988: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan*, I.L.R (2000) M.P. 1174: AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.

– **Section 115**, Criminal Procedure Code, 1974, Section 125 and Family Courts Act of 1984, Sections 7,8,10,18 and 19 – Application for maintenance under Section 125

Cr.P.C. – Power of J.M.F.C. exercised by Family Court while deciding such application – Revision arising out of such application flows from proceedings under the Cr.P.C. – Should be registered as Criminal Revision: *Rajesh Shukla Vs. Smt. Meena, I.L.R (2005) M.P. 686: 2005(2) MPLJ 483: 2005(2) MPHT 301: 2005(2) JLJ 249.*

– **Section 115** (as amended by Code of Civil Procedure (M.P. Amendment Act, 29 of 1984) – Held, in absence of any express provision to the contrary in the amending Act, supervisory or revisional power u/S 115 CPC has to be exercised in accordance with the provisions of law in force at the time when the power is sought to be exercised – After 14.08.84 when the amending Act came into force, High Court is empowered to exercise only such powers as are conferred on the High Court by provisions of section 115 CPC as amended – As revision petition in instant case is directed against an order passed by district Court in appeal, arising out of suit of the value less than Rs. 20,000, it is not maintainable u/S 115 CPC: *Ramchandra Jagannath & Ors. Vs. Dattatraya Shankarrao & Anr., 1986 MPLJ 406: AIR 1986 MP 191: 1986 JLJ 344.*

– **Section 115** (as amended by Code of Civil Procedure (M.P. Amendment Act, 29 of 1984) – Held, it is well settled that though there is an inherent right in every person to bring a suit of a civil nature, a right of appeal inheres in no one and an appeal for its maintainability must have the clear authority of law – Right of appeal is a creature of statute and similarly if a right of revision is claimed, it should be conferred by a provision of law – Use of word “may” in Section 115 does not mean that High Court has an unfettered discretion in dealing with a case u/S 115 CPC, but the fact that discretion of High Court u/S 115 CPC is controlled by that provision, does not lead to conclude that a substantive right is conferred on a litigant by Section 115 CPC: *Ramchandra Jagannath & Ors. Vs. Dattatraya Shankarrao & Anr., 1986 MPLJ 406: AIR 1986 MP 191: 1986 JLJ 344.*

– **Section 115** – Revision under Section 115, Civil Procedure code – Maintainable against order of District Judge under Section 139 (5) of Madhya Pradesh Municipalities Act: *Municipal Council Khandwa Vs. Santosh Kumar, I.L.R (1976) M.P. 104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.*

– **Section 115** – Revision – Suit for injunction for restraining defendant/Board from disconnecting electricity supply on basis of additional bill of Rs. 2,14,747.00 – Court fees Act, 1870 – Sections 7(iv)(c) and 7 (iv) (d) – *Advalorem* Court fees – Plaintiff though entitled to value his suit on his own but cannot be allowed to do so arbitrarily – Irrespective of nature of drafting the relief sought by plaintiff liable to pay *advalorem* court fee on the bill amount – Order 7, Rule 11(b) of the Code – duty of Trial Court to

correct valuation of relief and ask plaintiff to pay proper Court Fee else reject the plaint on his failing to do so – Order of trial Court proper – No interference called for: *Subhash Chand Jain Vs. The Chairman, M.P.E.B., I.L.R (2000) M.P. 903: AIR 2001 MP 88: 2000(4) MPHT 318: 2001(1) JLJ 81: 2001(1) MPJR 22: 2001 AIHC 1369: 2000(3) MPLJ 522.*

– **Section 115** and Workmen's Compensation Act (VIII of 1923), Section 19 (2) – Commissioner under the Workmen's Compensation Act is not a Court – Civil Procedure Code – Section 115 – Word 'Court' in – Used in a narrow sense – Means only a Civil Court – Order of Commissioner deciding a disputes under section 19 (2) of Workmen's Compensation Act – Not Revisable under section 115 of the Code: *Yashwant Rao Vs. Sampat, I.L.R (1980) M.P. 708: AIR 1979 MP 21: 1978 MPLJ 853.*

– **Section 141** – Object and purpose of the provision of the Section: *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.*

– **Section 141** – Words "All proceedings" in – Is of wide import – To restrict its meaning – Will amount to violence to language – Procedure of suit – Applicable to proceedings under order 9 rule 9 – Object and purpose of the provision of Section 141, Civil Procedure Code – Civil Procedure Code – Section 151 – Application to restore application under Order 9 rule 9, Civil Procedure Code dismissed for default – Maintainability – Interpretation of statues – No words to be added unless provision rendered absurd or nugatory – Civil Procedure Code – Order 43 rule 1(c) Words "rejecting an application" in – include dismissal for default or rejection in any other situation whatever – Applicable to an order under Order 9, rule 7 rejecting the application – Interpretation of Statues – Principle to be followed in interpreting law – Court to give effect to intention of legislature as expressed in the words used – No outside consideration can prevail – Civil Procedure Code – Order 9, rule 9 – Application for restoration dismissed for default – Two remedies open – Four remedies available in case of ex parte decree – Civil Procedure Code – Section 96 and 100 – Filing application under Order 9 rule 13 – No bar to appeal under section 96 or 100 – Precedent – Subsequent Division Bench not agreeing with the decision of first Division Bench – Proper procedure to refer matter to larger Bench: *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.*

– **Section 141** and Order 9, Rule 9 – Procedure of suit – Applicable to proceedings under Order 9 rule 9: *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.*



– **Section 148 & 149** – Confer power on Court to extend time – Power exercisable even if the order fixing time states that non-compliance within time will result in dismissal of suit – Direction acts only as *in terrorem*– Court still possesses power to extend time till order of dismissal is passed – Circumstances in which power can be exercised – Civil Procedure Code – Order 17, rule 3 – Word "default" in – Refers to nonpayment of amount directed to be paid – Section 2 (2) – "Dismissed for default" in – Refers only to non-appearance of parties and does not include any other default – Order dismissing suit for non-payment of costs – Order is appealable – Limitation Act, 1908 – Section 4 – Applicable to suits, appeal and applications – Other cases governed by General Clauses Act, Section 10 – Principle underlying these provisions applicable when act is to be done under order of the Court – Expiry on a day which is holiday – Act done on reopening day – Act is in time: *Budhulal Vs. Chhotelal*, I.L.R.(1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 J LJ 797.

– **Section 151** – Application to restore application under Order 9 rule 9, Civil Procedure Code, dismissed for default – Maintainability: *Nathuprasad Vs. Singhai Kapoorchand*, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 J LJ 340.

– **Order 1 Rule 10** and Specific Relief Act, 1963, Section 19 – Impleadment of party – Locus – Held, strangers to a contract making a claim adverse to the title of defendant (vendor) contending that they are the co-owners of the contracted property are neither necessary nor proper party and are therefore not entitled to be joined as parties to the suit – If the parties are added as parties to suit, scope of the suit would be enlarges and it would turned to be a title suit: *Panne Khushali & Anr. Vs. Jeewanlal Mathoo & Anr.*, AIR 1976 MP 148: 1976 MPLJ 170: 1976 J LJ 84.

– **Order 7 Rule 11** – Rejection of claim for time barred arrears of rents – Expression "Whole of the arrears of rents legally recoverable" excludes time barred arrears of rents: *Smt. Mankunwar Bai Vs. Sunderlal Jain*, I.L.R (1979) M.P. 676: 1978 MPLJ 143: 1978 J LJ 6: AIR 1978 MP 54.

– **Order 7 Rule 11(b)** – Duty of Trial Court to correct valuation of relief and ask plaintiff to pay proper court fee else reject the plaint on his failing to do so – Order of trial court proper – No interference called for: *Subhash Chand Jain Vs. The Chairman, M.P.E.B.*, I.L.R (2000) M.P. 903: AIR 2001 MP 88: 2000(4) MPHT 318: 2001(1) J LJ 81: 2001(I) MPJR 22: 2001 AIHC 1369: 2000(3) MPLJ 522.

– **Order 9 Rule 9** – Application for restoration dismissed for default – Two remedies open – Four remedies available in case of *ex-parte* decree: *Nathuprasad Vs.*

*Singhai Kapoorchand, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.*

– **Order 9 Rule 9** and Section 141–Procedure of suit – Applicable to proceedings under Order 9 rule 9: *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.*

– **Order 9 Rule 13**, Section 96(2)–Appeal – No bar even if filed after exhausting remedy under Order 9 Rule 13, C.P.C. –Appeal maintainable – Even proceedings of Appeal under Section 96 and application under Order 9 Rule 13 of the Code can be prosecuted simultaneously – Reference answered accordingly: *Smt. Archana Kumar and another Vs. Purendu Prakash Mukherjee and another, I.L.R.(2000)M.P. 309: AIR 2000 MP 279: 2000(2) MPLJ 491: 2000(3) MPHT 35: 2000(2) JLJ 84: 2000(II) MPJR 14.*

– **Order 14 Rule 2**, as amended and Section 115 – Issue requiring recording of evidence for its decision – Issue is mixed question of law and fact – Cannot be tried as preliminary issue: *M/s. Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R. (1980) M.P. 95: AIR 1979 MP 153: 1979 JLJ 720: 1979 MPLJ 736.*

– **Order 14 Rule 2**, as amended and Section 115– Proper course indicated – Preliminary issue to be taken first or not for decision – Does not decide rights of parties – Not a "case decided" – Interference under section 115, Civil Procedure Code not permissible: *M/s. Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R (1980) M.P. 95: AIR 1979 MP 153: 1979 JLJ 720: 1979 MPLJ 736.*

– **Order 14 Rule 2**, as amended and Section 115– Issue relating to jurisdiction – When can be tried as a preliminary issue – Issue requiring recording of evidence for its decision – Issue is mixed question of law and fact – Cannot be tried as preliminary issue – Proper course indicated – Preliminary issue to be taken first or not for decision – Does not decide rights of parties – Not a "case decided" – Interference under section 115, Civil Procedure Code not permissible: *M/s. Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R. (1980) M.P. 95: AIR 1979 MP 153: 1979 JLJ 720: 1979 MPLJ 736.*

– **Order 17 Rule 2** – Applicable to all cases of default – Hearing of the provision – To be used for limited purpose: *Rama Rao Vs. Shantibai, I.L.R (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 17 Rule 2** – Expression "such other order as it thinks fit" in Rule 2 – Permits disposal of suit and not a decision thereon: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 17 Rule 2 & 3** – Order 17 Rule 3– More stringent and requires strict construction – Order 17 rules 2 and 3 – Both applicable to an adjourned date of hearing – Expression "or to make such other order as it thinks fit" in Rule 2 – Enables Court to dispose of suit in a mode other than that provided by Order 9 – Order 17 rule 2 – Scope of Rule 3 – Ambit of this rule – Does not include that which is provided in rule 2 – Rule 3 – Does not include the case of default in appearance – Words "Dispose of" – Mean different from "decide" – Rule 2 – Applicable to all cases of default – Heading of the provision – To be used for limited purpose – Expression "such other order as it thinks fit" in Rule 2 – Permits disposal of suit and not a decision thereon – Interpretation of Statutes – Construction which renders provision superfluous to be avoided – Rule 3 – Presupposes presence of all parties and failure of party to do an act, necessary for further progress of suit – Stare decisis to be followed – "Appearance of a party" – Meaning of: *Rama Rao Vs. Shantibai, I.L.R.(1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 17 Rule 3** – Scope– Held, it is open to the Court to proceed under Order 17 Rule 3 CPC in the absence of a party where the conditions laid down in the said rule are fulfilled and it appears just and proper to do so: *Shantabai Vs. Chokhelal, AIR 1976 MP 21: 1975 MPLJ 832: 1976 JLJ 12.*

– **Order 17 Rule 2 & 3 and Order 9** – Powers of Appellate Court– Held, where Court has proceeded to decide the case on merits under Order 17 Rule 3 CPC in absence of a party, it is not open to the aggrieved party to file an application for setting aside the decree under Order 9 of the Code – Where the said decision/order has been challenged in an appeal, the appellate Court will have to examine where the lower Court properly exercised its jurisdiction in proceedings under Order 17 Rule 3 – It is of the view that lower Court rightly proceeded under Order 17 Rule 3 in the circumstances of the case and the decree passed by it is otherwise proper, it may dismiss the appeal but if it is of the view that lower Court should not have proceeded under Order 17 Rule 3, it may substitute an order under Order 17 Rule 2 CPC leaving the defaulting party to take recourse to an appropriate remedy under Order 9 CPC in the lower Court: *Shantabai Vs. Chokhelal, AIR 1976 MP 21: 1975 MPLJ 832: 1976 JLJ 12.*

– **Order 17 Rule 3** – Word "default" in – Refers to non-payment of amount directed to be paid: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **Order 17 Rule 3** – Ambit of this rule – Does not include that which is provided in rule 2: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 17 Rule 3** – Does not include the case of default in appearance: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 17 Rule 3** – More stringent and requires strict construction: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **Order 20 Rule 12** – Mesne Profit – Jurisdiction of Court– Held, Court has jurisdiction to pass decree of mesne profits in a suit provided the suit is for recovery of possession of immovable property and for rent or mesne profits – If suit is merely for the recovery of possession of immovable property and there is no claim either for rent or mesne profit, provisions of Order 20 Rule 12 are not attracted: *Amar Singh Vs. Chandrashekhar Rao, AIR 1984 MP 1.*

– **Order 20 Rule 12** – Past/Future Mesne Profit – Jurisdiction of Court – Held, so far as future mesne profits are concerned, the Court derives jurisdiction to pass a decree in that behalf not be virtue of any claim made by plaintiff in the plaint but by virtue of the provisions of Order 20 Rule 12 CPC which are attracted in a case where claim for recovery of possession of immovable property is accompanied by a claim for rent or mesne profits, past or future: *Amar Singh Vs. Chandrashekhar Rao, AIR 1984 MP 1.*

– **Order 20 Rule 12** – Future Mesne Profit – Jurisdiction of Court–Held, where in a suit for recovery of possession of immovable property, there is only claim of future mesne profits from the date of the suit and there is no claim for past mesne profits, the Court is empowered to pass a decree for future mesne profits while passing a decree for possession of the property: *Amar Singh Vs. Chandrashekhar Rao, AIR 1984 MP 1.*

– **Order 21 Rule 2&3** and Section 47 – Decree for eviction – Execution Objection by tenant – Judgment debtor alleging compromise giving up right of eviction under decree in return for promise to pay enhanced rent – Alleged compromise not recorded as certified – Compromise being adjustment of decree and not recorded as certified – Objection to execution not sustainable in view of rule 2 – Interpretation of Statute – Salutary rule of – Two statutory provisions – Not to be so construed as to encourage frivolous litigation or render one of them otiose: *Rajeev Khandelwal Vs. Arun Pannalal, I.L.R.(1987) M.P. 670: AIR 1987 MP 262: 1987 MPLJ 599: 1988 JLJ 416.*

– **Order 21 Rule 11 & 30** – Test to be applied to determine whether execution application is according to law: *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945: AIR 1961 MP 145: 1961 MPLJ 256: 1961 JLJ 166.*

– **Order 21 Rule 11 & 30** – Section 73 – Test to be applied to determine whether execution application is according to law– Order 21 Rule 11(j)(v) – Words "otherwise as the nature of the relief granted may require" are wide– Relief by way of rateable distribution is one of the modes of execution and is within the ambit of this provision : *Mst. Saraswatibai Vs. Govindrao, I.L.R. (1960) M.P. 945: AIR 1961 MP 145: 1961 MPLJ 256: 1961 JLJ 166.*

– **Order 21 Rule 11(j)(v)** – Words "otherwise as the nature of the relief granted may require" are wide: *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945: AIR 1961 MP 145: 1961 MPLJ 256: 1961 JLJ 166.*

– **Order 21 Rule 11(2)** – Relief by way of rateable distribution is one of the modes of execution and is within the ambit of this provision: *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945: AIR 1961 MP 145: 1961 MPLJ 256: 1961 JLJ 166.*

– **Order 21 Rules 95, 96, 97, 100 and Rule 35 & 36** – Obstruction by third party in taking possession by decree-holder – Option for the decree-holder – Remedy of the third party: *Smt. Usha Jain Vs. Manmohan Bajaj, I.L.R. (1982) M.P. 837 : AIR 1980 MP146 : 1980 MPLJ 623: 1980 JLJ 678. (Overruled by Supreme Court in Shreenath Vs. Rajesh AIR 1998 SC 1827: (1998) 4 SCC 543: 1998 (2) JLJ 187)*

– **Order 22 Rule 3 & 5, Order 43 Rule 1-A** and Sections 96, 104 & 115 – Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry – Suit held to have abated and consigned to record – Order is not appealable – Revision lies against such an order – One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part – The former part merges into decree and is open to challenge in the appeal filed against the decree – Revision against earlier part not tenable: *Mitthulal Vs. Badriprasad, I.L.R (1984) M.P. 365: AIR 1981 MP 1: 1980 MPLJ 778: 1981 JLJ 21.*

– **Order 33 Rule 1** and Section 149 – Application to sue in forma pauperis rejected–Court, Power of, to grant time to pay Court-fees by subsequent separate Order: *Ramdharlal Vs. Nagendra Prasad Sao, I.L.R. (1969) M.P. 163: AIR 1967 MP 1: 1966 MPLJ 724: 1966 JLJ 704.*

– **Order 33 Rules 1, 5 & 7 and Order 7 Rule 10** – Held, Court, while passing an order under O-33, R-1 can reject the application only on the grounds enumerated in O-33, R-5 CPC, however Court is not precluded from returning the plaint for presentation to proper Court for want of pecuniary jurisdiction–Court is also not precluded from examining the question of its pecuniary jurisdiction and pass orders under O-7 R-10 CPC: *Tejkumar Vs. Subhash Chandra, 1989 MPLJ 382: AIR 1989 MP 78: 1989 JLJ 373.*

– **Order 41 Rule 3A (1), (2)**, Section 100, 2(2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge in appellate decree – Second appeal maintainable against such decree: *Maniram Vs. Mst. Fuleshwar*, I.L.R. (1995) M.P. 518: 1996 MPLJ 764: 1996 J LJ 328. (Contrary view taken by Apex Court in *Ratan Singh v. Vijay Singh* AIR 2001 SC 279: (2001) 1 SCC 469: 2001(1) J LJ 283.)

– **Order 41 Rule 11 and Order 47 Rule 1**, Sections 140, 100, 101 – Review Application–Review of the Order of Single Bench–Placed before the Full Bench in peculiar fact situation – Power of Full Bench is limited to what the Single Bench could do while exercising power of Review – Review permissible only on three grounds specified- (i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed, (ii) mistake apparent on the face of record and (iii) any other sufficient ground – "Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously – Second Appeal dismissed holding "no substantial question of law involved for adjudication" – No ground supplied – Can be a ground for appeal but not for Review – Recourse to Review – Misconceived: *Ratanlal Vs. Bardi Bai*, I.L.R. (2003) M.P.1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) MPHT 295: 2003(2) J LJ 86: 2003(1) MPJR 534.

– **Order 41 Rule 14(3) & (4)** and Motor Vehicles Act, 1988, Section 173 – Appeal – Notice–Held, appeal shall not fail on account of dispensing with notice upon respondents who were ex-parte before the Court of first instance and have not submitted the address of service of notice – Object of provisions is to avoid delay in deciding the appeal, discretion is conferred on Appellate Court to dispense with service of notice – Since respondents have chosen not to appear before Court of first instance, they cannot claim right to be heard at appellate stage – No benefit can be claimed by the party against the exercise of discretion by Court in dispensing with notice – When notices have been dispensed with, appeal cannot be dismissed and Appellate Court has power to modify or enhance the quantum of compensation: *Jamuna Bai Vs. Chhote Singh*, 2004(2) MPLJ 376: 2004(2) MPHT 325: 2004(1) J LJ 227.

– **Order 41 Rule 14(3) & (4)**, (M.P. Amendment) – “proceeding incidental to an appeal”–Held, there is no inconsistency in the M.P. Amendment and Order 41 Rule 14(4) and notice can be dispensed with upon the parties who was proceeded ex-parte before the Court of first instance – Language of Order 41 Rule 14(4) is clear where it provides that it shall not be necessary to serve notice of any “proceeding incidental to an appeal” –

Legislature has made it mandatory that it is not necessary to serve notice: *Jamuna Bai Vs. Chhote Singh*, 2004(2) MPLJ 376: 2004(2) MPHT 325: 2004(1) JLJ 227.

– **Order 41 Rule 22**, Section 96, Letter Patent, Clause X, XIII, Constitution of India Articles 227, 226 – Intra-Court Appeal from writ Court order – Different from an LPA from First Appeal under Section 96 CPC – Cross-objection or cross-appeal – Not maintainable – Respondent cannot await service of notice to file cross appeal in LPA – Respondent may prefer LPA subject to Rule XIII for condonation of delay – May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order – Reference answered accordingly: *Jabalpur Development Authority Vs. Y.S. Sachan & Ors.*, I.L.R. (2004) M.P. 231: 2004(2) MPLJ 178: 2004(2) JLJ 9: 2004(2) MPHT 314.

– **Order 41 Rule 22 & 33** – Held, if a party who could have filed cross objection under Order 41 Rule 22, has not done so, even then Appellate Court can grant him relief under provisions of Order 41 Rule 33 – Provisions of Order 41 Rule 22 and Rule 33 are mutually exclusive in nature: *Prakramchand Vs. Chuttan & Ors.*, AIR 1991 MP 280: 1991 MPLJ 739: 1991 JLJ 733: 1991(II) MPJR 265.

– **Order 43 Rule 1-A and Order 22 Rule 3 & 5**, Sections 96, 104 & 115– Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry – Suit held to have abated and consigned to record – Order is not appealable – Revision lies against such an order – One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part – The former part merges into decree and is open to challenge in the appeal filed against the decree – Revision against earlier part not tenable: *Mitthulal Vs. Badriprasad*, I.L.R. (1984) M.P. 365: AIR 1981 MP 1: 1980 MPLJ 778: 1981 JLJ 21.

– **Order 43 Rule 1(c)** – Words "rejecting an application" in – include dismissal for default or rejection in any other situation whatever: *Nathuprasad Vs. Singhai Kapoorchand*, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.

– **Order 46 Rule 7** – Decree passed by High Court – Is effective by its own force: *Tikaram Vs. Bhaiyalal*, I.L.R. (1972) M.P. 630: AIR 1970 MP 237: 1970 MPLJ 622: 1970 JLJ 858.

– **Order 46 Rule 7** – High Court in control of the case – High Court can pass fresh decree – Even though original Court having no jurisdiction had passed the decree: *Tikaram Vs. Bhaiyalal*, I.L.R. (1972) M.P. 630: AIR 1970 MP 237: 1970 MPLJ 622: 1970 JLJ 858.

– **Order 47 Rule 1** – Review – Scope–Held, review means the act of looking after something again with a view to correction and improvement–Power of review can be exercised for correction of mistake but review is by no means an appeal in disguise for correction of an erroneous decision – This limited power cannot be exercised to substitute a view – Possibility of two views on a legal question is no ground for review – Litigant cannot seek review of a judgment merely for purpose of re-hearing and a fresh decision of the case: *Commissioner of Sales Tax Vs. Hukumchand Mills*, 2004(2) MPLJ 492: 2004(3) MPHT 22.

– **Order 47 Rule 1** and Constitution, Article 141 – Held, overlooking a point of law already settled by a judicial pronouncement of Supreme Court, if a contrary view is taken by High Court, it results in non-application of law and decision would inevitably suffer from an error apparent on face of record for which no elaborate arguments or reasoning would be required to point out such error and it would be good ground for review – It is duty of High Court to correct the mistake: *Commissioner of Sales Tax Vs. Hukumchand Mills*, 2004(2) MPLJ 492: 2004(3) MPHT 22.

– **Order 47 Rule 1** and Section 100–Second Appeal dismissed holding "no substantial question of law involved for adjudication" – No ground supplied – Can be a ground for appeal but not for Review – Recourse to Review – Misconceived: *Ratanlal Vs. Bardi Bai*, I.L.R. (2003) M.P. 1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) MPHT 295: 2003(2) JLJ 86: 2003(1) MPJR 534.

– **Order 47 Rule 1 and Order 41 Rule 11**, Sections 140, 100, 101 – Review Application – Review of the Order of Single Bench – Placed before the Full Bench in peculiar fact situation – Power of Full Bench is limited to what the Single Bench could do while exercising power of Review – Review permissible only on three grounds specified- (i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of record and (iii) any other sufficient ground – "Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously – Second Appeal dismissed holding "no substantial question of law involved for adjudication" – No ground supplied – Can be a ground for appeal but not for Review – Recourse to Review – Misconceived: *Ratanlal Vs. Bardi Bai*, I.L.R. (2003) M.P.1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) MPHT 295: 2003(2) JLJ 86: 2003(1) MPJR 534.

### **Civil Services (Classification, Control and Appeal) Rules, M.P., 1966**

– **Rule 9** – Revocation of suspension and transfer – Composite order – If the authority is competent to revoke suspension as also to transfer the employee, it is open to



such Authority to pass a composite order – Whether a transfer order can withstand the test of judicial scrutiny, will be an independent issue to be decided on settled legal principles: *Asif Mohd. Khan Vs. State of M.P.*, I.L.R. (2015) M.P. 3141: AIR 2015 MP 203: 2015(4) MPLJ 406: 2015(3) JLJ 181: 2016(I) MPJR 40.

– **Rule 9** – Non-conclusion of departmental enquiry within 2 years of its initiation – If the disciplinary enquiry is initiated against an employee after his retirement, it would not automatically come to an end in case the enquiry is not concluded within two years of its inception: *State of M.P. Vs. Puran Lal Nahir*, I.L.R. (2012) M.P. 691: 2012(1) MPLJ 677: 2012(1) MPHT 375: 2012(1) JLJ 179: 2012(II) MPJR 330.

– **Rule 9** – Powers of Governor – Governor is not precluded from passing final order in relation to payment of pension to a Govt. employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its inception: *State of M.P. Vs. Puran Lal Nahir*, I.L.R. (2012) M.P. 691: 2012(1) MPLJ 677: 2012(1) MPHT 375: 2012(1) JLJ 179: 2012(II) MPJR 330.

– **Rule 19** and Constitution of India, Articles 226, 227– Criminal Procedure Code, 1974, Section 389(i) – Writ challenging order of State Administrative Tribunal – Conviction of Government servant by trial Court – Termination – Competent authority can terminate services after conviction by criminal court – Stay of execution of sentence will not debar competent authority from doing so – Master and servant relationship terminates on termination order –Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court–Subsistence allowance cannot be granted for the period: *Jamna Prasad Vs. State of M.P.*; I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.

– **Rule 19** – Criminal Procedure Code, 1973, Sections 387 and 374(2) – Penal Code Indian, 1860–Sections 326, 320 Administrative Tribunals Act, 1985 Section 19 and Constitution of India, Article 227 – Service Law – Termination on ground of conviction in criminal case – Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case – Competent authority can terminate the services after conviction by criminal Court – On termination master and servant relationship comes to an end – Filing of appeal or stay of execution of sentence does not revive the relationship – Employee cannot be taken to be under suspension till decision in appeal – Not entitled to suspension allowance: *Jamna Prasad Vs. State*,

*I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.*

– **Rule 19(1)** and Prevention of Corruption Act, 1988 –Sections 7, 13(1)(d) – Conviction and sentence – Dismissal from service –Whether should be preceded by a hearing or opportunity –Absence of any such provision in rules –No opportunity need be given – 1978 M.P.L.J. 57 and 2003 (II) M.P.L.J. 485 overruled –Disciplinary authority on consideration of facts and circumstances may impose penalty –Conviction in corruption case – Dismissal is just and proper and excessive: *Laxmi Narayan Hayaran Vs. State of M.P., I.L.R. (2004) M.P. 1012: 2004(4) MPLJ 555: 2004(4) MPHT 343: 2005(1) JLJ 125: 2005(I) MPJR 55.*

– **Rule 22(i) & 23** – Order of Punishment passed by name of Governor – Appeal – Maintainability– Held – Authentication of an order of punishment in the name of Governor is an order of State Government against which an appeal would lie to Governor under Rule 23 of the Rules of 1966 – Executive functions of State are carried out in the name of the Governor, but are not exercised by the Governor in his personal capacity – Further, no appeal shall lie to the Governor if an order is passed by him personally in terms of Rule 22(i) of Rules of 1966: *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696.*

– **Rule 23 & 24(1)(i)(b)** – Appellate Authority – Held – In terms of appeal under Rule 23, appellate authority shall be Governor in terms of Rule 24(1)(i)(b) of the Rule of 1966 but again, it is not the power to be exercised by Governor personally, but by the “Council of Ministers” or the “Ministers” as may be warranted in the Rule of Business : *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696.*

### **Civil Services (General Conditions of Service) Rules, M.P., 1961**

– **Rule 6** – See – Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7, 9 &10: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627: 2018(2) MPLJ 419: 2018(1) JLJ 169: 2018(II) MPJR 178.*

– **Rule 8(2) & (7)** – Temporary/Confirmed Employee – Seniority – Held, a probationer who has not been able to pass the departmental examination prescribed either in the rules or in the order of appointment at the end of extended period of probation shall be deemed to be temporary employee under Rule 8(7) of the 1961 Rules – A probationer who has passed the departmental examination prescribed either in the rules or in the order of appointment at the end of extended period of probation shall be deemed to be a

confirmed employee and shall be assigned seniority accordingly: *Masood Akhtar (Dr.) Vs. R.K. Tripathi, 2012(I) MPJR 375.*

– **Rule 12(1)(f)** – Probationer – Seniority – Held, under rule 12(1)(f) an employee would be allowed to retain original seniority where extension of period of probation is not due to any fault or shortcoming of the employee – However, where extension of period of probation is on account of fault or shortcoming on the part of the employee, in such a case the probationer has to be assigned seniority from the date if that date can be ascertained i.e. the date on which he clears the departmental examination or where such date cannot be ascertained, the date on which he is considered suitable for confirmation – The discretion to confer lower seniority to a probationer under rule 12(1)(f) is confined to the extent that despite assigning lower seniority, such probationer shall always rank senior to those who are appointed in subsequent selection: *Masood Akhtar (Dr.) Vs. R.K. Tripathi, 2012(I) MPJR 375.*

### **Civil Services (Pension) Rules, M.P., 1976**

– **Rule 8(2)& (3)** – Principle of Natural Justice – Opportunity of Hearing–Held, principles of natural justice are specifically and expressly excluded and have no application to the cases falling under Rule 8(2) of 1976 Rules in view of the opening words of Rule 8(3) of the Rules of 1976, therefore, when an action is taken against the pensioner under Rule 8(2) of the Rules of 1976, no notice is required to be issued to the pensioner nor can he insist upon prior opportunity of representation on the strength of the principles of Natural Justice, if he has been convicted in criminal cases – However, the power of the authority to take action under the Rules would be subject to the guidelines as stated by the Supreme Court in *Union of India Vs. Tulsiram Patel (1985) 3 SCC 398=AIR 1985 SC 1416: Lal Sahab Bairagi Vs. State of M.P., 2019(IV) MPJR 172. [Special Bench]. (Ram Sewak Mishra Vs. State of M.P., I.L.R. (2017) M.P. 2076: 2017(4) MPLJ 428: 2017(3) JLJ 177 FB Overruled)*

### **College Code**

– **Statute 28** – See – Vishwavidyalaya Adhinyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j): *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299: 2017(4) MPLJ 404: 2017(3) JLJ 138.*

### **Commercial Tax Act, M.P., 1994 (V of 1995)**

– **Section 35** – Providing for deduction at source of tax payable by contractor – Vires of Section 35 challenged – Section 35 not excluding sales made outside state and is

contrary to Section 79 and entry 54 of list II of 7th Schedule providing for exemption of tax on sales made side state – Section 35 is beyond the competence of the state legislature and is *ultra vires* the Constitution: *M/s. Jaiprakash Associates Ltd Vs. State of Madhya Pradesh*; I.L.R. (2006) M.P. 1367: 2006(4) MPHT 431.

– **Entry No.22 in Part I of Schedule II, Entry No.22 in Part V of Schedule II, Entry No.39 in Part IV** – Reference made to 5 judges bench to decide "Whether the coal ash is a part of cinder and covered by the term coal in Entry No.22 in Part V of Schedule II of the Commercial Tax Act or the said commodity would be taxable under Entry No.39 in Part IV ?" – Held – "Coal Ash" is "Cinder" and covered by the term "Coal" in Entry No.22 in Part V of Schedule II and therefore it is not exigible to tax under Entry No.39 in Part IV. Further it has been held that judgment in *Hukumchand Mills* case *de hors* the earlier decisions and the view expressed therein with regard to Cinder (Coal Ash) being different commodity from its parent coal – Overruled to the extent that Cinder is not Coal – Appeal dismissed accordingly – State preferred an appeal against order of Single Judge, holding that – "The rate of tax on the sale of Coal Ash would be same as that of Coal and not prescribed under residuary entry", on the ground that it is against the ratio decided by 3 Judges bench in *Hukumchand Mills Ltd. v. Commercial Tax MP* [1988] 71 STC 101 – Hence this Reference: *Additional Commissioner of Sales Tax Vs. M/s. S. Kumar Limited*, I.L.R. (2008) M.P. 2156: 2008(3) MPLJ 606: 2008(4) MPHT 251: 2008(IV) MPJR 93.

### **Company Act (I of 1956)**

– **Section 433(e)** – Debt – Meaning – Any pecuniary liability, whether payable presently or in future or whether ascertained or to be ascertained – Any liability which is claimed as due from any person: *Jonathan Allen Vs. Zoom Developers Pvt. Ltd.*, I.L.R. (2016) M.P. 3218: AIR 2015 MP 152: 2016(2) MPLJ 136.

– **Section 433(e) & 434** – Locus to file petition under – Unpaid salary/wages & emoluments – Employee of the company has locus to file Company Petition as having been filed by a creditor of the company – Petition is maintainable : *Jonathan Allen Vs. Zoom Developers Pvt. Ltd.*, I.L.R. (2016) M.P. 3218: AIR 2015 MP 152: 2016(2) MPLJ 136.

– **Section 433(e) & 434** – Unpaid salary/wages of workman/employee is covered within the meaning of 'debts' under Section 433(e): *Jonathan Allen Vs. Zoom Developers Pvt. Ltd.*, I.L.R. (2016) M.P. 3218: AIR 2015 MP 152: 2016(2) MPLJ 136.

## Constitution of India

– **Directive Principles of State Policy** – P.I.L. – A woman jumped into funeral pyre of her husband & died (Committed Sati) – Cabinet of State Govt. decided not to provide any kind of financial assistance to Gram Panchayat for two years and also requested the Central Govt. not to extend any financial assistance to that Gram Panchayat – Order challenged by P.I.L. – Looking to the importance of the matter, Division Bench referred the matter to the Full Bench – Held – Although provisions contained in Part IV of the Constitution are not enforceable in any Court – But, if State Govt. or Central Govt. withhold all financial aid of a village on the ground that some people of the village have committed or abetted the commission of offence – Order of the Govt. arbitrary and *ultra vires* Art. 14 of the Constitution: *Anandilal Chourasia Vs. State of M.P.*; *I.L.R. (2007) M.P. 1183*; *AIR 2008 MP 257*; *2007(4) MPLJ 472*; *2007(4) MPHT 501*; *2008(1) JLJ 200*; *2007(III) MPJR 223*.

– **Writ of Certiorari** – When it can be issued – Central Provinces and Berar Revocation of Land Revenue Exemptions Act – Section 5(3) – Word "May" in – Has no compulsory force – Gives discretion to State Government to determine nature of grant and not a discretion to make a grant at all – Rules under the Act – Enquiry prescribed under rules meant for subjective satisfaction of State Government – Does not create any right in claimant for the grant of money or pension – Proceedings under section 5 – Not judicial or quasi-judicial in nature: *Sardar Govindrao Vs. The State of Madhya Pradesh*, *I.L.R. (1959) M.P. 172*; *AIR 1959 MP 339*; *1959 MPLJ 639*; *1959 JLJ 407*.

– **List II – Item 5** – Word "Power" in – A large word and its meaning cannot be limited – Includes power of making laws and imposing taxes: *Achchela Vs. The Janapada Sabha, Sihora & Anr.*, *I.L.R. (1963) M.P. 777*; *AIR 1963 MP 74*; *1963 MPLJ 92*; *1963 JLJ 5*.

– **Articles 2, 3 & 4 and Schedule 7, List I-Entry 78 & 95, List II-Entry 3** and State Reorganisation Act, 1956, Section 51(2) – Authority of Parliament – Held, the Act of 1956 was passed by Parliament exercising powers under Article 2 & 3 – Article 4 of the Constitution clearly provides that when parliament constitutes a new State, it can also make provisions for such supplemental, incidental and consequential provisions as it deems necessary – It can also provide for the organization of the respective organs of the State including the High Court – Entry 78 & 95 in List I of Schedule 7 confers power on Parliament to provide for the organization and constitution of a High Court – It cannot be said that parliament had no authority to enact these provisions.: *Abdul Taiyab Abbas Bhai*

*Malik & Ors. Vs. Union of India & Ors., AIR 1977 MP 116: 1976 MPLJ 767: 1976 J LJ 706.*

– **Article 12 & 226** and M.P. Co-operative Societies Act, 1960, Section 4 – Co-operative Society – Held, a Co-operative Society registered under the Act of 1960 does not fall within the definition of the term “other authorities” as stated in Article 12 of Constitution and is not a statutory body – Normally such societies will not be amenable to writ jurisdiction except in cases where there is a breach of statutory provisions and where enforcement of a legal right is sought: *Ramswarup Gupta Vs. M.P. Co-operative Marketing Federation Ltd, AIR 1976 MP 152: 1976 MPLJ 376: 1976 J LJ 293.*

– **Article 12** – State– Question whether M.P. Cooperative Dairy Federation Limited is a State or not referred to Larger Bench – Body financially, functionally and administratively dominated by or under the control of Govt. is a State – Held – Work of Federation relates to economic development of farmers engaged in production and sale of milk – Development of milk and milk products and economic development of farmers carrying business of sale of milk is part of functions of welfare State – 90% of share capital of federation held by Govt. – In 2003 Rs.9,96,50,024 given by way of grant-in-aid by Govt. thus Federation financially dominated by Government – Vast powers including to appoint, dismiss, suspend federation employees vest in Board of Directors majority of which nominated by Govt. – Managing Director appointed by Govt. and works under control, directions and guidance of Board of Directors – General Assembly of Federation also dominated by Board of Directors thus, Federation dominated and controlled by Govt. administratively and functionally – Federation is a State within meaning of Article 12 – Writ Petition maintainable – Judgment passed by Full Bench in case of Dinesh Sharma overruled: *M.P. State Co-operative Dairy Federation Vs. Madan Lal Chourasia, I.L.R. (2007) M.P. 859: AIR 2007 MP 214: 2007(2) MPLJ 594: 2007(2) MPHT 485: 2007(3) J LJ 125: 2007(II) MPJR 1. (Special Bench)*

– **Article 14** – Hostile discrimination to be established before Act is struck down under the Article: *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 J LJ 425.*

– **Article 14** – ‘Retired Govt. Servant’ is a separate class itself – Such classification not hit by Article 14 of the Constitution of India – Reference answered accordingly: *Kunjulal Yadu Vs. Parasram, I.L.R. (2000) M.P. 416: 2000(2) J LJ 105: AIR 2000 MP 235: 2000(3) MPHT 355: 2000(II) MPJR 123: 2000(2) MPLJ 514.*

– **Article 14** – Liquor Trade– Elimination & exclusion from business is inherent –Trade or business in liquor is a special category and must be treated as a class and

cannot be placed on same pedestal as other trades – Where State Government frames a policy with object to secure maximum revenue for parting with its privilege to deal in liquor, action of State Government cannot be assailed on the ground that it infringes Article 14: *Chingalal Yadav Vs. State of M.P.*, I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) JLJ 360: 2010(2) MPHT 251.

– **Article 14** and Coal Cess Rules, 1935, Rule 1 – Recovery of Coal Cess – Validity of – Continuance of the Rules and levy of Coal Cess on the colliery owners within district of Chhindwara alone in the new State of M.P. – Not an infringement of Article 14 of Constitution – Further, validity of Rules cannot be challenged without submitting any particulars: *Kanhan Valley Coal Company Pvt. Ltd. Vs. Janapada Panchayat, Chhindwara & Ors.*, AIR 1978 MP 69: 1978 MPLJ 67: 1978 JLJ 85.

– **Article 14 & 16** – Infringement of: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.

– **Article 14 & 16** – Principles of "equality of opportunity" – Applicable to members of same class of employee only – Does not prohibit prescription of reasonable rules for selection: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.

– **Article 14 & 19** – Liquor Trade– No citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies: *Chingalal Yadav Vs. State of M.P.*, I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) JLJ 360: 2010(2) MPHT 251.

– **Articles 14, 141, 226 & 227** – Writ petition – Service law – Extraordinary jurisdiction and power of superintendence – Greater the power or jurisdiction greater should be the caution and restraint in exercising such power or discretion – Law of precedent – What is binding as a precedent is the *ratio decidendi* – Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent – Without disturbing decision of Tribunal certain direction given to consider of the petitioner – Decision does not evolve any principle of law – Cannot be said to be a binding precedent – Order dated 4/11/2003 in W. P. No. 5238/02 overruled – Mere ad-hoc appointment for few months – Does not entitled petitioner to seek reinstatement after 16 years – Petition dismissed: *Jagdish Prasad Tripathi Vs. State of Madhya Pradesh Through Secretary School Education Department Bhopal*, I.L.R. (2004) M.P. 1119: 2004(4) MPLJ 564: 2004(4) MPHT 355: 2005(1) JLJ 420: 2005(1) MPJR 47.

– **Articles 14, 226 & 227**, Recovery of Debts Due to Bank and Financial Institutions Act, 1993, Sections 17, 17-A, 18, 20, 22, Debts Recovery Tribunals (Procedure) Rules, 1993, Rule 12(6) and Debts Recovery Tribunals Regulation of Practice Rules 1998, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants – Rejection – Writ petition – Appeal – Word "an" and 'any' – There is no difference between the two terms – Expressions used in Sections 17 and 20 are not repugnant to each other – Order rejecting application for permission to cross-examine witnesses whose evidence was collected on affidavit – Appealable under Section 20 of the Act if substantially affects some rights or liabilities of a party – Collection of evidence on affidavit and production of witness – If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has sworn an affidavit – Regulation 31, 32 are *intra vires* – Do not transgress the limits stipulated under Section 22 – Rule 12(6) – Bar of jurisdiction – There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to – Availability of alternative remedy – No inflexible rules for exercise of discretion by High Court – Depends upon on facts of each case – In exceptional circumstances writ Court can exercise its jurisdiction – Orders impugned do not call for interference in extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India – Leave granted to petitioners to prefer an appeal before appellate tribunal within six weeks: *M/s. P.C.C. Construction Co. Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172: 2003(1) MPJR 260.*

– **Articles 14, 226 & 227** – Education – Admission to B.E. Course – Rules of conduct for Entrance Test and Rules of Admission – Separate Rules in 1988 and 1989 – Framed under Article 162 of the Constitution – Entrance Test 1989 – Petitioner secured 47 to 48.7% marks – Not included in the “Merit List” or even the “Waiting List” – Decision of Government to give admission to 1988 candidates during 1989, who had failed in “General English” though otherwise qualified – Not violative of judicial mandate in M.P. No. 299/88 or of any Rules – So called failed candidates of 1988 deserved protection – Article 166 of the Constitution – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category: *Rahul Vs. State, I.L.R. (1991) M.P. 595: 1990 MPLJ 799: 1990 JIJ 613.*

– **Article 14 & 226**, Public Works Department Workcharged and Contingency Paid Employees Recruitment and Condition of Service Rules, M.P., 1976, Rule 2(h), Workcharged & Contingency Paid Employees Revision of Pay Rules, 1977, Rule 4 and,



Workcharged and Contingency Paid Employees' Pension Rules, 1979, Rule 2(c) – Writ Petition – Service Law – Superannuation –Gangman– Comparable to other class IV employees of State Government – Governed by Rules applicable to Workcharged & Contingency Paid Employees – Age of superannuation is 62 years: *Vishnu Vs. State of M.P.*, I.L.R. (2006) M.P. 312: 2006(1) MPLJ 23: 2006(1) MPHT 374: 2006(I) MPJR 269: 2006(1) JLJ 14.

– **Article 14 & 226**, Industrial Relation Act, MP 1960, Sections 1(3), 112, General Clauses Act, MP, 1957, Section 21 – Exclusion of 'electrical goods industry' from purview of MPIR Act 1960 by Section 1 (4) of Amending Act of 2000 – For application of amending Act no appointed date fixed – Notification of State Government in purported exercise of powers under Section 1(3) of the Act, 1960 – Quashed: *Heavy Electricals Mazdoor Trade Union Habibganj, Bhopal, M.P. Vs. State of M.P. Through The Principal Secretary, Department of Labour, Vallabh Bhawan, Bhopal*, I.L.R. (2006) M.P. 443: 2006(2) MPLJ 289: 2006(1) MPHT 551: 2006(1) MPJR 386: 2006(1) JLJ 392.

– **Article 16** – Relevant connection between test prescribed and interest of public service– No violation of this Article: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.

– **Article 19(1)(b) & 31(2)** – Former provides safeguards to Indian citizen – Later provides general safeguards to all: *Kanhaiyalal Vs. The Collector, Damoh & Ors.*, I.L.R. (1961) M.P. 450.

– **Article 21** – Petitioner's arrest and detention on reasonable suspicion of his being involved in setting and accepting ransom within dacoity – Affected area for payment to abductors at Delhi – Is not in violation of Article 21: *Gulab Chand Vs. State of M.P.*, I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.

– **Article 21 & 226** – Habeas Corpus – Constitution of India – Article 348 and Interpretation of Statute – Hindi version of statute for explaining ambiguity in the English Text – Use of – Madhya Pradesh Dakaiti Prabhavit Kshetra Adhyadesh, 1981 – Section 2 (f) – The term "specified offence" in – Meaning of – Section 2 (b) – The word 'dacoit' in – Explanation of – Act constituting offence mentioned in schedule must have a nexus with the commission of dacoity to become 'specified offence' – The word 'dacoity' has to be understood as defined in section 391, Indian Penal Code – Dacoity affected area – Commission of offence of dacoity within – Not necessary – Section 5 (2), proviso of the ordinance and Criminal Procedure Code, 1973, Section 41 (I) (a) and 167 – Arrest and detention under the Ordinance – Legality of – Right to be released on bail – Extent of – Petitioner's arrest and detention on reasonable suspicion of his being involved in setting

and accepting ransom within dacoity – Affected area for payment to abductors at Delhi – Is not in violation of Article 21: *Gulab Chand Vs. State of M.P.*, I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.

– **Article 25** – Guarantee under, does not take away power of State to legislate and Act for maintenance of peace: *Ram Lal Puri, Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 1: AIR 1971 MP 152: 1971 JLJ 247: 1971 MPLJ 388.

– **Article 47**– Contemplates total prohibition – Total prohibition on sale of liquor placed by State Government – Restriction cannot be said to be unconstitutional: *M/s. N. K. Doongaji And Company Katni Vs. State of M.P.* I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.

– **Article 58(2) & 226(3)** of the Constitution (42nd Amendment) Act, 1976 – Remedy of a Civil Suit contemplated by Section 150 (3) of the M.P. Land Revenue Code, 1959 – Is an alternative remedy: *Manoharlal Vs. State of M.P.*, I.L.R. (1978) M.P. 710: AIR 1978 MP 152: 1978 MPLJ 113: 1978 JLJ 89.

– **Articles 74, 83, 85 & 226** – Writ Petition –PIL – Issue of notice – Depends on whether petitioner has laid Issue foundation for a prima-facie case – House of the people – Entirely for the President to dissolve – Such exercise of discretion by the president– Not justiciable: *S.P. Anand Vs. Prime Minister & Head of The Council of Ministers, namely Shri Atal Bihari Vajpai*, I.L.R. (2004) M.P. 229.

– **Article 132 & 133** – Held, once the decision of the Court is that the question of law raised by a party is concluded by the decision of the Apex Court, then it cannot be said to be such a question of general importance which needs to be decided by the Supreme Court and for which a certificate under Article 133 of the Constitution should be given by this Court – Mere fact that some questions of law with regard to constitutional validity of the Presidential order were raised, does not justify grant of certificate: *Abdul Taiyab Abbas Bhai Malik & Ors. Vs. Union of India & Ors.*, AIR 1977 MP 176: 1977 MPLJ 227: 1977 JLJ 279.

– **Article 133** – Held, before a certificate under Article 133 of the Constitution is granted by this Court, it must be satisfied that a case involves a substantial question of law of general importance and further that the said question, in the opinion of the High Court needs to be decided by the Supreme Court – Where there is a difference of opinion amongst the Judges, but the decision of High Court is based on principles laid down in a decision of Supreme Court, the question is not a substantial question of law to be decided by the Supreme Court – Thus, it cannot be contended that the question whether petitioners have locus standi to file the present petition or not, is a substantial question of

law which needs a decision of the Supreme Court: *Abdul Taiyab Abbas Bhai Malik & Ors. Vs. Union of India & Ors.*, AIR 1977 MP 176: 1977 MPLJ 227: 1977 JLJ 279.

– **Article 133** – M.B. High Court of Judicature Act, 1949 – Section 25 – Judgment of Division Bench of High Court – Appeal to Full Bench under section 25 of M.B. High Court of Judicature Act, upholding judgment of Division Bench – Division Bench is Court immediately below Full Bench–Judgment one of affirmance– No leave can be granted: *Gulabchand Vs. Seth Kudilal*, I.L.R. (1960) M.P. 205: AIR 1959 MP 151: 1960 MPLJ 334: 1959 JLJ 50.

– **Article 141** – Conflicting view of law by Supreme court – Later view to be accepted as correct view: *Samaru Das Banjare Vs. State of M.P.*, I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.

– **Article 141** – Apex Court's decision – Conflicting decisions of Benches comprising equal number of Hon. Judges – Decision of earlier Bench is binding unless explained by the latter decision: *Jabalpur Bus Operator Association and Ors. Vs. State*, I.L.R. (2003) M.P. 1127: AIR 2003 MP 81: 2003(1) MPLJ 513: 2003(1) MPHT 226: 2003(1) JLJ 105: 2003(1) MPJR 158. (Special Bench)

– **Article 141** – Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts: *Jabalpur Bus Operator Association And Ors. Vs. State*, I.L.R. (2003) M.P. 1127: AIR 2003 MP 81: 2003(1) MPLJ 513: 2003(1) MPHT 226: 2003(1) JLJ 105: 2003(1) MPJR 158. (Special Bench)

– **Article 141** – High Court and subordinate Courts should lack competence to interpret decisions of Apex Court: *Jabalpur Bus Operator Association and Ors. Vs. State*, I.L.R. (2003) M.P. 1127: AIR 2003 MP 81: 2003(1) MPLJ 513: 2003(1) MPHT 226: 2003(1) JLJ 105: 2003(1) MPJR 158. (Special Bench)

– **Article 141** – Law of precedent – Conflict in two decisions of co-equal Benches – Decision rendered without considering earlier decision expressing contrary view – Have no value – Earlier decision is binding on the Bench of equal strength – Matter should be referred to the larger Bench in case of conflict: *Jabalpur Bus Operator Association And Ors. Vs. State*, I.L.R. (2003) M.P. 1127: AIR 2003 MP 81: 2003(1) MPLJ 513: 2003(1) MPHT 226: 2003(1) JLJ 105: 2003(1) MPJR 158. (Special Bench)

– **Article 141** – Precedent – Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding: *Wali Mohd. Vs. Batul Bi*, I.L.R. (2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.

– **Article 141** – Law of precedent – What is binding as a precedent is the ratio *decidendi* – Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent : *Jagdish Prasad Tripathi Vs. State of Madhya Pradesh Through Secretary School Education Department Bhopal, I.L.R. (2004) M.P. 1119: 2004(4) MPLJ 564: 2004(4) MPHT 355: 2005(1) JLJ 420: 2005(I) MPJR 47.*

– **Article 141** – Speaking Order – Binding Precedent–Held, order passed by Supreme Court shows that there is no declaration of law – When no reason is given but a SLP is dismissed or disposed of simpliciter, it cannot be said that there has been a declaration of law by Supreme Court under Article 141 of Constitution: *Dr. Kirti Deshmankar Vs. Union of India, AIR 1990 MP 357: 1990 MPLJ 494: 1990 MPJR 786.*

– **Article 141** – Speaking Order – Binding Precedent– Held, if order passed by Supreme Court is a speaking order, giving reasons for refusing to grant leave, the statement of law contained in that order is a declaration of law by Supreme Court within the meaning of Article 141 of Constitution – Findings recorded by Supreme Court bind the Court in any proceeding subsequent thereto – Further, it is well settled that a High Court cannot declare that a decision of Supreme Court is per incuriam: *M.P. State Electricity Board, Jabalpur Vs. Pandey Construction Co., 2005(2) MPLJ 550: 2005(2) MPHT 206: 2005(I) MPJR 509: 2005(2) JLJ 316.*

– **Article 141** – Binding Precedent – Held SLP was dismissed *in limine* without adverting to the issues on merits and, therefore, the same would not lay down any binding precedent on the question of Law: *Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd Vs. Sita Ram Patel, 2019(4) MPLJ 367.*

– **Article 141** – Binding Precedent – Held, it is settled proposition of law that dismissal of SLP by Apex Court “without giving reasons” cannot be said to be a binding precedent as there is no merger of the impugned order on dismissal of SLP – Dismissal simpliciter in which permission to file an appeal is not granted would not be a declaration of law by Supreme Court – It would not attract doctrine of merger and would not be a binding precedent: *M.P. State Electricity Board, Jabalpur Vs. Pandey Construction Co., 2005(2) MPLJ 550: 2005(2) MPHT 206: 2005(I) MPJR 509: 2005(2) JLJ 316.*

– **Article 141** – Binding Precedent – Dismissal of appeal from Rama & Co. is not binding precedent as there are earlier judgments in field and High Court bound to follow earlier decisions – View taken in *Dr. Jaidev Siddha* and others cannot be treated to have been impliedly overruled due to dismissal of SLP preferred against order rendered in case of *Rama and Company* – Law laid down in case of *Dr. Jaidev Siddha* holds field and principles laid down therein have full applicability. (Majority View): *Manoj Kumar Vs.*

*Board of Revenue, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) JLJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Article 141** – Binding Precedent– Judgment passed in case of Dr. Jaidev Siddha is per incuriam – View taken by Supreme Court in SLP arising out of order rendered in case of Rama and Company is binding precedent as sole question in SLP was about maintainability of appeal after coming into force of Act, 2005. (Minority view): *Manoj Kumar Vs. Board of Revenue: I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) JLJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Article 141** – Binding Precedent– Held, a mere order of dismissal of Special Leave Petition in motion, containing no reasons on interpretation of provisions of the Act cannot be treated as a binding precedent on his Court: *Madhukar Rao Vs. State of M.P. & Ors., 2000(1) MPLJ 289: 2000(1) JLJ 304: 2000(2) MPHT 445. (Approved by Supreme Court in State of M.P. Vs. Madhukar Rao ILR 2008 MP 640: 2008(1) MPJR 189: 2008(1) JLJ 427)*

– **Articles 141, 226 & 227** – Writ Petition – Law of precedent – Conflict in two decisions of co-equal Benches – Decision rendered without considering earlier decision expressing contrary view – Have no value – Earlier decision is binding on the Bench of equal strength – Matter should be referred to the larger Bench in case of conflict – Apex Court's decision – Conflicting decisions of Benches comprising equal number of Hon. Judges – Decision of earlier Bench is binding unless explained by the latter decision – High Court and subordinate Courts should lack competence to interpret decisions of Apex Court – Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts: *Jabalpur Bus Operator Association And Ors. Vs. State, I.L.R. (2003) M.P. 1127: AIR 2003 MP 81: 2003(1) MPLJ 513: 2003(1) MPHT 226: 2003(1) JLJ 105: 2003(1) MPJR 158. (Special Bench)*

– **Article 141**, Criminal Procedure Code, 1973, Sections 125, 127, 295 and 482 and Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5 – Precedent – Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding – Interpretation of statute – Cardinal principle – Every statute is *prima facie* prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligation – Right to get maintenance from her husband is a vested right of a woman in any religion – No provision in the Act of 1986 so as to give it retrospective operation – Substantive law

relating to vested rights – Such law are normally treated as prospective – Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C. – Talaq – Plea of divorce taken in written statement is no proof of divorce – Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law – Husband shall continue to remain liable until obligation comes to an end in accordance with law: *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.*

– **Article 154 & 299** – Statutory functions conferred on authority subordinate to the Governor – Functions not performed in the name of Governor – Such functions to be performed in accordance with statute conferring the functions – Such power does not become executive power of the Governor – Contract by such authority does not fall under Article 299: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 162** – No guidelines and procedure provided in the notification for grant or refusal of certificate – State Govt. is a competent to issue executive instructions for guide – lines and procedure in exercise of powers conferred under Article 162 of Constitution – Executive powers of the State are co-extensive with legislative powers: *M/s .Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502: 1988 MPLJ 620: 1988 JLJ 701.(Overruled in State of M.P. Vs. G.S. Dall & Flour Mills AIR 1991 SC 772)*

– **Article 166** – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category: *Rahul Vs. State of M.P., I.L.R. (1991) M.P. 595: 1990 MPLJ 799: 1990 JLJ 613.*

– **Article 213(1) & 254** and M.P. Krishi Upaj Mandi Adhiniyam, 1972, Section 11 (Amended by Ordinance No. 9 of 1977) – Validity of Ordinance – Assent of President – Held, there is no such requirement of law that if an Act has been enacted after it received the assent of the President, then no amendment of any kind can be made without the President's assent – Amendment can be made by Ordinance of Governor without the President's assent – Such ordinance is not *ultra vires* or invalid – When a subject matter is within the competence of the State Legislature and it is not repugnant with any provision of a law made by Parliament within the meaning of Article 254 of Constitution, assent of President is not necessary – Thus, the Ordinance so far it effects the cessation of membership of a committee constituted within a particular specified period and

dissolution of Committee constituted during that period, is not invalid: *Rasal Singh Vs. State of M.P.*, 1978 JLJ 216.

– **Articles 216, 225 & 226**, State Reorganisation Act, 1956, Sections 54 & 68, Government of India Act, 1915, Section 106, High Court Rules and Orders, M.P., Section 3, Court Fees Act, 1870, Section 35– Public Interest Litigation – In order to regulate filing of PIL, the Division Bench in its order dated 09.09.1999 in W.P. No.988/1999 issued certain directions including security deposit – Matter referred by the Division Bench to Full Bench after framing 5 substantial question of law – Held – Answering the reference the Full Bench held that the directions contained in the order dated 09.09.1999 passed in W.P. No.988/1999 by Division Bench of this Court will no longer hold good and that the rules in Section 3 of the High Court Rules for proceedings under Article 226 of the Constitution made under Article 225 of the Constitution and Clause 27 of the Letters Patent made by the High Court of Judicature, Nagpur, as amended from time to time, will continue to apply to all Public Interest Litigations filed under Article 226 of the Constitution until replaced or amended by rules made by the High Court of M.P. in exercise of its powers u/s 54 of the Act of 1956 r/w Article 225 of the Constitution: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008 MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105*.

– **Articles 216, 225 & 226**, State Reorganisation Act, 1956, Section 54 & 68, Government of India Act, 1915, Section 106, High Court Rules and Orders, M.P., Section 3– Public Interest Litigation – Powers to make Rules – These rules and orders do not provide for security deposit to be made along with a writ petition filed under Article 226 of the Constitution and it is only the High Court comprising of the Chief Justice and all Judges of the High Court of M.P. appointed by the President or a Committee of the High Court Judges or a Judge authorized to make orders or rules relating to practice and procedure of the High Court, which could make fresh orders or rules providing for a security deposit along with every PIL filed to prevent the abuse of PILs and hence the order dated 09.09.1999 of the Division Bench in W.P. No.988/1999 was without jurisdiction: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105*.

– **Article 226** – Principle of Natural Justice – Speaking/Reasoned Order–Held, unless expressly or impliedly required by a Statute or the rules, there is no obligation on a Tribunal to give reasons while passing orders – Giving of reasons is not a requirement of natural justice and a non-speaking order cannot be set aside merely on the ground that it

was not speaking and there was no application of mind before passing the order –Where a Tribunal chooses not to give any reasons for any particular decision, it cannot be inferred that reasons of Tribunal for such decision is bad in law: *Rana Natwar Singh Vs. State of M.P.*, 1980 MPLJ 729: AIR 1980 MP 129: 1980 JIJ 69. (Not good law as per *Samaru Banjare Vs. State of M.P.* 1985 MPLJ 361: 1985 JIJ 460)

– **Article 226** – Powers of Court – Generally relief under Article 226 should not be refused on technical grounds – Article 226 confers wide powers on High Court to reach injustice wherever it is found – No limits can be placed upon exercise of discretionary jurisdiction under Article 226 but it must be exercised along recognised lines of judicial principles and not arbitrary: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259: 1999(1) JIJ 14.

– **Article 226** – News Publication–Held, the news item published in daily news papers cannot ex-facie be taken to be of such authenticity which may warrant initiation of action in proceedings under Article 226 of Constitution: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259: 1999(1) JIJ 14.

– **Article 226** – Undertrials Prisoners – Fundamental Rights – Duty of State– Held, the convicts or undertrials are not wholly denuded of their fundamental rights – It is the duty of State to take effective steps to protect their guaranteed constitutional rights such as right to life, liberty, pollution free air and water – State has to ensure that condition of prisoners conform to certain minimum standards, maintenance, health, hygiene, institutional treatment and discipline and for taking corrective action as may be found necessary: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259: 1999(1) JIJ 14.

– **Article 226** – Pleadings– Reliefs – Though liberal consideration to the pleadings is to be given so as to allow any question to be raised and discussed covered thereunder yet a petitioner cannot be deemed to be entitled to a relief upon the facts and evidence, neither stated nor referred to in the pleadings relied upon: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259: 1999(1) JIJ 14.

– **Article 226** – Judicial Review – Scope and Interference – Jurisdiction of High Court – Held – Power of judicial review under Article 226 is not as Court of appeal but to find out whether the decision making process is in accordance with law and is not arbitrary or irrational – Further held – Even if High Court finds some illegality in the decision of the State Government, jurisdiction of High Court under Article 226 is to remit the matter to authority for reconsideration rather than to substitute the decision of competent authority with that of its own – Decision of the State Government holding that petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post



and the duties to be discharged: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627: 2018(2) MPLJ 419: 2018(1) JLJ 169: 2018(II) MPJR 178.*

– **Article 226** – Writ Petition – Alternative remedy – Court will consider whether the petition should not be entertained due to existence of an alternative remedy and depending upon the facts of each case and the nature of violation: *Anand Kumar Dubey Vs. Jabalpur Co-operative Milk Producers Union Ltd., I.L.R. (2013) M.P. 538: 2013(2) MPLJ 442: 2013(2) MPHT 124: 2013(3) MPHT 32: 2013 RN 164.*

– **Article 226** – Writ Petition – Maintainability – A writ petition would be maintainable against a body which is 'State' within the meaning of Article 12 of the Constitution even if the alleged breach is of a legal right, whether conferred by statute or otherwise: *Anand Kumar Dubey Vs. Jabalpur Co-operative Milk Producers Union Ltd., I.L.R. (2013) M.P. 538: 2013(2) MPLJ 442: 2013(2) MPHT 124: 2013(3) MPHT 32: 2013 RN 164.*

– **Article 226** – Expert Opinion – Judicial Review – Jurisdiction – Held – This Court should not act as a Court of Appeal in matter of opinion of experts in academic matters – Power of judicial review is concerned not with the decision but with decision making process – Court should not under the guise of preventing abuse of power be itself guilty of usurping power: *Nitin Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2314: AIR 2018 MP 64: 2018(1) JLJ 333: 2017(4) MPLJ 353: 2018(II) MPJR 51.*

– **Article 226** – Recruitment Examination – Answer Key – Judicial Review – Held – In exercise of judicial review, Court should not refer the matter to Court appointed expert as Courts have a very limited role particularly when no *malafides* have been alleged against the experts constituted to finalize answer key – It would normally be prudent, wholesome and safe for Courts to leave the decisions to the academicians and experts: *Nitin Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2314: AIR 2018 MP 64: 2018(1) JLJ 333: 2017(4) MPLJ 353: 2018(II) MPJR 51.*

– **Article 226** – Suppression of material fact – First W.A. withdrawn stating that Service Tax due already deposited so it become infructuous – Court permitted for withdrawal with liberty to approach appropriate forum – Second W.A. filed in a quite different manner suppressing that order was challenged previously in W.P. and order of CESTAT was modified and appellant was directed to deposit amount – Held – Liberty to approach appropriate forum would not include filing second W.A. – Effort has been made to reiterate the grievance in different manner unknown to law and the same is nothing but abuse of process of Court – Since second W.A. is not maintainable – Reference need not be answered – W.A. dismissed: *Great Galleon Ltd. Vs. Union of*

*India, I.L.R. (2009) M.P. 1869: 2009(2) MPLJ 609: 2009(3) MPHT 356: 2009(3) JLJ 15: 2009(II) MPJR 43.*

– **Article 226** – Dispensation of court fee on regular writ petition filed as Public Interest Litigation – View taken by Full Bench in ILR [2008] MP 2172 that court fee are payable on PIL filed as Writ Petition under Article 226 of Constitution except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that to be a fit case for registering case even though no court fee is paid on such letter or document is correct – Review dismissed: *Satya Pal Anand Vs. Registrar General, High Court of M.P., I.L.R. (2009) M.P. 1586: AIR 2009 MP 190: 2009(2) MPLJ 567: 2009(3) MPHT 301: 2009(1) JLJ 370: 2009(II) MPJR 302.*

– **Article 226** – Existence of alternative remedy – Not absolute bar to exercise of direction under this article: *Col. Lal Rampal Singh Vs. State of M.P., I.L.R. (1960) M.P. 934: AIR 1961 MP 154: 1961 MPLJ 1: 1961 JLJ 32.*

– **Article 226** – Futile writs cannot be issued: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R (1987) M.P. 736.*

– **Article 226** – Issue of writ of Mandamus – Whether can be issued against University for taking decision regarding grant of approval to the resolution of governing body of the college: *Jai Prakash Mudaliar Vs. A. C. Choubey, Pleader & President, Governing Body, Pt. Jawaharlal Nehru Science & Arts College, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JLJ 93.*

– **Article 226** – Decision of authority erroneous – No ground of interference unless decision is mala fide: *Kanhaiyalal Vs. The Collector, Damoh & Ors., I.L.R. (1961) M.P. 450.*

– **Article 226** – Maintainability of Writ Petition – Society not falling within the meaning of ‘State’ – Still amendable to writ jurisdiction to enforce statutory duty or duty imposed by charter, common law, custom or contract – Even if the respondents/Societies cannot be characterized as ‘State’ within the meaning of Article 12 of the constitution and, as such, are not amendable to writ jurisdiction, if the society or its officers act in violation of statutory provisions and/or fail to discharge statutory public duty, a writ would lie for enforcement of statutory obligations and public duty: *Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit, I.L.R. (1993) M.P. 53: 1993 MPLJ 786: 1993(II) MPJR 20. (No longer good law in view of (2002) 5 SCC 111 – Held, in M.P. State Co-operative Dairy Federation Vs. Madan Lal Chourasia ILR 2007 MP 859: AIR 2007 MP 214: 2007(2) MPLJ 594: 2007(2) MPHT 485: 2007(3) JLJ 125)*

– **Article 226** – Petitioner unsuccessful examinee at LL. B. Examination of Saugor University – Awadhesh Pratap University permitting petitioner to appear in LL. B. Examination as Ex-student – Admission card issued – Subsequently University cancelling it and withholding result without notice to show cause – Rules of natural justice violated – Certiorari can issue: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University Rewa I.L.R. (1979) M.P. 289: 1978 J LJ 182: 1978 MPLJ 172: AIR 1978 MP 86.*

– **Article 226** – State Government or Probation Board not acting arbitrarily, capriciously or with mala fide – Order cannot be challenged in writ under Article 226 of Constitution: *Lalji Vs. State, I.L.R. (1989) M.P. 567: AIR 1988 MP 82: 1988 MPLJ 127: 1988 J LJ 407.*

– **Article 226** – Writ Petition – Service Matter – Status of Chief Municipal Officer of a Municipality – Whether an employee of the State Govt. or of the Municipality – Reference to larger Bench – Municipalities Act., M.P 1961 – Sections 86, 87, 89, 90, 94 and Madhya Pradesh State Municipal Services (Executive) Rules, 1973 – Appointments of C.M.O. are made by the State Govt. unlike other staff for which only confirmation by the State Govt. is required – Fundamental Rules 22-A and 22-B are applicable – Testing on the anvil of legal position there is no difficulty in holding that Chief Municipal Officer are the servants of the State Government – Such Master & Servant relationship is not affected merely because salaries and allowances of such members are a charge on the Municipal funds – Reference answered accordingly: *Suresh Chandra Sharma Vs. State, I.L.R. (2000) M.P. 645: 2000(2) MPLJ 530: 2000(2) J LJ 268: 2000(II) MPJR 449.*

– **Article 226** – Order of State Government merging in the confirming order of Central Government – Central Government situated outside the jurisdiction of the High Court – High Court – No power, to issue writ to quash the order of the Central Government – Even the order of State Government cannot be got rid of – Precedent – Obiter Dicta of Supreme Court – Binding on High Court – Two reasons given for conclusion – None can be regarded as Obiter: *Seth Surajmal Vs. State of Madhya Pradesh, I.L.R. (1957) M.P 507: AIR 1958 MP 103: 1957 MPLJ 788: 1957 J LJ 1011.*

– **Article 226** – Scope – Grounds – Held, petitioner cannot be permitted to urge the grounds which were not specifically taken in the petition: *Bhanwarlal Chandmal Vs. State of M.P. & Ors. 1981 MPLJ 485: AIR 1981 MP 220: 1981 J LJ 612.*

– **Article 226** – Original Jurisdiction – When a writ is issued under Article 226 of Constitution in respect of Court or Tribunals or administrative authorities it is done in

exercise of original jurisdiction. (Majority View): *Manoj Kumar Vs. Board of Revenue*, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) J LJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)

– **Articles 226, 356 & 361** – Proclamation of Emergency – Immunity to Governor – Held, even if it is said that the report of the Governor has not taken the facts in their right perspective and thus the same are biased, vitiated with malafides, Governor will be deemed to have acted in the purported exercise of his powers and duties as enjoined by Constitution under Article 356 thereof – In the petition, no relief against the Governor nor even a relief of quashing his reports been sought – Even if malice in law can be said to be inferred, the Governor of State attracts the immunity clause as per Article 361 of the Constitution – Thus it is neither proper nor legal for the Governor to be made a party in the case: *Sunderlal Patwa Vs. Union of India*, AIR 1993 MP 214: 1993(I) MPJR 289: 1993 J LJ 387.

– **Articles 226, 356 & 356(5)** – Proclamation of Emergency – Judicial Review– Held, the Presidential Proclamation issued under Article 356 is open to judicial review on the settled principles and limits within which any other administrative action of the Government is so reviewable – This is the effect of the lifting of the bar on judicial review by deletion of clause (5) of Article 356 of Constitution by the 44<sup>th</sup> Amendment Act: *Sunderlal Patwa Vs. Union of India*, AIR 1993 MP 214: 1993(I) MPJR 289: 1993 J LJ 387.

– **Articles 226, 355 & 356** – Proclamation of Emergency – Justification–Held, incapacity or helplessness of State to meet a threat to public order or peace is not a permissible ground unless it results in non-functioning of the Government in the State – Article 355 enjoins upon the Union to help the State in maintaining its Government, but that duty is not to be discharged only by Proclaiming the Presidential Rule – Internal Disturbance is no longer a ground for imposition of emergency and it is only disturbance of nature of armed rebellion which could be a ground for proclamation of emergency – Failure on the part of the Government to save lives and properties of citizens in few cities in the State as a result of sudden outbreak of violence, could not reasonably led to the satisfaction of President that Government was unable to function in accordance with the Constitution of India or there was failure of constitutional machinery in the State – Presidential Proclamation was invalid exercise of power and beyond scope of Art. 356 and hence quashed: *Sunderlal Patwa Vs. Union of India*, AIR 1993 MP 214: 1993(I) MPJR 289: 1993 J LJ 387.

– **Articles 226(1)(a),(b),(c) & 226(3) and Constitution (42<sup>nd</sup> Amendment) Act, 1976**, Section 58– Scope & Applicability – Held, jurisdiction under Article 226(1) before

the amendment was very wide – After the amendment, jurisdiction under Article 226(1) has been restricted and further a fetter has been imposed under Article 226(3) that no such petition for redress of injury referred to in Article 226(1)(b) and (c) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force – But, such fetter does not apply to a case under Article 226(1)(a) relating to enforcement of fundamental rights – Applicability of the fetter imposed will always depend on facts and circumstances of each case and no hard and fast rule can be laid down in this respect – Petitions, in which alternate remedy is available, pending on appointed day, abates: *M.P. State Road Transport Corporation, Bhopal Vs. Regional Transport Authority, Jabalpur, AIR 1978 MP 1: 1977 MPLJ 863: 1977 J LJ 849.* (Note: Article 226(3) has been substituted by Constitution (44<sup>th</sup> Amendment) Act, 1978, Section 30).

– **Articles 226(1)(a),(b),(c) & 226(3) and Constitution (42<sup>nd</sup> Amendment ) Act, 1976, Section 58(2) – Period of Limitation – Applicability– Held, for the purpose of giving benefit of exclusion of time in computing period of limitation for seeking other available remedy, the period during which the proceedings related to such abated petition remained pending in the High Court shall be excluded: *M.P. State Road Transport Corporation, Bhopal Vs. Regional Transport Authority, Jabalpur, AIR 1978 MP 1: 1977 MPLJ 863: 1977 J LJ 849.***

– **Article 226** and M.P. Co-operative Societies Act, 1961, Section 55 – Termination of Employee – Jurisdiction– Held, if society terminates the services of its employees without complying the provisions of the statutory rules framed under the Act of 1961, the employee concerned can always approach the High Court under Article 226 not for enforcement of contract of service but for enforcing his legal rights which has been created by virtue of provisions of the Rules – Writ can be issued in such cases where Society has not carried out any legal obligation or has acted in violation of any statutory provisions: *Ramswarup Gupta Vs. M.P. Co-operative Marketing Federation Ltd, AIR 1976 MP 152: 1976 MPLJ 376: 1976 J LJ 293.*

– **Article 226** and M.P. Co-operative Societies Act, 1961, Section 55(1) & (2) – Termination of Employee – Alternate Remedy – Jurisdiction of Court – Effect– Held, Section 55(2) provides forum for deciding a dispute regarding the terms of employment, working conditions and the disciplinary action taken by Society which may arise between the Society and its employees – This does not mean that due to availability of this alternate remedy, jurisdiction under Article 226 can never be invoked in a proper case where violation of provisions of Section 55(1) is apparent: *Ramswarup Gupta Vs. M.P.*

*Co-operative Marketing Federation Ltd, AIR 1976 MP 152: 1976 MPLJ 376: 1976 J LJ 293.*

– **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: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R (2020) M.P. 2024: 2020 (4) MPLJ 511: 2020 (4) J LJ 11*

– **Article 226 & 227** – Distinction between – Proceedings under Article 226 are in exercise of original jurisdiction while proceedings under Article 227 are only supervisory. (Majority View): *Manoj Kumar Vs. Board of Revenue, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) J LJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Article 226 & 227** – Writ of Certiorari – In issuing writ of certiorari High Courts acts in exercise of original jurisdiction and not in exercise of appellate or revisional jurisdiction – Power to issue writ is original jurisdiction. (Majority View): *Manoj Kumar Vs. Board of Revenue, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) J LJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Article 226/227** – Academic Issues – Courts should be reluctant to decide constitutional points merely as matters of academic importance: *State of Madhya Pradesh Vs. M/s Shekhar Constructions, I.L.R. (2008) M.P. 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) J LJ 23. (Special Bench)*

– **Article 227** – Power of Superintendence – Power of Superintendence conferred on High Court is power restricted to the Courts and tribunal in relation to which it exercise jurisdiction – Power under Article 226 is not confined to Courts or Tribunals but extends to any person or authority. (Majority View): *Manoj Kumar Vs. Board of Revenue, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) J LJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Article 227**, Fundamental Rules, M.P., Rules 9 (23), 27 and Revision of Pay Rules, M.P., 1990, Rules 3(d) and 7(1) – Service law – Pay fixation on Revision of pay – Two advance increments for family planning operation – Constitutes personal pay' – Govt. servant gets benefits of two advance increments when pay is fixed in revised

scale above pre-fixation emoluments – Once pay is fixed in accordance with Sub-Rule (1) of Rule 7, Government Servant cannot claim any further benefit in the event of his promotion or payment of higher scale of pay: *State of Madhya Pradesh Vs. R.K. Chaturvedi*, I.L.R. (2006) M.P. 655: 2006(2) MPLJ 374: 2006(2) MPHT 281: 2007(I) MPJR 139: 2006(2) JLJ 143.

– **Articles 226, 14, 19(1)(g) & 227** and Excise Act, M.P. 1915(As amended by Act No. XX of 2000), Sections 34, 46, 47, 47-A, 47-B, 47-C and 47-D and Criminal Procedure Code 1973, Section 389 – Offences relating to liquor exceeding fifty bulk litres at the time of detection – Penal provisions made more condign and deterrent – Confiscation – Power of appellate and revisional Courts – Sessions Judge exercising power of revision can also pass orders which can be passed by the appellate authority – Power to pass order for preserving and keeping the seized articles in fact is thus saved – Restriction on the power to stay the order of confiscation – Cannot be held to be arbitrary irrational or unreasonable – Not *ultra vires* – Remedy of appeal and revision available – Petitioner may pursue the remedy: *Shrish Agrawal Vs. State*, I.L.R. (2003) M.P.579: 2003(2) MPLJ 189: 2003(2) MPHT 97: 2003(I) MPJR 346: 2003(2) JLJ 22.

– **Article 226/227**, Co-operative Societies Act, M.P., 1960 Section 9 – Reference – Whether Co-operative Society constituted under Section 9 of M.P. Co-operative Societies Act is a State or not? – Entire share capital not held by State Government – No financial assistance by State Govt. to meet entire expenditure – No monopoly enjoyed – No deep and pervasive State Control – Society performing commercial function for betterment of its members – No Department of Govt. transferred to Society – Such Society not instrumentality of State – Not amenable to writ jurisdiction: *Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit*, I.L.R.(1993) M.P. 53: 1993 MPLJ 786: 1993(II) MPJR 20.(No longer good law in view of(2002)5 SCC 111 – Held, in *M.P. State Co-operative Dairy Federation Vs. Madan Lal Chourasia* ILR 2007 MP 859: AIR 2007 MP 214: 2007(2) MPLJ 594: 2007(2) MPHT 485: 2007(3) JLJ 125)

– **Article 226 & 227** – Writ Petition under – Raising questions of vires of any enactment, rule, order or notification etc. – Hearing of – Can be done only at Jabalpur: *Balkishandas Vs. Harnarayan*, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.

– **Article 226 & 227** – M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – Rule 19 and Criminal Procedure Code, 1974, Section 389(i) – Writ challenging order of State Administrative Tribunal –Conviction of Government servant by trial Court – Termination – Competent authority can terminate services after

conviction by criminal court – Stay of execution of sentence will not debar competent authority from doing so – Master and servant relationship terminates on termination order – Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court – Subsistence allowance cannot be granted for the period: *Jamna Prasad Vs. State of M.P.*; *I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) J LJ 158.*

– **Article 226 & 227, Entry 49 or 50 of State List I and II, 7<sup>th</sup> Schedule** – Levy imposed by the Act is tax on minerals produced and not tax on land itself – Not covered by Entry 49 or 50 of State list II – Section 11 of the Act as amended is *ultra vires*: *M.P. Lime Manufacturers' Association, Katni Vs. State of M.P.*, *I.L.R.(1991) M.P. 1: AIR 1989 MP 264: 1989 MPLJ 561: 1989 MPJR HC 781: 1989 J LJ 605. (Approved by Apex Court in 1991 (Supp) 1 SCC 430).*

– **Article 226 & 227, Recovery of Debts Due to Banks and Financial Institutions Act 1993, Section 17 & 21** – Alternate Remedy – Jurisdiction – Held, there is no bar for entertaining a writ petition under Article 226/227 wherean alternative remedy has not been taken resort to – Despite statutory remedy provided for preferring appeal, in exceptional circumstances, writ Court can exercise jurisdiction under Article 226/227 and such exercise of power would depend upon facts and circumstances of the case: *Kowa Spinning Ltd. & Ors Vs. Debt Recovery Tribunal & Ors.*, *2003(1) J LJ 410: 2003(2) MPLJ 161: 2003(2) MPHT 114: AIR 2004 MP 1: 2004 AIHC 122.*

– **Article 226 & 227** – Writ of Certiorari – Discretion – Held, there are no inflexible rules for exercise of discretion by High Court while issuing the prerogative writ of Certiorari: *Kowa Spinning Ltd. & Ors Vs. Debt Recovery Tribunal & Ors.*, *2003(1) J LJ 410: 2003(2) MPLJ 161: 2003(2) MPHT 114: AIR 2004 MP 1: 2004 AIHC 122.*

– **Article 226** and M.P. Co-operative Societies Act, 1960, Section 55(1) – Duties of Appellate Authority – Held, a statutory authority hearing an appeal involving a legal right of the citizen must pass a speaking order: *Anil Kumar Ojha Vs. Appellate Authority, Dist. Co-oper. Land Development Bank Ltd.*, *1984 MPLJ 508: AIR 1984 MP 123: 1984 J LJ 619.*

– **Article 226 & 227** and Industrial Relations Act, M.P, (XXVII of 1960) Section 31(3), 61, 62 and Limitation Act (XXXVI of 1963), Section 5, 29 – Labour Law – Dispute – Approach to the Labour Court belated – Powers of Labour Court and commencement of proceedings – For sufficient reasons Labour Court may admit an application after expiry of the limitation prescribed under the State Act – Section 62(2) of



the M.P.I.R. Act does meet the twin requisite ingredients to have the applicability of the limitation Act – workman filing application under Section 62 of M.P.I.R. Act beyond limitation can always file application under Section 5 of the Limitation Act for condonation of delay – Reference answered accordingly: *Mohamad Sagir Vs. Bharat Heavy Electricals*, I.L.R. (2004) M.P.338: 2004(2) MPLJ 359: 2004(2) MPHT 179: 2004(2) JJJ 18: 2004(I) MPJR 316.

– **Article 226 & 227**, Civil Procedure Code, 1908, Order 41 Rule 22, Section 96, Letter Patent, Clause X, XIII – Intra-Court Appeal from writ Court order – Different from an LPA from First Appeal under Section 96 CPC – Cross-objection or cross-appeal – Not maintainable – Respondent cannot await service of notice to file cross appeal in LPA – Respondent may prefer LPA subject to Rule XIII for condonation of delay – May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order – Reference answered accordingly: *Jabalpur Development Authority Vs. Y.S. Sachan & Ors.*, I.L.R. (2004) M.P. 231: 2004(2) MPLJ 178: 2004(2) JJJ 9: 2004(2) MPHT 314.

– **Article 226 & 243-O**, Panchayat Raj Adhiniyam, 1993 (I of 1994), Section 19, 23, 36 and 122, Panchayat (Sarpanch, Up-sarpanch, President, Vice-President) Nirvachan Niyam, 1995, Rules 16(7)(i), 17 and 22 and Panchayat (Election Petition, Corrupt practices and Disqualification for Membership) Rules, M.P., 1995 Rules 2(c) and 21 – Election of President, Zila Panchayat – Certificate issued by competent authority – Notification not issued – Section 122, Panchayat Raj Adhiniyam – Election petition – In absence of notification of election no Election petition can be filed – Election petition filed prior to notification under Rule 22 – Nirvachan Niyam not liable to be taken up for consideration as being incompetent – Rules 2(c), 17 and 22 – “Returned Candidate” means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected – Unless notification is issued there cannot be any returned candidate hence no election petition could be filed on the basis of certificate issued under Rule 17 of the Election Rules: *Chandra Bhan Vs. State*, I.L.R. (2001) M.P. 291: 2001(2) MPLJ 419: 2001(2) MPHT 242: 2001(II) MPJR 174.

– **Article 226(3) and Section 58(2) of the Constitution (42nd Amendment) Act, 1976** – Remedy of a Civil Suit contemplated by Section 150 (3) of the M.P. Land Revenue Code, 1959 – Is an alternative remedy: *Manoharlal Vs. State of M.P.*, I.L.R.(1978) M.P. 710: AIR 1978 MP 152: 1978 MPLJ 113: 1978 JJJ 89.

–**Article 227** and Civil Procedure Code (V of 1908) – Section 115 – Award passed by the Motor Accidents Claims Tribunal cannot be called in question by the

insurer invoking either power of superintendence of the High Court under Article 227 or in revisional jurisdiction under Section 115 of the Code – Section 169 of the 1988 Act – MACT deemed to be Civil Court only for limited purposes contemplated in sub-section (2) thereof – Would not make it subject to the revisional or superintending power of the High Court under the Code or the Constitution: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174 : AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.*

– **Article 227** and Civil Services (Classification Control and Appeal) Rules 1966 Rule 19 – Criminal Procedure Code, 1973, Sections 387 and 374(2) – Penal Code Indian, 1860 – Sections 326, 320 Administrative Tribunals Act, 1985 Section 19 – Service Law – Termination on ground of conviction in criminal case – Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case – Competent authority can terminate the services after conviction by criminal Court – On termination master and servant relationship comes to an end – Filing of appeal or stay of execution of sentence does not revive the relationship – Employee cannot be taken to be under suspension till decision in appeal – Not entitled to suspension allowance: *Jamna Prasad Vs. State, I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.*

– **Article 227** and Administrative Tribunals Act, 1985 Section 19 – Service Law – Termination on ground of conviction in criminal case – Claim of subsistence allowance till decision in appeal by High Court – Penal Code Indian, 1860 – Sections 302, 326 and Criminal Procedure Code, 1973, Sections 374(2) and 387 – Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case – Civil Services (Classification Control and Appeal) Rules 1966 Rule 19 – Competent authority can terminate the services after conviction by criminal Court – On termination master and servant relationship comes to an end – Filing of appeal or stay of execution of sentence does not revive the relationship – Employee cannot be taken to be under suspension till decision in appeal – Not entitled to suspension allowance: *Jamna Prasad Vs. State, I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.*

– **Article 227(2)(b)** – See – High Court Superintendence Rules (M.P.), 1998 – Entry 9 & 10 of Schedule: *Union of India Vs. Registrar General, High Court of M.P., Jabalpur, I.L.R. (2012) M.P. 837: AIR 2013 MP 98: 2012(1) MPLJ 303: 2012(1) MPHT 382: 2012(1) JLJ 145.*

– **Article 228-A** – Petition under Article 226 – Challenging the Constitutional validity of State law – Cannot be dismissed in motion by a Division Bench – Liable to be heard by a Bench of five Judges even at the admission stage for its dismissal: *Brij Gopal Vs. State of M.P., I.L.R. (1979) M.P. 571: AIR 1978 MP 122: 1978 MPLJ 70: 1978 JLJ 96.*

– **Article 228-A** – Object of – Petition under Article 226 – Challenging the Constitutional validity of State law – Cannot be dismissed in motion by a Division Bench – Liable to be heard by a Bench of five Judges even at the admission stage for its dismissal – Words "Determining any question" – Connotation of – Construction of Statute – Principle of: *Brij Gopal Vs. State of M.P., I.L.R. (1979) M.P. 571: AIR 1978 MP 122: 1978 MPLJ 70: 1978 JLJ 96.*

– **Article 228-A (3)** – Words "Determining any question" – Connotation of: *Brij Gopal Vs. State of M.P., I.L.R. (1979) M.P. 571: AIR 1978 MP 122: 1978 MPLJ 70: 1978 JLJ 96.*

–**Article 243-X**, M.P. Municipal Corporation Act, 1956 and M.P. Municipalities Act, 1961 – Concept of Self Governance – Imposition of Tax– The concept of self-governance as provided under Chapter IX-A of the Constitution is not absolute and subject to law made by the Legislature. Neither the Municipal Corporation nor Municipality can impose tax independently without the authority of State Legislature as that would tantamount to create a sovereign within a sovereign which is impermissible in our constitutional framework and philosophy – There is no abdication of basic legislative function by the legislature – The proposition that there is excessive delegation is devoid of merit: *Sakhi Gopal Vs. State of M.P., 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. (Also Published in AIR 2004 MP 182 as Anil Kumar Gulati Vs. State of M.P.)*

– **Article 254** – Applies only when competing legislations both pertain to concurrent list – Inherent supremacy of Parliament to legislate in respect of matters in Union list: *M.P. State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 JLJ 16.*

– **Article 254 (1) & (2)** – Bal Adhinyam saved in case of repugnancy with the Central enactment in other case matter governed by Article 254 (1) – Circumstances in which Bal Adhinyam is saved and when not: *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.*

– **Article 265**, Municipal Corporation Act, M.P. 1956, Sections 427, 430 and Bhopal Municipal Corporation Terminal Tax, Assessment and Collection Bye-laws,

1970, Bye-laws Nos. 12 and 12-A—Collection of terminal tax—Auctioning of right to collect tax not illegal—Bye-law framed for collection of tax by auction—Contractor collecting tax has to work under authority of local body—Bye-law cannot be said to be *ultra vires* Article 265: *Sindhi Sahiti Multi Purpose & Transport Co-Operative Society Ltd. Bhopal, Vs. State of M.P., I.L.R. (1995) M.P. 149: 1995 MPLJ 176: 1994(II) MPJR 306: 1995 JIJ 387.*

– **Article 284** – Conflict between special Act and General Act – Circumstances in which special Act or general Act will prevail: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. P. O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal - Cum - Labour Court, Jabalpur, I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JIJ 732.*

– **Article 286** – Difference between sale “for the purpose of export” and sale “in the course of export” – Sale “for the purpose of Export” – Does not qualify for exemption – General Sales Tax Act, M.P., 1958 – Section 24(5) – Notification dated 29-10-63 – Not applicable to taxes levied before 29-10-63 – Talk of refund arises when tax is paid – Liability to pay tax not affected – Refund claimable only when goods are proved to have been exported – Sales Tax Act, C.P. & Berar, 1947 – Section 11(5) – Word “period” – Refers to quarter or quarters which is limit of assessment – Covers the case of dealer who does not apply for registration and does not file return – States Re-organization Act, 1956 – Section 78 – Scope of – Place of assessment for tax due before November 1956 – Is place when tax could have been assessed before that date – Successor State in whose dominion that place is situated – Has a right to recover that tax – Burden on petitioner to prove that order of assessment was without jurisdiction – Section 120 – Object behind the section – Power of adaptation – Does not confer power to make Laws inconsistent with specific provision made in this Act – Sales Tax Act, C.P. and Berar – Section 11-c – To be construed consistent with the right of successor State to recover arrears of taxes conferred by Section 78 of States Re-organization Act – Sales Tax Act, C.P. and Berar – Section 2(j) – Words “such period” in definition of taxable turnover – Refers to “prescribed period” in the definition of turnover – Rule 22 and Forms VI and IV – Words “such period or periods” – Refer to quarter or quarters as specified in notice – Rules 22, 32 and 34 – Connote that quarter is period prescribed for the definition of turnover in the Act – “Prescribed period” and “such period” in Section 2(j) – Mean a quarter – Sales Tax Act, C.P. and Berar, 1947 – Section 11(5) – Words “Within three calendar years from the expiry of such period” in – Mean three calendar years from expiry of such quarter for which dealer is liable to pay tax – Limitation of 3 years to be computed for each quarter separately and for the entire period within which he is liable to pay tax taken as a whole:

*Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Article 286** – Tax on sale of goods outside the State prior and subsequent to 26.1.50 – Validity: *M/s. Mullaji Jamaluddin & Co. Vs. The State of M.P. & Ors., I.L.R. (1957) M.P. 631: AIR 1958 MP 220: 1958 MPLJ 353: 1958 JLJ 410.*

– **Article 298 & 299** – Executive power in – Is the non-statutory executive power and not the statutory one: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 299** – Executive power – Wide enough to include power derived from Statute: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 299** – Conditions to be satisfied for requirements of this provision – These also apply to a contract by tender and acceptance: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 299(1)** – Bid list signed by Bidder and Collector – Does not fulfill requirement of this provision: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 299(1)** – Operation of, depends on question whether power exercised is executive – Not applicable to cases of excise contract: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Article 311** – Loss of seniority – Does not amount to reduction in rank: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 JLJ 32.*

– **Article 311** – Pay scale – Not the only criterion to ascertain whether person has been reduced in rank: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 JLJ 32.*

– **Article 311** – Selection of Civil Judge Class II to Civil Judge Class I – Cannot be deemed to be promotion – Further promotion to Additional District Judge according to seniority – Does not create a new cadre or cadre within cadre of a superior type: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P. Jabalpur, I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 JLJ 32.*

– **Article 311** – Revision of Civil Judge Class I to Civil Judge Class II – Whether amounts to reduction in rank – Whether it amounts to punishment – Is attracted where reduction amounts to punishment – "Reduction in rank" – Meaning of – Selection of Civil Judge Class II to Civil Judge Class I – Cannot be deemed to be promotion – Further promotion to Additional District Judge according to seniority – Does not create a new cadre or cadre within cadre of a superior type – Word "Rank" – Implication of – Pay scale – Not the only criterion to ascertain whether person has been reduced in rank – Loss of seniority – Does not amount to reduction in rank: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P. Jabalpur, I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 J LJ 32.*

– **Article 311** and Civilians in Defence Service (Temporary Service) Rules, 1949 – Held, an employee holding a civilian post connected with Defence, for which he is paid salary from the Defence estimates, is outside the purview of Article 311 of Constitution – Protection under Article 311 is not available to such an employee: *Union of India Vs. Sharmanand, 1972 MPLJ 550: 1972 J LJ 348.*

– **Article 311** and Civilians in Defence Service (Temporary Service) Rules, 1949 – Termination – Principle of Natural Justice – Held, to an enquiry connected with disciplinary action against such an employee, the principle of natural justice do not apply – Such employee can challenge the termination of his employment on ground of non-compliance with the provisions of the Rules of 1949 – Where an employee complains of breach of those Rules, he must plead that case and if denied, prove it: *Union of India Vs. Sharmanand, 1972 MPLJ 550: 1972 J LJ 348.*

– **Article 311(1)** and Police Regulation, Madhya Bharat, Regulation 246 & 247 – Dismissal – Competent Authority – Petitioner appointed by Maharaja of Gwalior and was dismissed by IG Police – Held, where at the time of integration of princely States with rest of India, persons serving in princely states were absorbed in new States that came into existence – The authority by whom such persons were appointed to integrated services or who would have been competent to make appointment, in case there was an actual fresh appointment, must be deemed to be the appointing authority competent to dismiss or remove such persons – IG Police is deemed to be the appointing authority for application of principle contained in Article 311(1) and was competent to dismiss the appellant: *Dinkarrao Gangaram Vs. State of M.P. AIR 1977 MP 13: 1976 MPLJ 848: 1976 J LJ 891.*

– **Article 311(2)**, proviso (a) and Police Regulation, Madhya Bharat, Regulation 246 & 247 – Dismissal – Opportunity of Hearing – Appellant convicted on criminal

charge and order of dismissal was passed and no reasonable opportunity of hearing was given – Appellant was dismissed on ground of conduct which led to his conviction on a criminal charge – Impugned order is not vitiated in view of proviso (a) to Article 311(2) of constitution: *Dinkarrao Gangaram Vs. State of M.P.* AIR 1977 MP 13: 1976 MPLJ 848: 1976 JIJ 891.

– **Article 311(2)** – Delinquent entitled to copies of statement of witnesses examined in preliminary enquiry if asked for in case those witnesses are examined in departmental enquiry: *Prabhakar Narayan Menjoge Vs. State of M.P.*, I.L.R. (1969) M.P. 175: AIR 1967 MP 215: 1967 MPLJ 174: 1967 JIJ 338.

– **Article 323-A**, Administrative Tribunals Act, 1985, Sections 14, 15, and 28 – Reference – Petitions challenging the selection process filed before High Court – Objection raised by respondent regarding maintainability of writ petition in view of Sections 14, 15 and 28 of Administrative Tribunals Act, 1985 – Cleavage of opinion in two Division Bench Decisions in this regard – Matter placed before Full Bench – Pre-recruitment dispute is nothing but dispute concerning recruitment within meaning of Article 323-A or Constitution of India – Dispute lie within jurisdiction of Administrative Tribunal – Writ Petition not maintainable: *Usha Narawariya (Dr.) Vs. State of M.P.*, I.L.R. (1993) M.P. 66: 1993 MPLJ 969: 1993 JIJ 663: 1993(II) MPJR 1.

– **Article 323-A or 323-B** – Award passed by pre-existing Tribunals and not constituted under Article 323-A or 323-B of the Constitution – Only Single Bench has jurisdiction to adjudicate the writ petition under Articles 226/227 of the Constitution arising from such an award – Directions of Hon'ble Supreme Court in L. Chandra Kumar's Case confines to only orders passed by Tribunal constituted under Article 323-A or 323-B of the Constitution – Reference answered accordingly: *Kedia Distilleries Ltd. Vs. General Secretary, Chhattisgarh Chemical Mill Mazdoor Sangh, Rajnandgaon*, I.L.R. (2000) M.P. 103: 2000(2) MPLJ 552: 2000(3) MPHT 343: 2000(II) MPJR 441: 2000(2) JIJ 97.

– **Article 323(2)** – Appointment – Recommendation of Public Service Commission – Effect – Held, it is open to State Government not to appoint anyone from the list of candidates selected by Public Service Commission – However it is not open to the Government (i) to appoint any person whose name does not appear in the list, or (ii) to appoint out of turn any person whose name appears in the select list by disturbing the order of merit of that list, unless under the Rules for the time being in force, the candidates ranking above him in the said list are ineligible for appointment in

Government service: *Omprakash Baburam Sharma Vs. State of M.P. & Anr.*, 1978 MPLJ 136: AIR 1978 MP 59: 1978 J LJ 143: 1978 Ser LJ 245.

– **Article 323(2)** – Appointment – Recommendation of Public Service Commission – Rights of Candidate–Interference of Court – Held, when Government does not accept the advice of Public Service Commission, it has to report its reasons to State Legislature – Government is answerable to Legislature but not to any candidate, nor is the matter justiciable except when there is violation of any statutory rule – Court can interfere in an action of Government on ground of fraud or malafide: *Omprakash Baburam Sharma Vs. State of M.P. & Anr.*, 1978 MPLJ 136: AIR 1978 MP 59: 1978 J LJ 143: 1978 Ser LJ 245.

– **Article 323(2)** – Selection – Fixation of Minimum Standard – Rights & Discretion of Public Service Commission – Held, Public Service Commission has unfettered right to evolve its own method or *modus operandi* for selection of most suitable candidate and for that purpose it may fix any criterion, subject to the eligibility fixed by Statute or by the Government being satisfied – Commission will be within its rights to classify the numerous applications into certain categories and to call for interview only those candidates who come within certain categories –There is no contravention of any rule in fixing the minimum standard for selection – Commission can fix a category on the basis of PLUS qualification and/or PLUS experience– It is the absolute discretion of the Commission: *Omprakash Baburam Sharma Vs. State of M.P. & Anr.*, 1978 MPLJ 136: AIR 1978 MP 59: 1978 J LJ 143: 1978 Ser LJ 245.

– **Article 323(2)** – Appointment – Lapse of Select List – Effect – Held, in absence of any statutory rule to the contrary, Government may issue executive instructions under which the list may automatically lapse on expiry of one year – Commission merely selects suitable candidates but appointing authority is the State Government, thus for reasons of its own it may not fill the post at all – State is not bound to make an appointment – If by omission to make an appointment, the list lapses on the expiry of one year, there is no violation of any statutory rule for which the Court interfere – It is a different matter that Government may be answerable to Legislature – After the list of selected candidate lapses, Government may request Public Service Commission for fresh selection: *Omprakash Baburam Sharma Vs. State of M.P. & Anr.*, 1978 MPLJ 136: AIR 1978 MP 59: 1978 J LJ 143: 1978 Ser LJ 245.

– **Article 323(2)** and M.P. Educational Services (Collegiate Branch) Recruitment Rules, 1967, Rule 13(3) – Appointment – Vacant Post – Effect – Government is not bound to fill any vacant post – Further, Government cannot fill the post by appointing a



person whose name does not appear in the list nor the order of merit in the select list can be disturbed in making an appointment: *Omprakash Baburam Sharma Vs. State of M.P. & Anr.*, 1978 MPLJ 136: AIR 1978 MP 59: 1978 JLJ 143: 1978 Ser LJ 245.

– **Article 343 & 344**, Official Languages Act, 1963, Section 3(4)– Circular dated 4th August, 2006 of the respondent Bank in so far as it insists on 35% pass marks in English to qualify for promotion in the case of persons like the petitioner who are proficient in Hindi, is not *ultra vires*: *Raghvendra Prasad Gautam Vs. Union Bank of India*, I.L.R. (2010) M.P. 2275: 2010(4) MPLJ 466: 2010(4) MPHT 309: 2011(1) JLJ 136: 2010(IV) MPJR 1.

– **Article 348** and Interpretation of Statute – Hindi version of statute for explaining ambiguity in the English Text – Use of: *Gulab Chand Vs. State of M.P.*, I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.

### **Construction of Statute**

– **Principle of:** *Brij Gopal Vs. State of M.P.*, I.L.R. (1979) M.P. 571: AIR 1978 MP 122: 1978 MPLJ 70: 1978 JLJ 96.

– **Amendment in a statute made to clarify the ambiguity** – Useful in construing the earlier provision: *M/s. Govindji Jamunadas, Gwalior Vs. The Commissioner of Sales Tax, M.P.*, I.L.R. (1983) M.P. 417: 1983 MPLJ 339: 1983 JLJ 376.

– **Specific provision in Income Tax Act** – Not governed by different or contrary provision in general law: *M/s. Girdharilal Nannelal, Burhanpur, Vs. Commissioner of Income Tax, M.P. Bhopal*, I.L.R. (1983) M.P. 657: AIR 1984 NOC (MP) 95: 1983 MPLJ 888: 1984 JLJ 111.

### **Contract Act, Indian (IX of 1872)**

– **Contract comes into existence by virtue of statutory provision and the rules:** *Ram Ratan Gupta Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.

– **Right and obligation pertaining to agreement** – Came into being by operation of contract: *M/s. Shri Ganesh Trading Company, Sagar, Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.

### **Co-operative Bank Employees Service Rules**

– **Rule 45(3)** – Petitioner's services terminated by an order dated 6-1-1975 without following the procedure laid down in rule 45 (3) and without any prior enquiry and without assigning any reasons – Dismissal in violation of statutory rule – Liable to be

quashed with direction for reinstatement: *Sevaram Vs. Board of Revenue, M.P. Gwalior, I.L.R. (1983) M.P.674: 1983 MPLJ 645: 1983 JLJ 627.*

– **Rule 45 (3)** – Registrar or his nominee hearing dispute under Section 55 (2) of Co-operative Societies Act, M.P., 1960 has jurisdiction to direct reinstatement on finding dismissal or removal to be illegal being in contravention of the Act or statutory rules: *Sevaram Vs. Board of Revenue, M.P. Gwalior, I.L.R. (1983) M.P. 674: 1983 MPLJ 645: 1983 JLJ 627.*

### **Co-operative Societies Act (II of 1912)**

– **Section 43(2)** and Bilaspur Co-operative, Central and Land Mortgage Bank Ltd., Bye-Law No. 52 & Co-operative Societies Rules, Rule 26 & 27 – Dispute of Validity of Election of Chairman – Jurisdiction of Registrar – Held, a dispute as to the validity of the election of the Chairman of the Board of Directors is not a dispute touching the business of the Bank, therefore such a dispute cannot be referred to Registrar for decision under Rule 26 r/w Bye-Law No. 52: *Gokul Prasad Vs. Laxmansingh & Ors. AIR 1962 MP 265: 1962 JLJ 416: 1962 MPLJ 641.*

### **Co-operative Societies Act, M.P., 1960 (XVII of 1961)**

– **Industrial Disputes Act (Central) (XIV of 1947)** – Difference between the two: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. P. O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

– **Section 9**, Constitution of India, Article 226/227 – Reference – Whether Co-operative Society constituted under Section 9 of M.P. Co-operative Societies Act is a State or not? – Entire share capital not held by State Government – No financial assistance by State Govt. to meet entire expenditure – No monopoly enjoyed – No deep and pervasive State Control – Society performing commercial function for betterment of its members – No Department of Govt. transferred to Society – Such Society not instrumentality of State – Not amenable to writ jurisdiction: *Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit, I.L.R. (1993) M.P. 53: 1993 MPLJ 786: 1993(II) MPJR 20. (No longer good law in view of(2002)5 SCC 111 – Held, in M.P. State Co-operative Dairy Federation Vs. Madan Lal Chourasia ILR 2007 MP 859: AIR 2007 MP 214: 2007(2) MPLJ 594: 2007(2) MPHT 485: 2007(3) JLJ 125).*

– **Section 53** – Proviso – Relaxing of outside limit for supersession by State Government – Cannot be said to be *ultra vires*: *The Collective Farming Society, Ltd.,*

*Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 J LJ 16.*

– **Section 55** and Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1965, Rule 18 – Disciplinary proceedings dropped to avoid stigma and order terminating Service simpliciter passed – Such Order cannot be treated as of punishment – One month's pay in lieu of notice – Payment, not a condition precedent – Order not rendered illegal for non-payment: *Central Co-Operative Bank Ltd., Raisen Vs. Shibbulal, I.L.R. (1988) M.P. 1: AIR 1988 MP 3: 1987 MPLJ 766: 1988 J LJ 20: 1988(1) Serv LR: 1988(4) Serv LJ 31.*

– **Section 55(1) & (2)** – Rules framed under section 55(1) are statutory rules – Cannot be equated with bye-laws framed for internal management and working of the society – Co-operative Bank Employees Service Rules, M.P.– Rule 45 (3) – Registrar or his nominee hearing dispute under section 55 (2) has jurisdiction to direct reinstatement on finding dismissal or removal to be illegal being in contravention of the Act or statutory rules – Petitioner's services terminated by an order dated 6-1-1975 without following the procedure laid down in rule 45 (3) and without any prior enquiry and without assigning any reasons – Dismissal in violation of statutory rule – Liable to be quashed with direction for reinstatement: *Sevaram Vs. Board Of Revenue, M.P., Gwalior, I.L.R. (1983) M.P. 674: 1983 MPLJ 645: 1983 J LJ 627.*

– **Section 55(2)** and Sahkari Kendriya Bank Karamchari Sewa Niyam, M.P. 1977, Rule 47 – Dispute raised against dismissal from service – New Rules came into force from 1-4-77 repealing Rules of 1965 – Registrar or his nominee has power to direct reinstatement if the dismissal in violation of Act or statutory rules – Dismissal by approving authority of the punishing authority is not without jurisdiction: *The Central Co-Operative Bank Ltd., Raisen Vs. Board of Revenue, I.L.R. (1988) M.P. 251: AIR 1988 MP 1: 1987 MPLJ 768: 1988 J LJ 17.*

– **Section 77 & 95(2)(hh)** and M.P. Land Revenue Code, 1959, Section 7 – Second Appeal – Delegation of Powers –Effect of Notification–Held, power of hearing appeals can be delegated by the State Government as provided u/S 95(2)(hh) of the Act – By delegating such powers to Board of revenue u/S 7 of the Code of 1959, it cannot be said that State Government deprived itself of all powers to hear appeals – In fact, notification talks of conferral of power and not of delegation – Thus, even after issue of notification conferring powers on the Board of revenue to hear second appeals u/S 77 of the Act, State Government still has jurisdiction to hear second appeals u/S 77: *Hastimal Vs. State of M.P., AIR 1972 MP 214: 1972 MPLJ 660: 1972 J LJ 1049.*

– **Section 77 & 80** and M.P. Co-operative Societies Rules, 1962 Rule 66(6)(iv) – Appeal & Revision – Held, provisions of Rule 66(6)(iv) of the Rules of 1962 do not operate as a bar to an appeal u/S 77 and revision u/S 80 of the Co-operative Societies Act: *Liyakat Ali Vs. Board of Revenue, Gwalior, 1984 MPLJ 489: AIR 1984 MP 170: 1984 J LJ 654.*

– **Section 91** – Empowers State Government to exempt any society or class of societies from provisions of Act and to apply to such societies or class of societies such provision with modification – Words “such provisions shall apply to such society or class of societies with such modification” followed by “as may be specified in the order” – Confer widest discretion – Does not lay down any criteria or standards for passing an order under the section regarding exemption or modification – Court not to invalidate a statute on ground of abdication of legislative power or excessive delegation – Legislature possesses power to implement State policy to promote welfare of people and the aims of socio-economic change – Delegation – Essential legislative functions cannot be delegated – Non-essential legislative functions can be delegated – Exemption of society or class of societies from provisions of Act – Not a legislative policy – Way in which modification in the frame-work in provisions of the Act can be made – Section 53 – Proviso – Relaxing of outside limit for supersession by State Government – Cannot be said to be *ultra vires* – Retrospective Enactment – Sovereign legislature enacts law with retrospective operation – Delegation of power – Delegation of power to authority – Authority cannot exercise power with retrospective effect – Section 53(i) – Word “Person” – To be read with the meaning ascribed in Section 3(42) of General Clause, Act – Includes a corporate body – Summary of the principles: *The Collective Farming Society, Ltd., Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 J LJ 16.*

### Co-owners

– **Suit for joint possession** – Principles when joint possession should or should not be granted laid down: *Brijlal Vs. Dau Mohanlal, I.L.R. (1957) M.P. 354: AIR 1958 MP 200: 1959 MPLJ 879: 1958 J LJ 241.*

### Copyright Act (XIV of 1957)

– **Section 45 & 48** – Registration of Copyright – Held, analysis of the Scheme and provisions of Act does not disclose any legislative intent to make registration of Copyright mandatory or to take away civil or criminal remedies in the event of non-registration of copyright – Criminal prosecution for copyright infringement is sustainable without registration u/s 45 of the Act: *K. C. Bokadia & Anr. Vs. Dinesh Chandra Dubey, 1999(1) MPLJ 33: 1996 J LJ 63.*

– **Section 45 & 48** – Registration of Copyright – Admissibility in Evidence – Held, as per Section 48, Registers of Copyrights shall be *prima facie* evidence of particulars entered therein and certified copies of the entries shall be admissible in evidence in all Courts without further proof or production of original: *K. C. Bokadia & Anr. Vs. Dinesh Chandra Dubey, 1999(1) MPLJ 33: 1996 JLJ 63.*

### **Country Spirit Rules, M.P., 1995**

– **Rule 9** – See – Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a): *Chingalal Yadav Vs. State of M.P., I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) JLJ 360: 2010(2) MPHT 251.*

### **Court Fees Act (VII of 1870)**

–**Anomalies in Act** – Remedy: *Balu Vs. Amichahd, I.L.R. (1972) M.P. 1.*

–**Schedule I Article 1-A** [As substituted by Court Fee (M.P. Amendment) Act (6 of 2008), w.e.f. 2-4-2008] – Amendment is a beneficial legislation – Benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02-04-2008 – Be it in the form of plaint before the subordinate court or memorandum of appeal before the High Court, as the case may be – Being beneficial court fee regime – Reference answered accordingly: *Technofab Engineering Ltd. (M/s.) Vs. Bharat Heavy Electricals Ltd., I.L.R. (2016) M.P. 651: AIR 2016 MP 1: 2015(4) MPLJ 426: 2015(3) JLJ 326: 2015(IV) MPJR 304.*

– **Section 7(iv)(c)** – Suit for declaration to avoid decree, agreement, document or liability – *Ad valorem* Court-fees when required to be paid: *Santosh Chandra Vs. Smt. Gyansundarbai, I.L.R. (1972) M.P. 412: AIR 1971 MP 1: 1970 MPLJ 363: 1970 JLJ 290.*

– **Section 7(iv)(c)** and Article 17 Schedule II – If plaintiff makes an allegation that the instrument is void and hence not binding upon him, then *ad valorem* court-fee is not payable and he can claim declaration simpliciter for which court-fee under Article 17(iii) of Schedule-II would be sufficient: *Sunil Radhelia Vs. Awadh Narayan, I.L.R. (2010) M.P. 2454: 2010(4) MPLJ 431: 2010(4) MPHT 477: 2011(1) JLJ 71: 2010(III) MPJR 412.*

– **Section 7(iv)(c) & 7(iv)(d)** – *Ad valorem* Courts fees – Plaintiff though entitled to value his suit on his own but cannot be allowed to do so arbitrarily – Irrespective of nature of drafting the relief sought by plaintiff has real ascertained money value – Plaintiff liable to pay *ad valorem* court fee on the bill amount: *Subhash Chand Jain Vs. The Chairman, M.P.E.B., I.L.R. (2000) M.P. 903: AIR 2001 MP 88: 2000(4) MPHT 318: 2001(1) JLJ 81: 2001(I) MPJR 22: 2001 AIHC 1369: 2000(3) MPLJ 522.*

– **Section 7(iv)(f)** – Expression “according to the amount at which the relief sought is valued in the plaint or memorandum of appeal with a minimum fee of Twenty Rupees” in – Governs not only clause (f) but all proceeding sub-clauses in clause (iv) of Section 7 – Valuation of suits falling in sub-clauses(a) to (e) of clause (iv) of section 7 – Court-fee to be computed according to the amount at which relief sought is valued – Implication of aforesaid expression – Appeal against preliminary decree for dissolution of partnership and accounts – Valuation of appeal to be same as made in plaint except where the Court has determined valuation on objection raised by defendant: *Smt. Rambati Vottery & Ors. Vs. Shivprasad Vottery*, ILR 1977 MP 191: AIR 1976 MP 1: 1975 MPLJ 838: 1975 J LJ 897.

– **Section 7(v)(b) & (d)** and rule under Section 35 – Scope and implication of – Words "Definite share" in – Meaning of – Anomalies in Act – Remedy – Interpretation of Statutes – Taxing provision to be strictly construed in a manner favourable to citizen: *Balu Vs. Amichahd*, I.L.R. (1972) M.P. 1.

– **Section 7(v)(b) & (d)** – Part of Whole Estate – Valuation– Held, in cases where court fees is required to be paid on market value u/s 7(v)(d), plaintiff cannot be allowed to pay court fees on the whole estate of which the land claimed in suit forms part but is not assessed to separate land revenue; nor can the plaintiff be allowed in such cases to work out the proportion of the land revenue in respect of the part of land claimed by him and pay court fee on the proportionate multiple of the land revenue worked out according to section 7(v)(b): *Balu Deochand Vs. Fundibai*, AIR 1972 MP 22: 1971 MPLJ 987: 1971 J LJ 978.

– **Section 7(v)(b) & (d)** – Scope–Held, even when a suit is filed for a share of an estate not being any specified part thereof, the court fees payable would be on the market value and not on the multiple to be worked out: *Balu Deochand Vs. Fundibai*, AIR 1972 MP 22: 1971 MPLJ 987: 1971 J LJ 978.

– **Section 35** – See – Constitution, Articles 216, 225, 226: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur*, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) J LJ 361: 2008(IV) MPJR 105.

### **Criminal Procedure Code (V of 1898)**

– **Section 4(h) & 417(3)** – Section 417(3) – Applies to the case of complaint by public servant in discharge of his duties except in case of police report – Application for leave to appeal by such public servant – Maintainability – Public servant can be a complainant and allegations made by him is complaint – Word “complaint” in – Not to

be understood in the sense given by section 4(h) of the Code: *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co., I.L.R. (1968) M.P. 173: AIR 1968 MP 238: 1968 MPLJ 489: 1968 CriLJ 156: 1968 J LJ 448.*

– **Section 29-B** and Bal Adhiniyam, Madhya Pradesh (XV of 1970) – Section 6 – Order of Juvenile Court committing juvenile offender to Sessions – Validity – Criminal Procedure Code, 1973, Section 27 – Excludes offences punishable with death or imprisonment for life from jurisdiction of ordinary Court – Makes them triable by Courts empowered under any other law in force – Bal Adhiniyam, 1970–Section 67 – Suspends operation of Section 29-B, Criminal Procedure Code, 1898 – Criminal Procedure Code, 1973 – Section 27 – Is a provision to the contrary contemplated by Section 67 of Bal Adhiniyam– Constitution of India – Article 254 (1) and (2) – Bal Adhiniyam saved in case of repugnancy with the Central enactment in other case matter governed by Article 254 (1) – Circumstances in which Bal Adhiniyam is saved and when not – Bal Adhiniyam, 1970 – Section 4 and 6 – Contravene Section 4,26 and 27 of Criminal Procedure Code, 1973 – Provision void to the extent of repugnancy – Bal Adhiniyam, 1970 – Scheme of the Act – Words “Enquiry” and “Trial” – Must be construed with regard to particular extent and with regard to the scheme and provision under consideration – Conferral of power on Magistrates – Invests magistrate with ordinary powers specified in third schedule as provided by Section 36, Criminal Procedure Code, 1898 – Bal Adhiniyam, 1970 – Section 6(1) – Does not exclude offences punishable with death or imprisonment for life – Jurisdiction to try an offence – Not same thing as jurisdiction to try offender – Court under special Act – Exercise special jurisdiction and not ordinary jurisdiction – Bal Adhiniyam, 1970 – Section 4 – Overrides Section 27 of Criminal Procedure Code, 1973 – Bal Adhiniyam, 1970, Section 6 and Criminal Procedure Code, 1973, Section 27 – No conflict between two provisions – General Clauses Act, 1897 – Section 8 – Permits reading of re-enacted provision if the same did not evidence different intention: *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 J LJ 167: 1975 CriLJ 713.*

– **Section 36** – Conferral of power on Magistrate – Invests magistrate with ordinary powers specified in third Schedule as provided by Section 36 of the Code: *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 J LJ 167: 1975 CriLJ 713.*

– **Section 99-A** – Conditions necessary for exercise of power of forfeiture: *Ram Lal Puri Vs. State of Madhya Pradesh, I.L.R. (1973) M.P.1: AIR 1971 MP 152: 1971 J LJ 247: 1971 MPLJ 388.*

– **Section 99-A** – High Court, Power of to review action of Government in the matter of forfeiture of book: *Ram Lal Puri Vs. State of Madhya Pradesh, I.L.R. (1973) M.P., 1: AIR 1971 MP 152: 1971 J LJ 247: 1971 MPLJ 388.*

– **Section 99-A** and Penal Code, Indian (XLV of 1860) – Section 295-A – Book giving objective picture of happenings in remote past without comment and based on historical fact – Book cannot come within mischief of section 295-A, Indian Penal Code – Cannot be forfeited under section 99-A, Criminal Procedure Code: *Ram Lal Puri Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 1: AIR 1971 MP 152: 1971 J LJ 247: 1971 MPLJ 388.*

– **Section 190(1)(b) & 251-A** – Case started on report of police officer under Opium Act – Report if police report under section 190(1)(b), Criminal Procedure Code – Procedure prescribed by Section 251-A – Whether applicable: *Ashiq Miyan Vs. The State of M.P., I.L.R. (1966) M.P. 1: AIR 1966 MP 1: 1965 MPLJ 889: 1965 J LJ 897: 1966 CriLJ 235.*

– **Section 251-A & 190(1)(b)** – Case started on report of police officer under Opium Act – Report if police report under section 190(1)(b), Criminal Procedure Code – Procedure prescribed by Section 251-A – Whether applicable: *Ashiq Miyan Vs. The State of M.P., I.L.R. (1966) M.P. 1: AIR 1966 MP 1: 1965 MPLJ 889: 1965 J LJ 897: 1966 CriLJ 235.*

– **Section 417** – Appeal by State against accused acquitted by the Sessions Court and also against accused who have been acquitted for offence under Section 323, Indian Penal Code because of compounding of offence – Maintainability: *State of Madhya Pradesh Vs. Hukum Singh, I.L.R. (1971) M.P. 5: AIR 1970 MP 26: 1969 MPLJ 728: 1969 J LJ 918: 1970 CriLJ 235.*

– **Section 417(3)** – Public servant can be a complainant and allegations made by him is complaint: *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co., I.L.R. (1968) M.P. 173: AIR 1968 MP 238: 1968 MPLJ 489: 1968 CriLJ 156: 1968 J LJ 448.*

– **Section 417(3)** – Applies to the case of complaint by public servant in discharge of his duties except in case of police report – Application for leave to appeal by such public servant – Maintainability: *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co., I.L.R. (1968) M.P. 173: AIR 1968 MP 238: 1968 MPLJ 489: 1968 CriLJ 156: 1968 J LJ 448.*

– **Section 417(3) & 4(h)** – Section 417(3) – Applies to the case of complaint by public servant in discharge of his duties except in case of police report – Application for



leave to appeal by such public servant – Maintainability – Public servant can be a complainant and allegations made by him is complaint – Word “complaint” in – Not to be understood in the sense given by section 4(h) of the Code: *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co., I.L.R. (1968) M.P. 173* : AIR 1968 MP 238: 1968 MPLJ 489: 1968 CriLJ 156: 1968 JLJ 448.

### **Criminal Procedure Code, 1973 (II of 1974)**

– **Section 27** – Excludes offences punishable with death or imprisonment for life from jurisdiction of ordinary Court – Makes them triable by Courts empowered under any other law in force: *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386*: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 27** – Is a provision to the contrary contemplated by Section 67 of Bal Adhinyam: *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386*: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.

– **Section 95** – Notification not stating the grounds of Government’s opinion declaring certain publications forfeited – Notification is invalid and liable to be quashed – Courts not entitled to consider the justification offered by State Government in its return or at the hearing of the case for deciding the validity of the notification: *Udaya Pratap Singh Chandel Vs. State, I.L.R. (1982) M.P. 573*: AIR 1982 MP 173: 1982 MPLJ 205: 1982 JLJ 622: 1982 CriLJ 1131.

– **Section 95** – Notification issued thereunder – Express mention of ‘statement of the grounds of Government’s opinion’ essential – Notification not stating the grounds of Government’s opinion declaring certain publications forfeited – Notification is invalid and liable to be quashed – Courts not entitled to consider the justification offered by State Government in its return or at the hearing of the case for deciding the validity of the notification: *Udaya Pratap Singh Chandel Vs. State, I.L.R. (1982) M.P.573*: AIR 1982 MP 173: 1982 MPLJ 205: 1982 JLJ 622: 1982 CriLJ 1131.

– **Section 125** – Maintenance – From Date of Order/Date of Application – Reasons/ Grounds – Held, ordinarily the claimant who seeks an order for maintenance u/s 125, shall obtain the relief from the date when she or he approached the Court i.e. the date of application and only where there are circumstances justifying a contrary view, it can be postponed to the date of the order – Decision regarding the date from which the order is to take effect must be supported by reasons which are required to be given whether the Court stipulates the date of the application or the date of the order, as the date from which the order is to take effect – It cannot be that the reasons are required to be given only where the Court holds that the order is to take effect from the date of the

application – Reasons have to be given even where the Court postpones the date to the date of the order – Technically, a decision which is not supported by reasons is vitiated, but this does not mean that the decision is void or *non est* or that the superior Court will necessarily set aside the order on the ground of want of specification of reasons: *Saroj Bai Vs. Jai Kumar Jain*, 1994 MPLJ 928: 1994 JLJ 725: 1994(II) MPJR 220.

– **Section 125** – Quantum – Liabilities of Husband–Session Court reduced the amount of maintenance from Rs. 200 pm to Rs. 50 pm – Held, wife has secured employment – Looking to the low income of husband, his liability to pay maintenance to his parents and other circumstances of the case, interference in the reduction so made by Session Court is not warranted: *Saroj Bai Vs. Jai Kumar Jain*, 1994 MPLJ 928: 1994 JLJ 725: 1994(II) MPJR 220.

– **Section 125** – Talaq–Plea of divorce taken in written statement is no proof of divorce– Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law–Husband shall continue to remain liable until obligation comes to an end in accordance with law: *Wali Mohd. Vs. Batul Bi*, I.L.R. (2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(I) MPJR 513: 2003(2) JLJ 5.

– **Section 125** and Civil Procedure Code (V of 1908) – Section 115– Family Courts Act of 1984, Sections 7,8,10,18 and 19–Application for maintenance under Section 125 CrPC– Power of J.M.F.C. exercised by Family Court while deciding such application–Revision arising out of such application flows from proceedings under the CrPC–Should be registered as Criminal Revision: *Rajesh Shukla Vs. Smt. Meena*, I.L.R. (2005) M.P. 686: 2005(2) MPLJ 483: 2005(2) MPHT 301: 2005(2) JLJ 249.

– **Sections 125, 127, 295 & 482** and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5–Precedent – Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding – Interpretation of statute – Cardinal principle – Every statute is *prima facie* prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligation – Right to get maintenance from her husband is a vested right of a woman in any religion – No provision in the Act of 1986 so as to give it retrospective operation – Substantive law relating to vested rights – Such law are normally treated as prospective – Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C. – Talaq – Plea of divorce taken in written statement is no proof of divorce – Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law – Husband shall continue to remain liable until

obligation comes to an end in accordance with law: *Wali Mohd. Vs. Batul Bi, I.L.R.(2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.*

– **Section 197**, Prevention of Corruption Act (II of 1947), Section 6 and Business Allocation Rules, M.P. 1957 – Sanction for prosecution of Govt. Servant– Sanction given by Law and Legislative Affairs Department for offence under section 161, Indian Penal Code, read with section 5 (1)(d) read with section 5(2) of the Prevention of Corruption Act is valid sanction although appointing and removing authority was Revenue Department: *Sunderlal Vs. State of M.P., I.L.R. (1988) M.P. 119: AIR 1988 MP 70: 1988 MPLJ 119: 1988 JLJ 126: 1988 CrLR MP 74.*

– **Section 201** – Complaint filed on 7-9-1973 without copies of complaint – Magistrate making endorsement of its presentation but returning it for purposes of copies – Complaint represented on 14-9-1973 with copies – Complaint deemed to have been filed on 7-9-1973: *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. V. L. Jain, I.L.R. (1983) M.P. 121: AIR 1982 MP 97: 1982 MPLJ 320: 1982 JLJ 156.*

– **Sections 295, 125, 127 & 482** and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5 – Precedent – Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding – Interpretation of statute – Cardinal principle – Every statute is *prima facie* prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligation – Right to get maintenance from her husband is a vested right of a woman in any religion – No provision in the Act of 1986 so as to give it retrospective operation – Substantive law relating to vested rights – Such law are normally treated as prospective – Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C. – Talaq – Plea of divorce taken in written statement is no proof of divorce – Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law – Husband shall continue to remain liable until obligation comes to an end in accordance with law: *Wali Mohd. Vs. Batul Bi, I.L.R.(2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.*

– **Section 374(2) & 387** – Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case: *Jamna Prasad Vs. State., I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.*

– **Section 374(2) & 387** – Civil Services (Classification Control and Appeal) Rules 1966 Rule 19– Penal Code Indian, 1860 – Sections 326, 320 Administrative Tribunals Act, 1985 Section 19 and Constitution of India, Article 227 – Service Law – Termination on ground of conviction in criminal case – Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case – Competent authority can terminate the services after conviction by criminal Court – On termination master and servant relationship comes to an end – Filing of appeal or stay of execution of sentence does not revive the relationship – Employee cannot be taken to be under suspension till decision in appeal – Not entitled to suspension allowance: *Jamna Prasad Vs. State*, I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.

– **Section 387 & 374(2)** – Appellate Court or revisional Court has power only to suspend execution of sentence – Stay of conviction can be ordered only in exceptional case: *Jamna Prasad Vs. State*, I.L.R. (2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.

– **Section 389** and Constitution of India, Articles 226, 14, 19(1)(g), 227 and Excise Act, M.P. 1915(As amended by Act No. XX of 2000), Sections 34, 46, 47, 47-A, 47-B, 47-C and 47-D – Offences relating to liquor exceeding fifty bulk litres at the time of detection – Penal provisions made more condign and deterrent – Confiscation – Power of appellate and revisional Courts – Sessions Judge exercising power of revision can also pass orders which can be passed by the appellate authority – Power to pass order for preserving and keeping the seized articles in fact is thus saved – Restriction on the power to stay the order of confiscation – Cannot be held to be arbitrary irrational or unreasonable – Not *ultra vires* – Remedy of appeal and revision available – Petitioner may pursue the remedy: *Shrish Agrawal Vs. State*, I.L.R. (2003) M.P. 579: 2003(2) MPLJ 189: 2003(2) MPHT 97: 2003(1) MPJR 346: 2003(2) JLJ 22.

– **Sections 389, 437 & 439** – Application for grant of bail pending appeal or ordinary bail pending trial – In both cases bail is granted for a limited purpose to secure presume of convict of the accused – All such bail application – Second or successive – Should be placed for consideration before the bench which earlier decided the first application unless that bench is not available for sufficient duration – Such practice is a matter of long standing convention and judicial discipline to prevent abuse of process of the Court: *Santosh Vs. State*, I.L.R. (1999) M.P. 1103: 2000(1) MPLJ 354: 2000(2) MPHT 241: 2000(1) JLJ 240: 2000(1) MPJR 349.

– **Section 389 & 439** – Successive Bail Applications – Listing – Held, there is no law or any statutory rule making it obligatory that all subsequent bail applications should be placed before the same Bench or Judge who passed earlier orders but it is only a rule of convenience based on judicial discipline, developed by a long standing convention – Main purpose and object behind it is to prevent abuse of the process of Court, avoidance of an opportunity to an accused or appellant to select any Court or Bench of his choice to make successive applications for bail, to avoid delay and conflicting orders by different Judges on the same subject matter and to discourage a litigant from pestering every Judge till he gets an order of his liking effecting the credibility of the Court and the confidence of the other side – It is for these reasons that the judicial discipline demands that the subsequent bail application should be place before the same Judge who passed the earlier orders subject to availability: *Narayan Prasad Vs. State of M.P., 1993 MPLJ 1: 1992(II) MPJR 298.*

– **Section 389(1)** – Successive Bail Applications – Listing– Held, when a first bail application preferred in a pending appeal u/s 389(1) of the Code has been considered by a Division Bench and faced rejection and thereafter the second bail application is filed and due to non-availability of earlier Division Bench, a second Division Bench deals with the matter and rejects the application, the other successive and subsequent bail applications should go before the said Bench and not before the Bench that has been given the roaster to deal with such matter – If the first bail application is rejected by a Bench and if one of the members of the Bench is available, the subsequent bail applications should be listed before a Bench of which he is a member and it should not go before the regular Bench as per roaster: *Gopal & Ors. Vs. State of M.P., 2004(4) MPLJ: 2005(1) MPJR 141: 2004(4) MPHT 195: 2005(1) JLJ 269.*

– **Section 389(1)** and Constitution of India, Articles 226, 227 – M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – Rule 19 – Writ challenging order of State Administrative Tribunal –Conviction of Government servant by trial Court – Termination – Competent authority can terminate services after conviction by criminal court – Stay of execution of sentence will not debar competent authority from doing so Master and servant relationship terminates on termination order –Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court – Subsistence allowance cannot be granted for the period: *Jamna Prasad Vs. State of M.P.,I.L.R.(2002) M.P. 809: I.L.R. (2003) M.P. 368: 2003(1) MPHT 77: 2003(1) MPLJ 296: 2003(1) JLJ 158.*

– **Section 427(1) & 482** – High Court under inherent powers can order subsequent sentence to run concurrently with earlier sentence even in appropriate cases: *Sher Singh Vs. State of M.P., I.L.R. (1989) M.P. 1: 1989 MPLJ 116: 1989 J LJ 201.*

– **Section 433-A**, Prisoners' Release on Probation Act, Madhya Pradesh, 1956, Sections 2, 9, Prisoners Release on Probation, Rules, Madhya Pradesh, 1964, Rule 4 – Question whether amendment in Rule 4 is *ultra vires* the rule making power of the State Government under section 9 of the Act – Held – The restrictions of periods of actual imprisonment introduced by the amended proviso for becoming a prisoner eligible to be considered for release under the Act is in consonance with section 433-A of the Code of Criminal Procedure introduced by the Parliament which provides for restriction on powers of remission or commutation in certain cases– According to section 433-A a life convict, for an offence for which death is one of the punishments, cannot be released from prison unless he has served at least 14 years of imprisonment: *Anni @ Ramesh Vs. State of M.P., I.L.R. (2010) M.P. 1687: 2010(4) MPHT 302.*

– **Section 438 & 72** – Procedure– Held, where an order of anticipatory bail is passed after issue of non-bailable warrant of arrest by a Magistrate, the duty of the police officer entrusted with execution of the warrant would be to arrest the person and produce him before the Magistrate who thereupon shall deal with the accused as required by the order of anticipatory bail: *Nirbhay Singh & Anr. Vs. State of M.P., 1995 MPLJ 296: 1995 J LJ 21: 1995(I) MPJR 234.*

– **Sections 438, 204 & 209** – Procedure – Held, an application under section 438, Criminal Procedure Code would be maintainable even after the Magistrate issued process under section 204 or at the stage of committal of the case to the Sessions Court or even at a subsequent stage, if circumstances justify the invocation of the provision – This is not to say that the jurisdiction under section 438 of the Code is to be freely exercised without reference to the nature and gravity of the offence alleged, the possible sentence which may be ultimately imposed, the possibility of interference with the investigation or the witnesses and public interest: *Nirbhay Singh & Anr. Vs. State of M.P., 1995 MPLJ 296: 1995 J LJ 21: 1995(I) MPJR 234.*

– **Section 438** – Interim Order Restraining Arrest– Held, on an application under section 438 of the Code, the Court cannot pass an interim order restraining arrest: *Nirbhay Singh & Anr. Vs. State of M.P., 1995 MPLJ 296: 1995 J LJ 21: 1995(I) MPJR 234.*

– **Sections 482, 125, 127 & 295** and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5 – Precedent – Decision earlier in time shall hold the field unless it is referred and explained in the latter

decision in which case the latter one shall be binding – Interpretation of statute – Cardinal principle – Every statute is *prima facie* prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligation – Right to get maintenance from her husband is a vested right of a woman in any religion – No provision in the Act of 1986 so as to give it retrospective operation – Substantive law relating to vested rights – Such law are normally treated as prospective – Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C. – Talaq – Plea of divorce taken in written statement is no proof of divorce – Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law – Husband shall continue to remain liable until obligation comes to an end in accordance with law: *Wali Mohd. Vs. Batul Bi, I.L.R.(2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.*

– **Section 482 & 427(1)** – High Court under inherent powers can order subsequent sentence to run concurrently with earlier sentence even in appropriate cases: *Sher Singh Vs. State of M.P., I.L.R. (1989) M.P. 1: 1989 MPLJ 116: 1989 JLJ 201.*

– **Schedule-I as amended by (M.P. Amendment) Act 2007 w.e.f. 22.2.2008** – By the amendment some serious offences of IPC (as shown in amendment) were made triable by "Court of Sessions" instead of "Magistrate of the First Class" – "Pending cases not affected" – New law or amendment bringing about change of forum does not affect pending cases unless a provision is made in it for changeover of proceedings or there is some other clear indication in new law or the amendment that pending cases are affected – Cases pending in the court of JMFC as on 22/2/2008 are not affected and will be continued to be tried by JMFC – Reference answered accordingly: *In Reference, I.L.R. (2008) M.P. 1035: 2008(3) MPLJ 311: 2008(3) MPHT 535: 2008(2) JLJ 265: 2008(IV) MPJR 132.*

## (D)

### Dakaiti Prabhavit Kshetra Adhyadesh, M.P., 1981

– **Section 2(b)** – The word ‘dacoit’ in –Explanation of: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.*

– **Section 2(b)** and Penal Code, India (XLV of 1860) Section 391 – The word ‘dacoity’ has to be understood as defined in section 391, Indian Penal Code – Dacoity affected area – Commission of offence of dacoity within –Not necessary: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.*

– **Section 2(f)** – The term “specified offence” in – Meaning of: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.*

– **Section 2(f)** – Act constituting offence mentioned in schedule must have a nexus with the commission of dacoity to become specified offence: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.*

– **Section 5(2)** – and Criminal Procedure Code, 1973 (II of 1974), Sections 41(1)(a) and 167 – Arrest and detention under the Ordinance – Legality of –Right to be released on bail – Extent of: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919: 1982 MPLJ 7: 1982 JLJ 170.*

### **Debts Recovery Tribunals Regulation of Practice Rules, 1998**

– **Regulations 31 & 32** and Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Section 17(2) – Recovery Proceeding – Held, Regulations 31 & 32 are intra-vires, they do not transgress the limits stipulated u/s 22 of the Act or Rule 12(6) of the 1993 Rules – They are absolutely valid and impeccable: *Kowa Spinning Ltd. & Ors Vs. Debt Recovery Tribunal & Ors., 2003(1) JLJ 410: 2003(2) MPLJ 161: 2003(2) MPHT 114: AIR 2004 MP 1: 2004 AIHC 122.*

### **Decree**

– **Decree which is passed on an unregistered Award:** Decree not without jurisdiction – Decree valid though not according to law: *Moolchand Vs. Maganlal, I.L.R. (1964) M.P. 481: AIR 1965 MP 75: 1965 MPLJ 89: 1965 JLJ 147.*

– **Distinction between a decree which is a nullity and a decree which in not according to law:** *Moolchand Vs. Maganlal, I.L.R. (1964) M.P. 481: AIR 1965 MP 75: 1965 MPLJ 89: 1965 JLJ 147.*

### **Deed**

– **Interpretation of, Principle:** *Shri Digambar Jain Tera Panthi Mandir Trust, Shakkar Bazar, Indore Vs. Sub-Registrar, Stamps, Indore, I.L.R. (1971) M.P. 403: AIR 1970 MP 23: 1969 MPLJ 747: 1969 JLJ 935: 1969 RN 530.*

– **Nature of document to be determined from the language used and also its purpose and also by the substance of the transaction disclosed by the whole of the document:** *Balkrishna Vs. The Board of Revenue, M.P., Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 JLJ 941: 1969 RN 538.*



### **Delegated Legislation**

– **Includes “Conditional Legislation”:** *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.*

– **Essential legislative functions cannot be delegated:** *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 JLJ 16.*

– **Made by Executive** – Qualifies the description of Law – Delegated legislation – Includes “Conditional Legislation” – Order or Notification issued in exercise of non-statutory power or in exercise of statutory power which is purely executive – Does not amount to law – Law – Includes Rules, Orders and notifications issued by Government or subordinate authority in exercise of delegated Legislative power – Notification issued under statutory power exempting from general provisions of statute – Has force of law – Telegraph Wires (Unlawful Possession) Act, 1950 – Section 7(1) Notification issued by Central Government under – Is legislative in nature – Evidence Act, 1872 – Section 57(1) Judicial notice can be taken of such notification – Price fixation – Is in nature of legislative measure: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.*

### **Delegation**

– **Non-essential legislative function can be delegation:** *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 JLJ 16.*

– **Delegation of power to authority** – Authority cannot exercise power with retrospective effect: *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 JLJ 16.*

### **Deputy Commissioner**

– **Deputy Commissioner mentioned in Section 13(3)** – A Revenue Officer and not a person designate: *Ram Milan Vs. Bansilal, I.L.R. (1958) M.P. 131: AIR 1958 MP 203: 1958 MPLJ 446: 1958 JLJ 481.*

### **Divorce Act, Indian (IV of 1869)**

– **Proceedings under** – Nature of: *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099: AIR 1979 MP 70: 1979 JLJ 299.*

– **Section 3(3)** – Words ‘Reside or last resided together’ – Meaning of – Spouses having no common permanent home – Wife visiting husband’s place during holidays and residing together and also cohabiting – Inference of last resided together at the place where husband lived can be drawn – Adultery – Charge of, by husband against wife – Husband’s testimony not controverted by wife by sworn testimony – Inference: *Poster J.S. Singh Vs. Smt. Jyotsana Singh, I.L.R. (1982) M.P. 389: AIR 1982 MP 122: 1982 MPLJ 389: 1982(2) DMC 141: 1982 JLJ 500.*

– **Section 7** – Standard of proof recommended in *Blyth v. Blyth* should be applied – High Standard of proof needed for proving adultery in Divorce case: *Prem Masih Vs. Smt. Kumudanibai, I.L.R. (1975) M.P. 565: AIR 1974 MP 88: 1974 MPLJ 188: 1974 JLJ 247.*

– **Section 7** – High Court or District Court to give relief on the similar principles and rules as nearly as may be conformable to the principles and rules on which Court of Divorce and Matrimonial Causes in England acts and gives relief: *Prem Masih Vs. Smt. Kumudanibai, I.L.R. (1975) M.P. 565: AIR 1974 MP 88: 1974 MPLJ 188: 1974 JLJ 247.*

– **Section 10** – Adultery – Charges of, by husband against wife – Husband’s testimony not controverted by wife by sworn testimony – Inference: *Poster J.S. Singh Vs. Smt. Jyotsana Singh, I.L.R. (1982) M.P. 389: AIR 1982 MP 122: 1982 MPLJ 389: 1982(2) DMC 141: 1982 JLJ 500.*

– **Section 10** – Application by petitioner – Wife – Respondent got one daughter and one son out of the wedlock – Adultery – Allegation of adultery remained uncontroverted – Ex. P-1 photograph of Second marriage – One daughter born out of that wedlock – View taken by the Trial Court is justified decree confirmed: *Filomina Anthony Vs. Robert Anthony, I.L.R. (1999) M.P. 818.*

– **Section 10** – Husband seeking divorce on the ground that living with wife was unsafe and humanly impossible – During pendency of the petition husband gains knowledge that his wife is living in adultery – Amendment raising adultery as a ground for Divorce – Amendment when can be allowed – Order allowing such amendments – Validity and effect of Divorce – Proceedings under – Nature of – Section 11 – Charge of adultery – Requisites for proof thereof: *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099: AIR 1979 MP 70: 1979 JLJ 299.*

– **Section 10** – Petition for divorce on ground of adultery – Adultery to be proved to the satisfaction of Court beyond reasonable doubt – Adultery to be inferred from certain definite facts unless there is evidence to negate that inference – Sections 17 and 34 – Award of damages – High Court, Power to determine questions even when appeal

not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted – Things to be taken into consideration in determining damages – Adultery not itself sufficient to grant damages – Section 17 – Power of High Court to examine petitioner to obtain further information and to give opportunity to explain certain parts of his deposition: *Samuel Bahadur Singh Vs. Smt. Roshni Singh, I.L.R. (1959) M.P.487: AIR 1960 MP 142.: 1960 MPLJ 230: 1960 J LJ 288.*

– **Section 10** – Dissolution of Marriage – Adultery by Wife–Held, there is evidence of the wife’s inclination towards betraying the faith reposed in her by petitioner – Record shows that she earlier eloped with another person but was forgiven by the petitioner on her expressing words of repentance – Warnings by husband to the respondent wife produced no good results–As per evidence, wife with an employee of petitioner’s workshop was even seen roaming together– Conduct of the respondent/wife, the circumstances established in the case and the evidence led by petitioner clearly goes to show that petitioner has successfully proved that wife committed adultery – He is entitled to a decree of divorce – Decree of divorce rightly passed: *Pulikkottial Cheru Vs. Mary Zechariah, AIR1981 MP 112: 1981 J LJ 178.*

– **Section 10** – Dissolution of Marriage – Adultery – Standard & Burden of Proof – Adultery can rarely be proved by direct evidence which is looked upon only with disfavour and one has to infer adultery from attending circumstances, the inclination of spouse and opportunities available – Such evidence must be clear, cogent and convincing and should admit only of one inference before it can be accepted to infer adultery – Onus to prove this charge of adultery is upon the person making it and it is for him to satisfy the Court by adducing proper and sufficient evidence that adultery has been committed by other spouse – As circumstantial and presumptive evidence assumes importance in the case of adultery and direct evidence is normally not probable, uncorroborated evidence supported by such circumstantial evidence may be enough – Falsity of defence may be no substitute. Although this charge of adultery assumes a criminal character and demands of a rather strict proof, yet the standard of proof required is not the same as is required to prove a criminal charge – Proof beyond reasonable doubt is now not necessary and preponderance of probabilities may decide the issue: *Pulikkottial Cheru Vs. Mary Zechariah, AIR1981 MP 112: 1981 J LJ 178.*

– **Section 10** – Dissolution of Marriage – Adultery by Husband –Petition by wife on ground of adultery by husband – Held, husband and his alleged mistress did not appeared before the Court – Evidence of wife and her son remained unrebutted – Wife held entitled for decree of dissolution of marriage – Decree of dissolution of marriage rightly passed: *Bitiya Charles Vs. Samuel, AIR 1987 MP 119: 1987(1) DMC 306.*

– **Section 10 & 14** – Second Marriage by Husband –Held, evidence on record establishes that husband has deserted the petitioner and has remarried an another woman from whom there is a child born out of that union – Husband has not entered the witness box to controvert or challenge the evidence – Ground for divorce made out – Decree of dissolution of marriage rightly passed: *Patience Williams (Dr) Vs. Ashok*, AIR 1985 MP 223: 1984(1) DMC 486.

– **Sections 10, 14 & 17** – Adultery – Proof –Held, in matrimonial suit, direct evidence is rarely possible – Adultery of wife established by evidence on record – Wife did not enter the witness box to deny the allegations – She has also not appeared before this Court even after service of notice – *Decree nisi* dissolving the marriage rightly passed: *Daniel John Vs. Rajmaya*, AIR 1986 MP 245: 1987 JJJ 39.

– **Sections 10, 16 & 17** – Adultery & Cruelty –Held, it is rarely possible to prove adultery by direct evidence – In present case, husband filed written statement admitting illicit relationship with another woman – Witness deposed that husband is living with another woman as husband and wife – Evidence on record is unrebutted and thus establishes cruelty and adultery by husband– Decree of dissolution of marriage rightly passed: *Neena Vs. John Pormer*, AIR 1985 MP 85: 1985(1) DMC 229.

– **Section 10 & 17** –Dissolution of Marriage – Adultery & Cruelty –Held, evidence established that wife was living in adultery with other persons – There are letters and photographs of wife in the arms of a stranger which has been produced before the Court – Decree dissolving the marriage was rightly passed: *Jeviyar Cleman Vs. Ashalata*, AIR 1989 MP 263: 1989(1) DMC 199.

– **Section 10 & 17** – Dissolution of Marriage – Decree Nisi –Held, husband filed a petition u/s 10 alleging that respondent/wife since solemnization of her marriage with petitioner has been guilty of adultery – Notice of proceeding sent to wife but she has not appeared – Petitioner’s statement is unrebutted and there is no evidence to the contrary – No collusion between the parties – There is a registered letter of wife wherein she had given her intention for dissolution of marriage– *Decree nisi* for dissolution of marriage rightly passed by Court below: *Juel Topo Vs. Nirmala Noorgadi*, AIR 1986 MP 25: 1985(1) DMC 269.

– **Section 10 & 17** – Dissolution of Marriage – Adultery & Cruelty –Held, testimony of wife and other witness are unrebutted – Evidence establishes that husband was guilty of adultery coupled with such cruelty as without adultery would have entitled the wife to a divorce *a mensa et thoro* – *Decree nisi* dissolving the marriage rightly passed: *Alyson Vs. Rodney Valentine D’bras*, AIR 1983 MP 160: 1983(1) DMC 427.

– **Section 10 & 17** – Reference for confirmation of decree of divorce – Divorce is a Civil Proceeding – Case is to be proved by preponderance of probabilities depending upon the nature of gravity of act alleged – Wife keeping extra marital affairs despite objection of husband – Roaming in public with paramour and going to Gurudwara instead of attending Church – Travelling various places and spending nights together with paramour – Case of adultery proved – No collusion nor acquiescence or condonation on part of husband – Decree of Divorce conformed: *Sunil Masih Vs. Smt. Elizabeth Daisy Masih, I.L.R. (2001) M.P. 430: AIR 2001 MP 226: 2001(2) MPLJ 401: 2001(3) MPHT 220: 2001(2) JLJ 64: 2001(II) MPJR 344: 2001 AIHC 3279: 2001(2) DMC 53.*

– **Section 10 & 17** – Desertion by Wife –Held, wife deserted the husband and started living with another person as husband and wife – Evidence of petitioner husband and one of his son was remained un rebutted – The only requirement to prove the case by petitioner is by preponderance of probabilities and the degree of probability depends on the gravity of offence – Petitioner has satisfactorily proved his case – Decree of dissolution of marriage rightly passed: *M.P. Badalkar Vs. Shanta Sarojini, AIR 1988 MP 319: 1987(2) DMC 288.*

– **Sections 10, 17 & 22** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage: *Mary G. Sunny Vs. Sunny George, I.L.R. (2002) M.P.414: 2002(3) MPHT 121: 2002(3) MPLJ 497: 2002(II) MPJR 21.*

– **Sections 10, 17, 34, 35 & 55** – Petition for divorce by husband on ground of adultery – Decree of divorce alongwith award of damages – Sections 10 and 17 – Reference for confirmation of decree of divorce – Divorce is a civil proceeding – Case is to be proved by preponderance of probabilities depending upon the nature of gravity of act alleged – Wife keeping extra marital affairs despite objection of husband– Roaming public with paramour and going to Gurudwara instead of attending Church– Travelling various places and spending nights together with paramour – Case of adultery proved – No collusion nor acquiescence or condonation on part of husband – Decree of divorce confirmed – Section 34 and 55 – Award of damages against adulterer – Independent cause of action – Adulterer has no right to challenge confirmation proceeding under Section 17 but can avail remedy of appeal under Section 55 of the Act– Decree of dissolution of marriage made absolute: *Sunil Masih Vs. Smt. Elizabeth Daisy Masih, I.L.R. (2001) M.P. 430: AIR 2001 MP 226: 2001(2) MPLJ 401: 2001(3) MPHT 220: 2001(2) JLJ 64: 2001(II) MPJR 344: 2001 AIHC 3279: 2001(2) DMC 53.*

– **Section 11** – Charge of adultery – Requisites for proof thereof: *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099: AIR 1979 MP 70: 1979 JLJ 299.*

– **Section 14**, Proviso – Does not bar jurisdiction of Court to grant decree for dissolution of marriage at the instance of a spouse who is also guilty of adultery – Discretion – When to be exercised – Social consideration – Relevancy of: *Smt. Nalini Vs. C.H. Issac, I.L.R. (1978) M.P. 400: AIR 1977 MP 266: 1977 MPLJ 687: 1977 JLJ 829.*

– **Section 14** – Petition for divorce on ground of adultery – Direct evidence hardly possible – Proof can be by circumstantial evidence – Section 7 – High Court or District Court to give relief on the similar principles and rules as nearly as may be confirmable to the principles and rules on which Court of Divorce and Matrimonial Causes in England acts and gives relief – Standard of proof recommended in *Blyth v. Blyth* should be applied – High standard of proof needed for proving adultery in divorce case: *Prem Masih Vs. Smt. Kumudanibai, I.L.R. (1975) M.P. 565: AIR 1974 MP 88: 1974 MPLJ 188: 1974 JLJ 247.*

– **Section 17** – Confirmation of a *decree Nisi* for dissolution of marriage – Wife living in adultery – No connivance on the part of husband – No condonation of adultery by husband – Offence repeated and semblance of future repetition is present – Original guilt of erring partner will revive – Husband entitled to a decree of divorce: *The State of M.P. Vs. Sharad Kumar Phillips, I.L.R. (1979) M.P. 771.*

– **Section 17** – Divorce – Application for divorce on the ground of adultery of wife – Wife found in compromising position in non-applicant's house – wife remained ex-party – Held – Trial court rightly passed decree of divorce in favour of husband – Reference Disposed of: *Shailendra Kumar Vs. Smt. Chandra Prabha, I.L.R. (1997) M.P.45: AIR 1998 MP 266: 1998(2) JLJ 158.*

– **Section 17** – Confirmation of decree for dissolution of marriage – Petition under Section 10 by husband on ground of adultery – Trial Court recording categorical finding that respondent was not living in adultery yet granted the decree on the ground that she has left the petitioner for last two years – Without jurisdiction: *Sebestain Vs. Smt. Kunti Divya, I.L.R. (1999) M.P. 1008.*

– **Section 17** – Reference for confirmation of decree of dissolution of marriage – Ground of impotency – Petition under Section 10 is misconceived – Wife should have moved application under Section 18 on ground of impotency or under Section 22 on ground of cruelty – Decree set aside – Case remanded to trial Court to permit amendment in the petition and proceed according to law: *Jenet Mary James Vs. Vinod Kumar James, I.L.R. (1999) M.P. 910.*

– **Section 17** – Reference to confirmation of decree for dissolution of marriage – Section 10 – Application by petitioner wife – Respondent got one daughter and one son

out of wedlock – Adultery – Allegation of adultery remained un-controverted – Ex.P-1 photograph of Second marriage – One daughter born out of that wedlock – View taken by the Trial Court is justified Decree confirmed: *Filomina Anthony Vs. Robert Anthony*, I.L.R. (1999) M.P. 818.

– **Section 17** – Reference for confirmation of decree of dissolution of marriage – Special Marriage Act, 1954 – Section 28 – Joint Petition for mutual divorce – Sections 15, 18 of the Act – Registration of marriage and effect – Since the marriage has not been registered – Section 28 – Does not come into play – Decree granted by the Trial Court is without application of mind – Decree set aside: *Smt. Susmita Joesph Vs. Limson*, I.L.R. (1999) M.P. 722.

– **Section 17** and M.P. Civil Courts Act, Section 7 & 11 – Held, an Additional District Judge to whom the case has been transferred for disposal by District Judge, has jurisdiction to hear and determine the original proceedings under the Divorce Act: *Lamuel Torne Vs. Kamalabati Lamuel*, 1961 J.L.J. SN 190.

– **Sections 17, 10 & 22** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage: *Mary G. Sunny Vs. Sunny George*, I.L.R. (2002) M.P.414: 2002(3) MPHT 121: 2002(3) MPLJ 497: 2002(II) MPJR 21.

– **Sections 17, 20, 22 & 23** – Decree passed by District Judge for dissolution of marriage or for declaring marriage to be null & void requires confirmation by High Court – No confirmation required for decree for judicial separation – Such decree comes into effect from the date on which it is passed – Reference to High Court in case of decree for judicial separation, wholly in competent & misconceived: *Benzamin Vs. Smt. Rundhbai*, I.L.R. (1988) M.P. 471: AIR 1989 MP 25: 1988 MPLJ 500: 1988 J.L.J. 721: 1988(2) DMC 426.

– **Section 17 & 34** – Award of damages – High Court, power to determine questions even when appeal not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted: *Samuel Bahadur Singh Vs. Smt. Roshni Singh*, I.L.R. (1959) M.P. 487: AIR 1960 MP 142.: 1960 MPLJ 230: 1960 J.L.J. 288.

– **Sections 17, 34 & 55** – Award of damages against adulterer – Independent cause of action – Adulterer has no right to challenge confirmation proceeding under Section 17 but can avail remedy of appeal under Section 55 of the Act – Decree of dissolution of marriage made absolute: *Sunil Masih Vs. Smt. Elizabeth Daisy Masih*, I.L.R. (2001) M.P. 430: AIR 2001 MP 226: 2001(2) MPLJ 401: 2001(3) MPHT 220: 2001(2) J.L.J. 64: 2001(II) MPJR 344: 2001 AIHC 3279: 2001(2) DMC 53.

– **Section 18 & 19** – Annulment of Marriage – Impotency of Husband – Held, from the medical and other evidence, it is established that husband was impotent not only at the time of marriage but also at the time of institution of suit – Evidence on record suggest that husband is found impotent in relation to the petitioner wife, possibility of his being potent otherwise is not ruled out – Wife entitled for decree of annulment of marriage: *Jyotsna Ram Vs. Subhash Ram, 1991(II) MPJR 188.*

– **Sections 18, 19 & 20** – Impotency of Husband –Held, evidence establishes that husband was impotent and was incapable of committing sexual intercourse even prior to marriage but concealed this fact at the time of marriage – Instead of making attempt to cure himself, use to react otherwise and become violent and cruel towards the wife – Husband has not appeared before Court despite such serious allegations – Evidence of wife and other witness stands unchallenged – Court rightly declared the marriage null and void: *Rajni Singh Vs. Santosh Singh, AIR 1988 MP 260: 1987(2) DMC 314.*

– **Section 19(4) & 20** – Nullity of Marriage – Re-marriage by Wife without taking Divorce from First Husband –Held, marriage between the petitioner and the respondent was a nullity under S. 19(4) of the Act since the respondent's earlier marriage was subsisting and first husband was alive at the time of second marriage – Respondent/wife was ex parte before trial Court even after service of notice – Statements of petitioner's witnesses have not been challenged and they have gone un rebutted – No evidence by wife to show that earlier marriage stood dissolved when she contracted second marriage with petitioner – Since first husband was alive at the time of second marriage of respondent with petitioner, the second marriage was a nullity: *Andrias Soni Vs. Mr. Joyce Prasad Soni, AIR 1986 MP 180: 1986 JLJ 738: 1985(1) DMC 257.*

– **Section 22** – Decree of Judicial Separation does not require for confirmation by the High Court it comes into force from the very day it is passed: *Rajesh Dass Vs. Usha Dass, I.L.R. (1995) M.P. 472: AIR 1996 MP 129: 1996(I) MPJR 190: 1996 JLJ 194: 1996 MPLJ 277.*

– **Section 22** – Accusation of cruelty – Burden of proof – Desertion– Proof of: *Prem Prakash Rubin Vs. Smt. Sarla Rubin, I.L.R. (1990) M.P. 601: AIR 1989 MP 326: 1989 MPLJ 571: 1989 JLJ 573: 1989 MPJR 674.*

– **Section 22** – Cruelty – Includes mental cruelty also – Conduct of husband or wife rendering continuance of cohabitation and performance of conjugal rights impossible amounts to such cruelty – Accusation of cruelty –Burden of proof – Desertion – Proof of: *Prem Prakash Rubin Vs. Smt. Sarla Rubin, (1990) I.L.R. M.P. 601: AIR 1989 MP 326: 1989 MPLJ 571: 1989 JLJ 573: 1989 MPJR 674.*



– **Sections 22, 10 & 17** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage: *Mary G. Sunny Vs. Sunny George, I.L.R. (2002) M.P.414: 2002(3) MPHT 121: 2002(3) MPLJ 497: 2002(II) MPJR 21.*

– **Section 22 & 23** – No confirmation required for decree for judicial separation – Such decree comes into effect from the date on which it is passed – Reference to High Court in case of decree for judicial separation, wholly in-competent and misconceived: *Benzamin Vs. Smt. Rundhbai, I.L.R. (1988) M.P. 471: AIR 1989 MP 25: 1988 MPLJ 500: 1988 JLJ 721: 1988(2) DMC 426.*

– **Section 34 & 17** – Award of damages – High Court, power to determine questions even when appeal not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted: *Samuel Bahadur Singh Vs. Smt. Roshni Singh, I.L.R. (1959) M.P. 487: AIR 1960 MP 142: 1960 MPLJ 230: 1960 JLJ 288.*

### **Doctrine of Merger**

– **Applicable to Income Tax proceedings as well** – Extent of its applicability: *The Commissioner of Income Tax, M.P., Bhopal Vs. K.L. Rajput, I.L.R. (1986) M.P. 618: 1987 MPLJ 247: 1987 JLJ 35.*

– **Doctrine of merger** – Where the appeal against original order of assessment was on limited point and the appellate authority without touching any other ground though set-aside the order of assessment but the remand was confined to give opportunity to appellant to file Form B and appendix declaration and to pass a fresh appropriate assessment order, the entire assessment order is not merged in the assessment order which passed after remand: *Vikram Cement Vs. Commissioner of Commercial Tax, I.L.R. (2010) M.P. 2443: 2011(1) MPLJ 610: 2011(2) MPHT 283.*

### **Doctrine of stare decisis**

– **Doctrine of “stare decisis”** – Implication of: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Doctrine of “stare decisis”** – Held, the doctrine does not preclude consideration of an interpretation which started as an unexamined assumption – Applicability of this doctrine depends largely on the nature of the question at issue – Doctrine is invoked when reversal of a decision, which has prevailed for a considerable length of time is likely to create serious embarrassment for those, who relying upon a particular interpretation of a Statute, have entered into contracts or other transactions,

would find themselves frustrated if a different interpretation is put on that Statute: *Mangilal Surat Singh Vs. Board of Revenue 1983 MPLJ 254: AIR 1983 MP 134: 1983 JIJ 385.*

## (E)

### Election

– **Right to stand for election when conferred by a statute** – Becomes a civil right – Disposal of dispute entrusted to Civil Court – Procedure of that Court to apply unless prohibited: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JIJ 53.*

### Electricity Duty Act, M.P. (X of 1949)

– **Section 3(1), Part B, Entry 3** and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity – Held – If appellant has a mining licence and carrying out mining activity, being covered under the Act of 1952 and his stone crushing unit is situated in or adjacent to mine, he will be liable to pay the rate of electricity duty as provided in Section 3(1), Entry 3 of Part B (Table) of Act of 1949: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JIJ 5.*

– **Section 3(1), Part B, Entry 3** and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity – Held – Rate of duty u/S 3(1) Entry 3 of Part B (Table) as applicable to mines, cannot be applied/enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine and are not involved in the mining activity: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JIJ 5.*

– **Section 3(1), Part B, Entry 3** and Vidyut Shulk Adhiniyam, M.P. (17 of 2012), Section 3(1), Part A, Entry 6 – Applicability – Held – Act of 2012 came into force w.e.f. 25.04.2012 and same is not applicable with retrospective effect: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JIJ 5.*

### Electricity Tariff

– **Fixation** – Whenever contracted supply falls short of 40% of Contract load, then the Board shall be entitled to charge for the reduced energy (actually supplied) and

will not be entitled to charge 40% of the Contract load – Reference by Division Bench – Opinion – Given by Full Bench – Present interpretation will be prospective in nature and not retrospective: *Raymond Limited Vs. M.P.E.B., I.L.R. (1998) M.P. 905: AIR 1999 MP 143: 1999(1) MPLJ 648: 1999(1) JLJ 238: 1999 AIHC 3167.*

### **Enactment**

– **Retrospective** – Sovereign legislature enacts law with retrospective operation: *The Collective Farming Society, Ltd. Lilakheri Vs. State of M.P., I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 JLJ 16.*

### **Essential Commodities (Price Exhibition and Price Control) Order, M.P. 1977**

– **Clause 6(2)**, M.P. Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980 – Clause 6, 10 – Issuance of Receipt or Invoice – Control Order 1977 requires a dealer to issue correct receipt or invoice to every purchaser – Licence issued under Order, 1980 requires licensee to issue to every customer, correct receipt or invoice if so demanded – Order issued by Collector in exercise of power under Clause 6(2) of Order, 1977 directing all Petrol and Diesel pump owners to supply cash memos to customer challenged – Matter referred to larger bench for reconsideration of judgment passed in *Virendra Singh V. Collector, Indore and others* holding that it is not necessary to issue receipt or invoice unless demanded in case of sale of motor spirit – Held – Control Order, 1977 applicable to Petrol and Diesel (H.S.D.) – Control Order, 1980 applies to Motor Spirits and High Speed Diesel Oil only – Elaborate provisions including licensing of dealer have been made in Control Order, 1980 to regulate sale and supply of Motor Spirits and High Speed Diesel Oil – Clause 8 of term of licence provides that licensee shall issue receipt or invoice to customer if so demanded by him – Whether a dealer to whom Control Order, 1980 applies has to comply with provisions of Control Order, 1977 – Dealer as defined in Clause 2(b) of Control Order, 1980 means person engaged in business of purchase, sale or storage of sale of motor spirit and or high speed diesel oil or both on the basis of agreement with Oil Company – Dealer who carries on business in Motor Spirit and High Speed Diesel Oil has to sell in accordance with instructions of Government or Public Sector Companies with regard to prices at which product is to be sold – Thus, dealer cannot be asked to comply with provisions of Control Order, 1980 as well as Control Order, 1977 – Decision passed in *Virendra Singh V. Collector, Indore and others* holding that it is not necessary to issue receipt or invoice unless demanded was correct in facts of the case – However, authorities mentioned in Clause 10 of Control Order, 1980 can issue any direction in addition to those contained in

terms and conditions of licence: *Surjeet Singh Saloja Vs. The State of Madhya Pradesh*, I.L.R. (2007) M.P. 1158: 2007(4) MPLJ 566: 2008(1) JLJ 274: 2007(4) MPHT 494: 2007(III) MPJR 235.

### **Essential Commodities Act (X of 1955)**

– **Section 6-C** and Criminal Procedure Code, 1973 (II of 1974), Section 401 – District and Sessions Judge – Acts as Criminal Court inferior to High Court – Revision would lie under Section 401 of the Code of Criminal Procedure, 1973: *Harbhajansingh Vs. State of M.P.*, I.L.R. (1978) M.P. 1097: AIR 1978 MP 150: 1978 MPLJ 125: 1978 JLJ 194: 1978 CriLJ 1147.

– **Section 6-C** – Appointment of District and Sessions Judge as “Judicial Authority” – Is a Judicial Court in hierarchy of Court: *Harbhajansingh Vs. State of M.P.*, I.L.R. (1978) M.P. 1097: AIR 1978 MP 150: 1978 MPLJ 125: 1978 JLJ 194: 1978 CriLJ 1147.

– **Section 6-C** – Words ‘Judicial Authority’ under – Import of – Is not *persona designata* while hearing appeals from orders under section 6-A – Appointment of District and Sessions Judge as “Judicial Authority” – Is a Judicial Court in hierarchy of Court – Acts as Criminal Court inferior to High Court – Revision would lie under section 401 of the Code of Criminal Procedure, 1973: *Harbhajansingh Vs. State of M.P.*, I.L.R. (1978) M.P. 1097: AIR 1978 MP 150: 1978 MPLJ 125: 1978 JLJ 194: 1978 CriLJ 1147.

### **Estate Duty Act (XXXIV of 1953)**

– **Section 5 & 6** – Death of sole coparcener – Entire properties passes on his death for purposes of Entire Duty: *Ramratan Vs. The Controller of Estate Duty, I, Bhopal*, M.P., I.L.R. (1982) M.P. 1008: 1982 MPLJ 122: 1982 JLJ 167: 1982 JLJ 532: 1983 JLJ 14.

– **Section 5 & 6** – Hindu undivided family properties – Partition – Sole coparcener receiving properties in his share – Nature of – Death of sole coparcener – Entire Property passes on his death for purposes of Estate Duty: *Ramratan Vs. The Controller of Estate Duty, I, Bhopal*, M.P., I.L.R. (1982) M.P. 1008: 1982 MPLJ 122: 1982 JLJ 167: 1982 JLJ 532: 1983 JLJ 14.

– **Sections 5, 7 & 39** and Hindu Succession Act (XXX of 1956), Section 14 – Female Hindu Possessed of right amounting to property in generic sense – Vests in her as full owner – Her share not liable for Estate Duty – Hindu Succession Act, 1956 – Section 14 – Is retrospective – Immaterial whether right of a female accrues before or after

commencement of the Act – Partition – A female entitled to a share on partition – Not deprived of her right simply because parties there to not assigning any share – Her act of standing by or failure to raise objection to partition – Does not take away her right to get a share – Such conduct does not amount to acquiescence or relinquishment – Hindu Law – Family consisting of deceased and his wife – Entire property and not half of it passes on the death of deceased in case the deceased being the only coparcener and owner of entire coparcener interest – Estate Duty Act, 1953 – Section 10 – Gifts in favour of grand-sons of cash amounts – Donees depositing amounts with a firm of which donor not partner – Donor becoming partner subsequently on reconstitution of firm – After some time donees withdrawing amounts from that firm and reinvested in another firm – Section 10 not attracted: *The Controller of Estate Duty, Madhya Pradesh, Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300: 1982 J.L.J. 42.*

– **Section 7** and Insurance Act (IV of 1938), Section 39 –Nomination of Insurance policies of deceased – Effect – Sum representing value of such insurance policies passes on death of the deceased – Includable in the principal value of estate of deceased – Assignment of policy and nomination of policy – Distinction between: *The Controller of Estate Duty, M.P. Jabalpur Vs. Kewalram, I.L.R. (1990) M.P.1: 1989 MPLJ 488: 1989 J.L.J. 473.*

– **Section 10** – Conditions necessary for taking out gifts from the operation of this provision – Donor remaining in possession and enjoyment of gifted property – Gift cannot be excluded – Donor retaining and excluding certain rights and interest from the gift – Possession and enjoyment by donor of such rights and interests does not amount to non-exclusion of donor of what is given under gift of which possession and enjoyment is assumed by donee – Amount deposited with bank, firm etc. – Depositee becomes owner – Depositor owns only a debt also known as obligation or actionable claim – Such right is proprietary right – This amounts to actionable claim – Possession and enjoyment of property gifted – Retained by donee to entire exclusion of deceased or otherwise – Interpretation of Statutes – Taxing statute to be construed in favour of subject – Estate Duty Act – Section 10 – Lays down two conditions and unless both conditions are satisfied, property would be liable to estate duty – Gift – For a valid gift donee must immediately begin to enjoy the gift to the exclusion of the donor – Passive attitude of donee, cannot be construed as possession and enjoyment – Mere inaction on part of donee will not amount to donor continuing in possession.: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 J.L.J. 604: 1973 MPLJ 484.*

– **Section 10** – Donor remaining in possession and enjoyment of gifted property – Gift cannot be excluded: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

– **Section 10** – Donor retaining and excluding certain rights and interests from the gift – Possession and enjoyment by donor of such rights and interest does not amount to non-exclusion of donor of what is given under gift of which possession and enjoyment is assumed by donee: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

– **Section 10** – Gift – For a valid gift donee must immediately begin to enjoy the gift to the exclusion of the donor: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

– **Section 10** – Gifts in favour of grandsons of cash amounts – Donees depositing amounts with a firm of which donor not partner – Donor becoming partner subsequently on reconstitution of firm – After some time donees withdrawing amounts from that firm and reinvested in another firm – Section 10 and attracted: *The Controller of Estate Duty, Madhya Pradesh, Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300: 1982 JLJ 42.*

– **Section 10** – Lays down two conditions and unless both conditions are satisfied, property would be liable to estate duty: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

– **Section 10** – Passive attitude of donee, cannot be construed as possession and enjoyment – Mere inaction on part of donee will not amount to donor continuing in possession: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

– **Section 10** – Possession and enjoyment of property gifted – Retained by donee to entire exclusion of deceased or otherwise: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.*

### **Estoppel**

– **Estoppel** – Promissory estoppel – petitioner aware exemption not available to his unit and unit not established because of exemption – No question of promissory estoppel: *M/s. Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502: 1988 MPLJ 620: 1988 JLJ 701. (Overruled in State of M.P. Vs. G.S. Dall & Flour Mills AIR 1991 SC 772)*

### **Evidence Act, Indian (I of 1872)**

– **Section 25** and Land Revenue Code, M.P. (XX of 1959), Section 230 and rule 8 of Kotwari Rules – Kotwar is not a police officer – Confession made before kotwar – Admissible in evidence: *State of M.P. Vs. Premlal, I.L.R. (1986) M.P. 554: 1987 MPLJ 195*.

– **Section 57(1)** – Judicial notice can be taken of such notification: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 J LJ 124: 1977 Cri LJ 597*.

– **Section 76** – Certified copy of Entry in Assessment List Register – Admissibility: *Damumal Vs. Smt. Shevantibai, I.L.R. (1966) M.P. 689: 1965 MPLJ 496: 1965 J LJ 557: AIR 1965 MP 223*.

– **Section 91** – Excludes oral evidence regarding terms of documents, but not evidence regarding relationship of landlord and tenant: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809: AIR 1975 MP 230: 1975 MPLJ 633: 1975 J LJ 667*.

– **Section 114** – Illustration (e)– Applies to the report of the public analyst – Presumption is rebuttable: *The State of Madhya Pradesh Vs. Chhotekhan, I.L.R. (1971) M.P. 197: AIR 1970 MP 29: 1969 MPLJ 732: 1969 J LJ 876: 1970 Cri LJ 238*.

– **Section 114** – Presumption arising from notification – Not rebutted by showing that instrument also used in a trade or calling other than agriculture: *The Commissioner of Sales Tax, M.P., Vs. M/s. Narang Industries of Indore, I.L.R. (1973) M.P. 183: 1971 MPLJ 403: 1971 J LJ 352*.

– **Section 114** – Presumption that statutory power validity exercised – Excess of jurisdiction in exercise of statutory power not to be assumed: *The Commissioner of Sales Tax, M.P., Vs. M/s. Narang Industries of Indore, I.L.R. (1973) M.P. 183: 1971 MPLJ 403: 1971 J LJ 352*.

– **Section 115** – Petitioner neither guilty of fraud nor misstatement or suppression of facts nor patently ineligible – Promissory estoppel operative against the University respondent: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, I.L.R. (1979) M.P. 289: 1978 J LJ 182: 1978 MPLJ 172: AIR 1978 MP 86*.

– **Section 115** – Promissory Estoppel – Principles of: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, I.L.R. (1979) M.P. 289: 1978 J LJ 182: 1978 MPLJ 172: AIR 1978 MP 86*.

**Excise (Amendment and Validation) Act, M.P. (XX of 1964)**

– **Excise Act became applicable to foreign liquor after amendment:** *M/s. N. K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Grant of license regarding foreign liquor** – Does not involve any transfer of a right of sale from Government to licensee – State Government can only charge fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 5** – as amended and Sections 18 and 21 – Enable grant of license in F.L.1: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

**Excise Act, M.P. (II of 1915)**

– **Confers regulatory power on State Government in respect of manufacture and sale of foreign liquor:** *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Contains no provision regarding execution of formal deed of contract** – Contract comes into existence by virtue of statutory provision and the rules – Acceptance of bid – Does not involve any judicial or quasi-judicial process – Constitution of India – Article 299(1) – Operation of, depends on question whether power exercised is executive – Not applicable to cases of excise contracts – Excise Act, Central Provinces and Berar – Section 18 – Liability of bidder arises when bid accepted – Deposit is not condition precedent – Constitution of India – Article 299 – Conditions to be satisfied for requirements of the provision – These also apply to a contract by tender and acceptance – Bid list signed by Bidder and Collector – Does not fulfill requirement of this provision – Law empowering State Government to enter into Contract – Exercise of that power amounts to exercise of executive power – Includes contracts made by State under statutory authority – Article 154 – Statutory functions conferred on authority subordinate to the Governor – Functions not performed in the name of Governor – Such functions to be performed in accordance with statute conferring the functions – Such power does not become executive power of the Governor – Contract by such authority does not fall under Article 299 – Excise Act, Central Provinces and Berar – Section 18 – Auction of excise contract – Is a sale under statutory power – Auction by Collector – Is in exercise of statutory power – Constitution of India – Articles 298 and 299 – Executive power in – Is the non-statutory executive power and not the statutory one – Interpretation of Statute –



Principle of construction – No part or statute should be rendered devoid of any meaning – Constitution of India – Article 299 – Executive power – Wide enough to include power derived from Statute: *Ram Ratan Gupta Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Fee realized in respect of Excise Contract** – Cannot be justified as a fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Grant of licence is a grant of privilege exclusively belonging to the State:** *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Tax on Luxuries** – Must be co-related to the value, quality and quantity of luxuries – Not imposed for enjoying the privilege of carrying on trade in articles of Luxury: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Sections 8 to 17** – Confer power on State alone to deal in intoxicants: *M/s. N. K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 17** – Grant of licence – In only to control and regulate the exercise of the right: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 17** – Licence does not transfer right to carry on trade: *M/s. N. K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 17** – Right to carry on trade in intoxicating liquor – Is subject to a licence granted under Section 17: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – As amended – Applicable to foreign liquor – Power of State Government to charge consideration for transfer of privilege or right to sale foreign liquor: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – Grant of lease under – Person acquires a sort of limited monopoly: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – Grant of privilege – Does not involve transfer of right to trade: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – Right to regulate trade – Does not imply that right vested in controlling authority: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – Right to trade – Is a kind of right enjoyed by a person – State has no exclusive right or privilege to carry on trade itself though it has power to regulate it: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** and Constitution of India, Article 19 (6) – Consideration received is for grant of lease of trading rights – Provisions valid under first part of Art. 19(6) of the Constitution: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18** – Auction by Collector – Is in exercise of statutory power: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P.377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Section 18** – Auction of excise contract – Is a sale under statutory power: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Section 18** – Liability of bidder arises when bid accepted – Deposit is not condition precedent: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

– **Section 18 & 27** – Payment receivable under – Is different from duty and fees: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P.207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 18 & 27** – To be read along with Section 27: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

–**Sections 25, 26 & 27** – Contemplate three kind of levies – These three cannot be conferred: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **Section 27** – Authorises State Government to accept payment in consideration of grant of lease under Section 18 – Payment of consideration need not be equated with fees but can be charged in addition to fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 J LJ 515.*

### **Excise Policy, 2010-2011**

– **Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a)**, Country Spirit Rules, M.P. 1995, Rule 9– Applications are being invited under new excise policy also – Provisions of new policy are not violative of M.P. Foreign Liquor Rules, 1996 and M.P. Country Spirit Rules, 1995: *Chingalal Yadav Vs. State of M.P., I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) J LJ 360: 2010(2) MPHT 251.*

– **Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a)**, Country Spirit Rules, M.P. 1995, Rule 9– It is open to State Government to renew the licence of existing licensee on such condition – New policy is a valid policy as same is not in contravention of Rule 8(1)(a) of M.P. Foreign Liquor Rules, 1996 and Rule 9 of M.P. Country Spirit Rules, 1995: *Chingalal Yadav Vs. State of M.P., I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) J LJ 360: 2010(2) MPHT 251.*

## **(F)**

### **Finance Act (XXXII of 1994)**

– **Section 65(76b) [As amended by Finance Act, 2005]**, Central Excise Act, 1944, Section 2(f) – Manufacture – Service Tax – Packaging and bottling of liquor come within the ambit and sweep of manufacture – There can be no levy of service tax on manufacture in view of clear postulate u/s 65(76b) of Act, 1994 – Decision rendered in *M/s Vindhyaachal Distilleries* does not state law correctly – Decision rendered in *Som Distilleries* upheld: *Maa Sharda Wine Traders (M/s.) Garahakota, Sagar Vs. Union of India, I.L.R. (2009) M.P. 1568: AIR 2009 MP 207: 2009(2) MPLJ 593: 2009(3) MPHT 304: 2009(2) J LJ 298: 2009(II) MPJR 16.*

### **Foreign Liquor Rules, M.P., 1996**

– **Rule 8(1)(a)**, Country Spirit Rules, M.P. 1995, Rule 9 – Grant of licence in such other manner as directed by general or special order – "In such procedure which may be prescribed by the State Government from time to time" means that it empowers the Government to prescribe the mode of disposal of applications for grant of licence by renewal of applications submitted by existing licensees: *Chingalal Yadav Vs. State of M.P., I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) J LJ 360: 2010(2) MPHT 251.*

### **Forest Contract Rules**

– **Rule 28 & 29** – Deal with failure of purchaser after contract in writing is executed – Offer of bid accepted subject to condition of auction – Implied contract comes into operation such contract not governed by Article 299 of the Constitution: *K.P. Choudhary Vs. The State of Madhya Pradesh, I.L.R. (1962) M.P. 29: AIR 1962 MP 102: 1962MPLJ 166: 1961 JLJ 1384.*

### **Fundamental Rules, M.P.**

– **Rule 9(3)**, Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Revocation of suspension order – Lien – It is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension – Lien can be against a post and not a lien on a place: *Asif Mohd. Khan Vs. State of M.P., I.L.R. (2015) M.P. 3141: AIR 2015 MP 203: 2015(4) MPLJ 406: 2015(3) JLJ 181: 2016(I) MPJR 40.*

– **Rule 22-A & 22-B**, are applicable – Testing on the anvil of legal position there is no difficulty in holding that Chief Municipal Officers are the servants of the State Government – Such master & servant relationship is not affected merely because salaries and allowances of such members are a charge on the Municipal funds – Reference answered accordingly: *Suresh Chandra Sharma Vs. State, I.L.R. (2000) M.P. 645: 2000(2) MPLJ 530: 2000(2) JLJ 268: 2000(II) MPJR 449.*

– **Rule 27**, Fundamental Rule – Two advance increments for family planning operation – Constitutes personal pay: *State of Madhya Pradesh Vs. R.K. Chaturvedi; I.L.R. (2006) M.P. 655: 2006(2) MPLJ 374: 2006(2) MPHT 281: 2007(I) MPJR 139: 2006(2) JLJ 143.*

## **(G)**

### **General Clauses Act (X of 1897)**

– **Section 8** – Permits reading of – re-enacted provision if the same did not evidence different intention: *The State of M.P. Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.*

### **General Clauses Act, M.P., 1957 (III of 1958)**

– **Section 2(6)** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Function of presiding over the meeting according to Section 55(3) of Municipalities

Act, M.P., 1961 – Is an officer empowered to perform duties of Collector of district: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 2(6)** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Function of Collector can be performed by additional Collector or Sub-Divisional Officer in the absence of prohibition: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 2(6)** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Officer holding the current charge of post and person holding a particular post and officer not vested with powers attached to that post-difference: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 2(6)** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Person holding current charge of post – Person can do only administrative functions: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

### **General Sales Tax (Amendment) Act, M.P. (XX of 1964)**

– **Section 8** – Prescribes limitation and the mode of counting it – The amendment by section 8 – Is not retrospective – General sales Tax Act, M.P., 1958 – Section 2(u) – “Year” in – Means Twelve months ending on 31<sup>st</sup> March – Section 19-(before amendment) – “Year” – Would mean financial year – Assessment year will be from April to end of March – Five years to be computed from the end of financial year – Section 19, as amended – Enlarges period of limitation for re-assessment and widens grounds on which re-assessment can be made: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489: 1975 MPLJ 37: 1975 RN 118: 1975 JLJ 215.*

### **General Sales Tax Act, M.P., 1958 (II of 1959)**

– **As amended by (Amendment) Act (XVI of 1965) Sections 2(bb), 4 & 10** and Schedule 1, Entry 6 – Assessee carrying on business of manufacture of cloth and yarn – Cloth manufactured was tax free – Sale of unserviceable items of stores like discarded machineries, colours, chemicals, iron hoops, coal ash etc – Such Sales of goods liable to tax: *M/s. Hukumchand Mills Ltd. Indore Vs. Commissioner of Sales Tax, M.P., I.L.R. (1990) M.P. 7: 1987 MPLJ 570.*

– **Determination of meaning of sugar in** – Definition given in Central Excise and Salt act, 1944 can be taken into consideration – Four purposes of Sales tax on declared goods – Definition of sugar given in Central Sales Tax Act. 1956 and also additional duties of excise (Goods of special Importance) Act, 1957 – Can be taken into consideration in interpreting it as occurring in M.P. General Sales Tax Act – General Sales Tax Act, M.P., 1958 – Schedule 1, Entry No. 41 "Sugar" in – Has meaning understood in common parlance – Includes sugar in whatever shape it may be – Best judgment assessment – Can be made when account – Books are rejected on sound ground – Assessment made cannot be regarded as best judgment assessment – Interpretation of statute – Words to be construed in natural and popular sense– Presumption – Central and state Legislatures – Presumed to act in harmony – Words in entry 41 of schedule 1 – Include all forms of sugar – Includes Mishri, Batasa and Chironji – Schedule III entry I – Sweetmeats – Does not include Mishri, Batasa and Chironji: *M/s.Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 J LJ 836.*

– **Notification dated 1-4-1959, Serial no. 1** – “Phawdas” – Fall within description of “Hoes” (all kinds) – Evidence Act – Section 114 – Presumption that statutory power validly exercised – Excess of jurisdiction in exercise of statutory power not to be assumed – Presumption arising from notification – Not rebutted by showing that instrument also used in a trade or calling other than agriculture: *The Commissioner of Sales Tax, M.P. Vs. M/s Narang Industries of Indore, I.L.R. (1973) M.P. 183: 1971 MPLJ 403: 1971 J LJ 352.*

– **Notification dated 1-4-1959, Serial no. 1** – Held, “Phawadas” that are not spades and shovels falls within the description of ‘hoes (all kinds)’ and are covered under Item No.I of the Notification and are exempt from tax under Serial No.1 Schedule I of the M.P. General Sales Tax Act, 1958: *Commissioner of Sales Tax Vs. M/s Indore Iron Traders, 1974 MPLJ 858.*

– **Section 2(bb) & 2(d)** and Factories Act (63 of 1948), Section 46–For its workers, canteen as required by section 46, Factories Act run by assessee – Textile Mill in its premises – Dominant object of canteen was to render service to its workers – Mill is not a dealer as its intention not being sale of food it would not be the business of the Mill – Under such circumstances, canteen sales cannot be called dealer’s turnover – Canteen sales were not exigible to tax – Commissioner of Sales Tax Vs. Gwalior Rayon Silk Mfg. Co. Ltd. Nagda overruled: *Commissioner of Sales Tax, M.P. Vs. Hukumchand Mills Ltd., Indore, I.L.R. (1995) M.P. 538: 1996 MPLJ 585: 1996(I) MPJR 83.*

– **Section 2(d)** – Government of Forest Department –Not dealer in respect of forest produce: *M/s. Shri Ganesh Trading Co. Sagar, Vs. State of M.P., I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.*

– **Section 2(u)** – “year” in means twelve months ending on 31<sup>st</sup> March: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489: 1975 MPLJ 37: 1975 RN 118: 1975 JLJ 215.*

– **Section 4 & 13** – Make “powdered bones” taxable – Section 10 and Entry 22 of schedule I–Exempt sales of fertilizer except oil cakes – Interpretation of Statute – Rule of harmonious construction – Meaning – Entry 22, Schedule I – “Fertilizer” – General than the expression “powdered bones” – “Fertilizer” to be construed to mean manures other than powdered bones – If construed in the above manner – Effect can be given to words “powdered bones” in schedules II and III and also to word “fertilizer” in Schedule I – Legislature – Power of, in enacting fiscal measure – Very wide – Hostile discrimination to be established before Act is struck down under Article 14 of Constitution of India – Interpretation of Statute – Two Provisions contradictory – Leading provision will override subordinate one – Earlier Act ambiguous – Later Act can be seen to clarify ambiguity: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.*

– **Section 8(1)** and General Sales tax rules, M.P., 1959 Rule 20(4) – Relation between the two: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910: 1978 MPLJ 806: 1978 JLJ 869.*

– **Section 10 and Entry 22, Schedule I** – Exempt sales of fertilizer except oil cakes: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.*

– **Section 10 and Entry 22, Schedule I** – “Fertilizer” – General than the expression “powdered bones”: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.*

– **Section 10 and Entry 22, Schedule I, II and III** – “Fertilizer” to be construed to mean manures other than powdered bones – If construed in the above manner – Effect can be given to words “powdered bones” in Schedules II and III and also to word “fertilizer” in schedule I: *The Ratlam Bone and Fertilizer company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.*

– **Section 12** – Notification No. 2044/1885/V-SI, as amended by notification No.500/136/V/57, issued under – Does not make production of certificate as condition

precedent for claiming benefit of reduced rate – Section 38(5) – Gives power to appellate authority to admit additional evidence: *The Commissioner of sales Tax, M.P. Vs. M/s Dinesh Kumar Pradeep Kumar, Rewa, I.L.R. (1976) M.P. 1: 1974 JLJ 699: 1974 MPLJ 843.*

– **Section 12(1)**, Notification dated 23-10-1981 and 3-7-87 – Interpretation of – Interpretation of 1981 notification in the light of executive instructions – Traditional Industries excluded to claim exemption of sale tax: *M/s. Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502: 1988 MPLJ 620: 1988 JLJ 701. (Overruled in State of M.P. Vs. G.S. Dall & Flour Mills AIR 1991 SC 772)*

– **Section 12(1)**, Notification dated 23-10-1981 and 3-7-87 and Instructions of State Govt. by order dated 12-1-88, Clause 5 and Constitution of India, Article 162 – For claim of exemption from Sales Tax under 1981 Notification eligible certificate required from authorized Officer – No guide lines and procedure provided in the notification for grant or refusal of certificate State Govt. is competent to issue executive instructions for guide – lines and procedure in exercise of powers conferred under Article 162 of Constitution – Executive powers of the State are co-extensive with legislative powers – Interpretation of 1981 notification in the light of executive instructions – Traditional industries excluded to claim exemption of sale tax – Promissory Estoppel – Petitioner aware exemption not available to his unit and unit not established because of exemption – No question of promissory estoppel: *M/s. Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502: 1988 MPLJ 620: 1988 JLJ 701. (Overruled in State of M.P. Vs. G.S. Dall & Flour Mills AIR 1991 SC 772)*

– **Section 18** – Best judgment assessment – Can be made when account-books are rejected on sound ground – Account-books not rejected – Assessment made cannot be regarded as best judgment assessment: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 JLJ 836.*

– **Section 19 (as amended)** – Re-assessment – Limitation – Held, a vested right, not to be reassessed can arise only after the expiry of the period of limitation for re-assessment and any change in law extending the period of limitation before the expiry of the original period does not affect any vested right – In instant case, assessment was completed on 30.08.67 and change in period of limitation vide amendment of 1964 came into effect on 22.11.64, thus, amendment changing the period of limitation for commencement of re-assessment proceedings has already taken effect before the making of the assessment – Therefore no occasion arises for considering the application of any change in the law for re-assessment after the date of assessment and before the issue of



the notice for re-assessment: *Brijlal Sachdeva & Brothers Vs. Commissioner of Sales Tax, M.P. & Anr.*, 1980 MPLJ 756: 1980 JLJ 616.

– **Section 19** – Words “Calendar Year” – Held, the calendar year commences from 01<sup>st</sup> January and expires on 31<sup>st</sup> December and that it does not mean a year i.e. a period of 365 days calculated from any day within the calendar: *Brijlal Sachdeva & Brothers Vs. Commissioner of Sales Tax, M.P. & Anr.*, 1980 MPLJ 756: 1980 JLJ 616.

– **Section 19 (as amended)** – Enlarges period of limitation for re-assessment and widens grounds on which re-assessment can be made: *The Commissioner of Sales Tax, M.P. Vs. M/s. Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489: 1975 MPLJ 37: 1975 RN 118: 1975 JLJ 215.*

– **Section 19 (before amendment)** – Assessment year will be from April to end of March – five years to be computed from the end of financial year: *The Commissioner of Sales Tax, M.P. Vs. M/s. Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489: 1975 MPLJ 37: 1975 RN 118: 1975 JLJ 215.*

– **Section 19 (before amendment)** – “Year” – would mean financial year: *The Commissioner of Sales Tax, M.P. Vs. M/s. Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489: 1975 MPLJ 37: 1975 RN 118: 1975 JLJ 215.*

– **Section 19(1)** – Where the entire assessment order (dt. 19.03.1991) was not merged in the assessment order (dt. 26.10.1994) which was passed after remand, the initiation of proceedings u/s 19(1) of the Act (dt. 23.09.1997) for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed could not have been ordered being barred by limitation: *Vikram Cement Vs. Commissioner of Commercial Tax, I.L.R. (2010) M.P. 2443: 2011(1) MPLJ 610: 2011(2) MPHT 283.*

– **Section 19(1)** – Assessment re-opened thereunder – Assessee obtaining a declaration in form XII-A from the purchasing dealer claiming the concession rate of tax under section 8(1) of the Act, because the goods were not specified in the registration certificate of the purchasing dealer – Tenability of – General Sales Tax rules, M.P., 1959 – Rule 20(4) – Compliance of provisions there of – Mandatory – General Sale tax Act, Section 8(1) and General Sales tax Rules, 1959, Rule 20(4) – Relation between the two: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910: 1978 MPLJ 806: 1978 JLJ 869.*

– **Section 24(5)** – Notification dated 29-10-63 – Not applicable to taxes levied before 29-10-63 – Talk of refund arises when tax is paid – Liability to pay tax not affected – Refund claimable only when goods are proved to have been exported: *Shyama*

*Charan Shukla Vs. State of M.P., I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Sections 38(3)(b)(i) & 39** – Revision – Maintainability – Held, where an appeal is preferred u/S 38 of the Act and it is not followed with deposit of tax u/S 38(3)(a) or (b) and the same is dismissed for failure to deposit 1/3<sup>rd</sup> of the amount of tax as required u/S 38(3)(b)(i), revision application is maintainable: *M.P. Electricity Board Jabalpur Vs. Additional Assistant Commissioner of Sales Tax, 1998(2) MPLJ 209.*

– **Section 38(5)** – Gives power to appellate authority to admit additional evidence: *The Commissioner of Sales Tax, M.P. Vs. M/s Dinesh Kumar Pradeep Kumar, Rewa, I.L.R. (1976) M.P. 1: 1974 JLJ 699: 1974 MPLJ 843.*

– **Section 39 & 43** – Power to impose penalty for alleged Concealment of turnover – Provision relates to additional power and confers jurisdiction on the commissioner for imposition of penalty – Proceeding can be initiated in suo-motu power of revision by the Commissioner – Order of Single Judge set aside: *Addl. Commissioner of Sales Tax, Jabalpur Vs. M/s. Moujilal Das Singh; I.L.R. (2004) M.P. 240.*

– **Section 44(1)** – Reference – Held, finding of fact as recorded by the Board of Revenue was not open to challenge in Reference u/S 44 of the Act: *Commissioner of Sales Tax Vs. Hukumchand Mills, 2004(2) MPLJ 492: 2004(3) MPHT 22.*

– **Schedule I, Entry No. 41** – “Sugar” in – Has meaning understood in common parlance – Includes sugar in whatever shape it may be: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 JLJ 836.*

– **Schedule I, Entry No. 41** – Words in – Include all forms of sugar – Include Mishri, Batasa and Chironji: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 JLJ 836.*

– **Schedule III, Entry 1** – Sweetmeats – Do not include Mishri, Batasa and Chironji: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 JLJ 836.*

– **Entry No. 25 of Schedule II, Part II** – Word “Dyes” – Whether includes “colour powders” – Words and Expressions in entries in Schedule to be construed in popular commercial sense and not on scientific, technical or rigid dictionary meaning – Doctrine of ejusdem generic – Is not inviolable rule of law – Is to be applied with caution: *M/s. Sukhu Ram Tamrakar, Durg Vs. State of M.P., I.L.R. (1978) M.P. 1103: AIR 1978 MP 97: 1978 MPLJ 120: 1978 JLJ 160: 1978 Tax LR 1773.*

– **Entry 44, Part-II- Schedule II** – When tractor can be said to be agricultural implement – Determining consideration is “Principal and primary use” – Exigibility to tax and exemption from it – Attracted at the point of sale and not subsequent use – Determination of the nature of machinery – Dependent upon general use – Taxing statute – Principle of construction – Case of ambiguity – Statute to be liberally construed in favour of subject – Test to be applied to determine whether machinery is agricultural machinery: *M/s. R.M.E. Works, Raipur Vs. The Commissioner of Sales Tax M.P., I.L.R. (1977) M.P. 1039: 1976 MPLJ 244: 1976 JLJ 355.*

### **General Sales Tax, Rules, M.P., 1959**

– **Rule 20(4)** – Compliance of provisions thereof – Mandatory: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910: 1978 MPLJ 806: 1978 JLJ 869.*

### **Government of India Act, 1915**

– **Section 106** – See – Constitution, Articles 216, 225, 226: *S. P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105.*

### **Gwalior State Protection of Children Act**

– **Section 10** – Repugnant to provision of Indian Penal Code made applicable to Gwalior by Act 3 of 1951 – Section 10 void under Article 254 (1) of Constitution: *Lalla Vs. The State, I.L.R. (1959) M.P. 125.*

## **(H)**

### **High Court**

– **Power to issue writ** – No power to issue writ to quash the order of the Central Government situated outside the jurisdiction of the High Court: *Seth Surajmal Vs. The State of Madhya Pradesh, I.L.R. (1957) M.P. 507: AIR 1958 MP 103: 1957 MPLJ 788: 1957 JLJ 1011.*

### **High Court of Madhya Pradesh Rules, 2008**

– **Chapter IV, Rule 1(11) & 2(7)(d)** – Tribunals – Word 'tribunals' used in Rule 2(7)(d) of Rules is restricted to tribunals which have judicial members – Writ petitions against orders interlocutory or final passed by tribunals having judicial members are to be heard by Division Bench – Writ petitions against orders interlocutory or final passed by

other tribunals are to be heard and disposed of by a judge sitting alone : *J.S.J. Real Estate Pvt. Ltd Vs. Collector, Dewas, I.L.R. (2009) M.P. 915: AIR 2009 MP 138: 2009(2) MPLJ 577: 2009(2) JLJ 5: 2009(2) MPHT 426: 2009(II) MPJR 218.*

– **Chapter IV, Rule 8(3)** – Reference to Larger Bench – It is not open to Single Judge to doubt the correctness of the view expressed by Division Bench – However, Single Judge sitting alone while hearing a case is free to refer the decision of coordinate or Larger Bench of High Court for reconsideration: *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943: AIR 2016 MP 10: 2015(4) MPLJ 450: 2016(1) JLJ 322: 2015(IV) MPJR 287.*

– **Chapter IV, Rule 10** – Formulation of point – Judges comprising of Division Bench differing on the point of admission – Matter was placed before Hon'ble the Chief Justice without formulating the point –Held– The Chief Justice acquires jurisdiction to nominate one or more of other Judge(s) only after such formulation of point(s) of difference – Unless such formulation is made, the Chief Justice may not even acquire the power under sub-rule (2) to nominate one or more of other Judge(s) to deliver the opinion – Matter to be placed before Hon'ble the Chief Justice for appropriate orders: *Suresh Singh Sikarwar Vs. State of M.P., I.L.R. (2011) M.P. 36: 2011(1) MPLJ 175: 2011(1) JLJ 196: 2010(IV) MPJR 145: 2010(5) MPHT 393.*

– **Chapter IV, Rule 12** – Practice and Procedure – Questions Referred to Larger Bench – Jurisdiction – Division bench referred the present matter to Larger bench without formulating questions to be adjudicated – Held – Rule 12 does not envisage reference of the entire case to a larger bench and thus it is incumbent upon the referring bench to formulate questions for reference to Larger bench and the referee bench has jurisdiction only to answer the questions referred to it and thereafter it is required to be decided by the referring bench in accordance with the opinion of the larger bench on referred questions – Larger bench cannot delve into the matter and formulate questions involved in the controversy – In such circumstances, in Rule 12, the word “may” occurring between words “it” and “formulate” will have to be read as “shall” – Further held – In the present case, an application for withdrawal of the proceedings was also filed before the larger bench for which the referring Court is competent to decide the same and hence the matter is required to be sent back to the referring division bench for disposal of the same – Matter be placed before the Acting Chief Justice for being posted before the referring division bench for disposal of the application for withdrawal and in case application is rejected, to formulate questions for reference to larger bench – Questions referred answered accordingly: *Bhawna Kale Vs. State of M.P., I.L.R. (2017) M.P. 1293: 2019(2) MPLJ 346.*

– **Rule 15 & 22** – Non-obstante clause in Rule 22 of Chapter IV of the High Court of M.P. Rules, 2008 does not override the guideline, as incorporated in Rule 15 of the same Chapter, for listing of a subsequent application for suspension of sentence/ grant of bail: *Ram Pratap Vs. State of M.P.*, I.L.R. (2010) M.P. 1896: 2010(3) MPLJ 598: 2010(4) MPHT 297: 2011(1) JLJ 13: 2010(IV) MPJR 11.

### **High Court Rules and Orders (Civil)**

– **Chapter I, Rule 12** – Reference to a larger bench – When can be made – Existence of two conflicting decisions not a condition precedent: *Balkishandas Vs. Harnarayan*, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.

### **High Court Rules and Orders, M.P.**

– **Section 1, Chapter 1, Rule 7 & 8** – Held, Chief Justice has the exclusive power to constitute a Full Bench of three or more Judges and also to nominate the Judges of a Full Bench: *Savita Devi Vs. Sukhvinder Kaur*, AIR 2007 MP 146: 2006(4) MPLJ 617: 2007(1) MPHT 193: 2006(III) MPJR 301: 2007(2) JLJ 4.

– **Section 1, Chapter 1, Rule 10** – Held, it is only in a case where reconsideration of decision of two or more Judges is thought necessary that a reference may be made to the Chief Justice with the recommendation that it be placed before two or more Judges, but the said provision does not contemplate reference to a Full Bench where two Judges composing of Division Bench differ on a point of law but have not stated the point on which they differ: *Savita Devi Vs. Sukhvinder Kaur*, AIR 2007 MP 146: 2006(4) MPLJ 617: 2007(1) MPHT 193: 2006(III) MPJR 301: 2007(2) JLJ 4.

– **Section 1, Chapter 1, Rule 11** – Held, Rule 11 confers a discretion on the Chief Justice to nominate either one Judge or more Judges to deal with the matter in case of a difference on a point of law between the two Judges composing the Division Bench – Rule does not provide that in a case where the Judges composing the Division Bench do not state the point of law on which they differ, the case has to be referred to a larger Bench for decision – In such cases also, the matter has to be placed before the Chief Justice for an appropriate order: *Savita Devi Vs. Sukhvinder Kaur*, AIR 2007 MP 146: 2006(4) MPLJ 617: 2007(1) MPHT 193: 2006(III) MPJR 301: 2007(2) JLJ 4.

– **Section 3** – See – Constitution, Articles 216, 225, 226: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur*, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105.

### **High Court Superintendence Rules (M.P.), 1998**

– **Entry 9 & 10 of Schedule, Constitution** – Article 227 (2)(b) – Only Court word has been used in Article 227(2)(b) – Thus Article 227(2)(b) does not empower the High Court to make rules with regard to Tribunals – Rules 1998, so far it relates to Administrative Tribunal are *ultra vires*: *Union of India Vs. Registrar General, High Court of M.P., Jabalpur, I.L.R. (2012) M.P. 837: AIR 2013 MP 98: 2012(1) MPLJ 303: 2012(1) MPHT 382: 2012(1) JLJ 145.*

### **Hindu Law**

– **Alienation** – Suit of coparcener for possession of transferred property – Alienee can ask for general partition of coparcenary property in same suit – Rights of a purchaser from a coparcener regarding coparcenary property – Purchaser not in possession of property in excess of the share of transferring coparcener – Possession of purchaser cannot be said to be unjust or inequitable – Court can give direction for staying execution proceedings of decree of a coparcener in a suit for possession, to enable purchaser to file separate suit for general partition: *Ramdayal Vs. Manaklal, I.L.R. (1975)M.P. 1: AIR 1973 MP 222: 1973 MPLJ 650: 1973 JLJ 764.*

– **Coparcenary Property** – Question of applicability of particular school or branch of Mitakshara Hindu Law to particular party – Would depend upon pleadings and facts and circumstances of each case – There cannot be any general statement of law on that subject with regard to particulars region: *Diwan Singh Vs. Bhaiya Lal, I.L.R. (1997) M.P. 46: I.L.R. (1998) M.P.157: AIR 1997 MP 210: 1997(2) MPLJ 202: 1997(2) JLJ 167: 1997(II) MPJR 68.*

– **Direction by Court** – Court can give direction for staying execution proceedings of the decree of a coparcener in a suit for possession, to enable purchaser to file separate suit for general partition: *Ramdayal Vs. Manaklal, I.L.R. (1975) M.P.1: AIR 1973 MP 222: 1973 MPLJ 650: 1973 JLJ 764.*

– **Family consisting of deceased and his wife** – Entire property and not half of it passes on the death of deceased in case the deceased being the only coparcener and owner of entire coparcenary interest: *The Controller of Estate Duty, Madhya Pradesh, Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300: 1982 JLJ 42.*

– **Particular branch of Hindu Law (Banaras School)** – As administered and applicable to integrating unit (Madhya Bharat) continues to govern the right of a coparcener of Hindu Joint family despite the formation of the new State of Madhya Pradesh: *Diwan Singh Vs. Bhaiya Lal, I.L.R. (1997) M.P. 46: I.L.R. (1998) M.P.157: AIR 1997 MP 210: 1997(2) MPLJ 202: 1997(2) JLJ 167: 1997(II) MPJR 68.*

– **Right of a purchaser from a coparcener regarding coparcenary property** – Purchaser not in possession of property in excess of the share of transferring coparcener – Possession of purchaser cannot be said to be unjust or inequitable: *Ramdayal Vs. Manaklal, I.L.R. (1975) M.P. 1: AIR 1973 MP 222: 1973 MPLJ 650: 1973 JLJ 764.*

### **Hindu Succession Act (XXX of 1956)**

– **Section 4(2)** – Words – “Tenancy rights” – Whether includes Bhumiswami or Bhumidhari tenure-holders: *Nahar Vs. Mst. Dukalhin, I.L.R. (1975) M.P. 753: AIR 1974 MP 141: 1974 MPLJ 257: 1974 JLJ 250.*

– **Section 14** – Suit by reversioners to set aside alienations made by a widow before coming into force of the Act – widow does not get absolute interest in the property already transferred–Suit maintainable: *Mst. Lukai Vs. Niranjan, I.L.R. (1958) M.P. 9: AIR 1958 MP 160: 1958 MPLJ 244: 1958 JLJ 279.*

– **Section 14** – Is retrospective – Immaterial whether right of a female accrues before or after commencement of the act: *The Controller of Estate Duty, M.P. Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300: 1982 JLJ 42.*

– **Section 14** – Partition – A female entitled to a share on partition – Not deprived of her right simply because parties there to not assigning any share – Her act of standing by or failure to raise objection to partition – Does not take away her right to get a share– Such conduct does not amount to acquiescence or relinquishment: *The Controller of Estate Duty, M.P. Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300: 1982 JLJ 42.*

### **Hindu Widow's Remarriage Act (XV of 1856)**

– **Section 2 & 5** – Widow's Remarriage – Inherited Property – Effect – Held, a Hindu widow is, upon her remarriage, divested of her husband's property which she has already obtained by inheritance to her son – However, she does not forfeit the self acquired property of the son which she has inherited: *Bhondu Ganpat Vs. Ramdayal Govindram, AIR 1960 MP 51: 1959 MPLJ 1173: 1960 JLJ 36.*

### **Hindu Women's Right to Property Act (XVIII of 1937)**

– **Section 3(2)** – Death of Minor Son – Widow's Right to Property of Deceased – Held, a Hindu widow, who has u/S 3(2) of the Act of 1937 obtained interest in her husband's estate and holds the estate with her minor (unmarried) son, after the death of the son, takes upon the whole estate by survivorship: *Bhondu Ganpat Vs. Ramdayal Govindram, AIR 1960 MP 51: 1959 MPLJ 1173: 1960 JLJ 36.*

**(I)****Income Tax Act, Indian (XI of 1922)**

– **Sections 2(6-AA), 16(1)(a) & 14(2)(aa)** and Finance Act (XIII of 1960) – Registered partnership firm – Whether special surcharge on the share of Income-tax paid by the registered firm falling to the share of the assessee is payable – Unearned income – Nature of – Whether any income of the partner which is exempted from tax is unearned Income or “Earned Income” – Income exempted from Income-Tax under section 14(2) – Excluded from the purview of “Earned Income” Under Section 2(6-AA) – Not liable to be treated as “Earned Income” of the assessee partner– Computation of the “Total Income” of the assessee partner – Sum exempted under section 14(2) (aa) from payment of tax included in it by virtue of Section 16(1)(a): *The Commissioner of Income Tax, Madhya Pradesh Vs. Parmanand Bhai Patel, I.L.R. (1979) M.P. 95: AIR 1978 MP 80: 1978 MPLJ 355: 1978 JLJ 266: 1978 Tax LR 484.*

– **Section 14(2)(aa) & 16(1)(a)** – Computation of the “Total Income” of the assessee partner – Sum exempted under Section 14(2)(aa) from payment of tax included in it by virtue of Section 16(1)(a): *The Commissioner of Income Tax, Madhya Pradesh Vs. Parmanand Bhai Patel, I.L.R. (1979) M.P. 95: AIR 1978 MP 80: 1978 MPLJ 355: 1978 JLJ 266: 1978 Tax LR 484.*

**Income Tax Act, Indian (XLIII of 1961)**

– **Section 37(1)** – Nature of expenditure to fall within the Section: *The Additional Commissioner of Income-Tax, M.P. Bhopal Vs. M/s. Kuber Singh Bhagwandas, Bhopal, I.L.R. (1980) M.P. 1000: AIR 1979 MP 26: 1979 MPLJ 65: 1979 JLJ 363.*

– **Section 40(b)** – Allowable deduction – Partnership firm – Partner in representative capacity lending monies belonging to him individually to such firm interest paid to him is allowable deduction and no liable to be added back under section 40 (b): *The Commissioner of Income Tax, Jabalpur Vs. M/s. Narbharam Popatbhai & Sons, Raipur, I.L.R. (1987) M.P. 202: 1987 MPLJ 618: 1987 JLJ 518.*

– **Section 80(G)** – Provides for deduction of donation to certain funds, charitable institutions etc – Also applied to donations to the Govt. or any local authority – Donations made by assessee to Chief Minister Drought Relief Fund – Governed by the section and admissible as deduction to some extent – Assessee entitled to the benefit of the section when donations are disallowed as expenditure under section 37(1) of the Act – Section 37 (1) – Nature of expenditure to fall within the section: *The Additional*



*Commissioner of Income-Tax, M.P. Bhopal Vs. M/s. Kuber Singh Bhagwandas, I.L.R. (1980) M.P. 1000: AIR 1979 MP 26: 1979 MPLJ 65: 1979 JLJ 363.*

– **Section 80-G & 37(1)** – Assessee entitled to the benefit of Section 80 when donations are disallowed as expenditure under section 37(1) of the Act: *The Additional Commissioner of Income-Tax, M.P. Bhopal Vs. M/s. Kuber Singh Bhagwandas, I.L.R. (1980) M.P. 1000: AIR 1979 MP 26: 1979 MPLJ 65: 1979 JLJ 363.*

– **Section 184(7) & Form No.12** – Continuation of registration for part of year, only in case of dissolution of firm – No question of continuation of registration when firm continues after change in Constitution: *M/s. Ayodhya Prasad Parmeshwaridas, Raigarh Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1988) M.P. 353: 1987 MPLJ 770: 1988 JLJ 26.*

– **Section 187** – Assessee firm filing two returns i.e. One for the period before the change in Constitution of the Firm and another for the period after change but during one accounting period – Single assessment for the entire accounting period is liable to be made: *M/s. Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657: AIR 1984 NOC (MP) 95: 1983 MPLJ 888: 1984 JLJ 111.*

– **Section 187** – Expression “change in the constitution of the firm” in – Covers dissolution of partnership under general law – Old firm dissolved and succeeded by another firm with one or more partners of the old firm – Amounts to change in Constitution of firm within section 187(1) – Assessee – Firm filing two returns i.e. One for the period before the change in constitution of the firm and another for the period after change but during one accounting period – Single assessment for the entire accounting period is liable to be made – Construction of Statute – Specific provision in Income Tax Act – Not governed by different or contrary provision in general law: *M/s. Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657: AIR 1984 NOC (MP) 95: 1983 MPLJ 888: 1984 JLJ 111.*

– **Section 187 (1)** – Old firm dissolved and succeeded by another firm with one or more partners of the old firm – Amounts to change in Constitution of Firm within section 187(1): *M/s. Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657: AIR 1984 NOC (MP) 95: 1983 MPLJ 888: 1984 JLJ 111.*

– **Section 214 & 244(1-A)** – If after assessment any amount becomes refundable the assessee is entitled to interest on refund but interest is not payable under section 214 and 244 (1-A) simultaneously: *Commissioner of Income Tax, Jabalpur Vs. M/s Udhoji*

*Shri Krishandas, Satna; I.L.R. (2004) M.P. 440: 2004(1) MPLJ 589: 2004(1) MPHT 438: 2004(1) MPJR 462.*

– **Sections 214, 244 & 256** – Reference – Interest payable by Government and interest on refund where no claim is needed – ‘Regular assessment’ means the first or the original assessment by the Assessing Officer and not the revised assessment pursuant to appellate order – ‘Advance tax’ is a tax paid by assessee before regular assessment and on assessment the amount loses its character of advance tax – If after assessment any amount becomes refundable the assessee is entitled to interest on refund but interest is not payable under sections 214 and 244 (1-A) simultaneously: *Commissioner of Income Tax, Jabalpur Vs. M/s Udhoji Shri Krishandas, Satna; I.L.R. (2004) M.P. 440: 2004(1) MPLJ 589: 2004(1) MPHT 438: 2004(1) MPJR 462.*

– **Section 256(1) & (2)** – Dharmada Account – Assessee was charging Dharmada at the rate of 2% and was maintaining separate account – However, the said account was treated as Revenue Receipts as the assessee had failed to bring on record any material to indicate contribution on regular basis to some of the Institutions – M.C.C. No. 668/1993 was dismissed – However, in the case of Commissioner of Income Tax Vs. Bijli Cotton Mills (P) Limited, Hon'ble Supreme Court had held that an amount collected as Dharmada and deposited in a separate account is not a revenue receipt – Earlier judgment passed was not contrary to the judgment passed by Hon'ble Supreme Court as no law was laid down or no decision was taken – Authorities are entitled to ascertain on the basis of the facts of each individual case as to whether the amount collected in the name of Dharmada is actually meant for a charitable purpose or not – Decision passed in case of M.C.C. No. 668/1993 was based on peculiar facts of that case and no law contrary to law laid down in Bijli Cotton Mills, therefore, judgment passed in M.C.C. 668/1993 cannot be said to be bad in law: *Lilasons Breweries Ltd., Bhopal (M/s.) Vs. Commissioner of Income Tax, Bhopal, I.L.R. (2013) M.P. 756.*

– **Section 256(1) & 263** – Held, Commissioner was not competent u/s 263 of the Act to set aside the entire order of assessment passed by I.T.O. when that order was the subject matter of appeal preferred by the assessee before the A.C.C.: *The Commissioner of Income Tax, Jabalpur Vs. M/s Simplex Metalica, Jabalpur, 1987 MPLJ 294.*

– **Section 261** – Decision by Full Bench – Money lent by partner to firm – Interest paid – Not liable to be added back under section 40(b) of the Act – Substantial question of law of general importance – Certificate granted: *The Commissioner of Income-Tax, Jabalpur Vs. Narbharam Popatbhai and Sons. Raipur, I.L.R. (1988) M.P. 285: 1987 MPLJ 447: 1987 JLJ 589.*

– **Section 263 & 256** – Jurisdiction of Commissioner – Against an order of assessment, the assessee filed an appeal before the Appellate Assistant Commissioner who dealt with only some points arising out of the assessment order – Commissioner u/s 263 quashed the entire order of assessment passed by the Income Tax Officer – Held, in such circumstances, the order of the Income Tax Officer has merged with the order of the Appellate Assistant Commissioner and therefore Commissioner u/S 263 has no jurisdiction to set aside the order of assessment passed by the Income tax Officer: *Commissioner of Income Tax Vs. Mandsaur Electric Supply Co. Ltd, 1983 MPLJ 88.*

– **Section 263** – Doctrine of merger – Applicability to Income-tax proceedings – Extent of its application: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584: 1982 MPLJ 296: 1982 JLJ 520.*

– **Section 263** – I.T.O's order of assessment challenged in appeal before A.A.C. In respect of some items only Remaining items neither agitated nor decided by A.A.C. – Scope of revisional power of C.I.T.: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584: 1982 MPLJ 296: 1982 JLJ 520.*

– **Section 263** – Revisional powers of C.I.T. – Doctrine of merger – Applicability to Income-tax proceedings – Extent of its application – I.T. O's order of assessment challenged in appeal before A.A.C. In respect of some items only – Remaining items neither agitated nor decided by A.A.C. – Scope of revisional power of C.I.T.: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584: 1982 MPLJ 296: 1982 JLJ 520.*

– **Section 263** – Powers of Commissioner to revise order of assessment which was subject matter of appeal before A.A.C. Extent and Limitation of – Doctrine of Merger – Applicable to Income tax proceedings as well – Extent of its applicability: *The Commissioner of Income-Tax M.P., Bhopal Vs. K.L. Rajput, I.L.R. (1986) M.P. 618: 1987 MPLJ 247: 1987 JLJ 35.*

### **Indore Stamp Act (II of 1907)**

– **Section 2(9), Articles 17 & 47-A** – Document transferring management of Trust property – Does not amount to conveyance – Stamp Duty payable governed by Article 47-A and not Article 17 – Deed does not fall under Section 2(9) – Deed – Interpretation of, Principles: *Shri Digambar Jain Tera Panthi Mandir Trust, Shakkar Bazar, Indore Vs. Sub-Registrar, Stamps, Indore, I.L.R. (1971) M.P. 403: AIR 1970 MP 23: 1969 MPLJ 747: 1969 JLJ 935: 1969 RN 530.*

### **Industrial Disputes Act (XIV of 1947)**

– **As amended** – Prevails over M.P. Co-operative Societies Act: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

– **And Co-operative repealed by Societies Act, M.P., 1960 (XVII of 1961)** – Industrial Disputes Act is special Act – Not co-operative societies Act, 1960–Both can co-exist without repugnancy: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

–**Industrial disputes to be decided under this Act:** *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

– **Section 10** – Mining is industry – Workman engaged in mining operation – Is workman in mining industry – Dispute between such employee and his employer – Is Industrial dispute – Central Government appropriate authority to make reference – Reference to industrial court is valid and proper – For making reference dispute to be raised by employee with employer – Constitution of India – Article 284 – Conflict between special Act and General Act – Circumstances in which Special Act or General Act will prevail – Industrial Disputes Act is Special Act – Not repealed by Co-operative Societies Act, 1960 – Both can co-exist without repugnance – Co-operative Societies Act, M.P. 1960 and Industrial Disputes Act (Central), 1947 – Difference between the two – Industrial Disputes Act, 1947 – Industrial dispute to be decided under this Act – Industrial Disputes Act (after amendments by Acts 45/65 and 45/71) – Prevails over M.P. Co-operative Societies Act: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

– **Section 10** – Reference to Industrial Court is valid and proper – For making reference dispute to be raised by employee with employer: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905: 1975 MPLJ 583: 1975 JLJ 732.*

– **Section 10(1)** – Reference of Dispute – Whether stale claims can be rejected by Central Government on the ground that Industrial Dispute does not exist – 152 Contract Workers removed in the year 1984 – Dispute raised before Conciliation Officer in the year 1995 – Conciliation proceedings failed – Central Government referred the dispute that whether action of management in not regularizing services of 152 contract workers is legal and justified to Central Industrial Tribunal – Order of reference Challenged on the ground that dispute is a stale one – Held – If appropriate Government finds that Industrial dispute exists at the time of making reference notwithstanding that claim is belated such order cannot be interfered on the ground of incompetence or without jurisdiction – Appropriate Government may also refuse to refer Industrial Dispute which exists but has become stale if it is no expedient to refer the same – Reference answer accordingly: *Dy. C.M.E./Sub Area Manager, Ramnagar R.O., SECL Shahdol Vs. Union of India, I.L.R. (2007) M.P. 1187: 2008(1) MPLJ 60: 2008(2) JLJ 85: 2008(1) MPHT 28: 2007(III) MPJR 403.*

– **Section 25-F** – Once it is found that the termination order is violative of S. 25-F of Act then the said order is ab initio void and the employee is entitled to reinstatement with full back wages – However, the Court can refuse to grant relief of reinstatement for a particular reason which will depend on the facts & circumstances of each case – There is no hard and fast rule that the Court should grant the relief of reinstatement with full back wages in each and every case – Reference answered accordingly: *Munshi Singh Vs. Nagar Panchayat Jaura, I.L.R. (2009) M.P. 2748: 2009(4) MPLJ 57: 2009(4) MPHT 352: 2009(3) JLJ 253: 2009(IV) MPJR 108.*

– **Section 33-C(2)** and Payment of Wages Act (IV of 1936), Sections 15 and 22 – Jurisdiction – section 22 of Payment of Wages act does not bar jurisdiction of labour court under section 33-C(2), Industrial Disputes Act, in respect of claims referable to section 15, Payment of wages Act – Section 33-C(2) – Claims under – Scope of: *Mohammad Ismail Vs. Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur, I.L.R. (1982) M.P. 757: 1980 MPLJ 18: 1980 JLJ 177.*

### **Industrial Disputes Rules, M.P., 1957**

– **Rules 10-A, 10-B(1) & 10-B(2)** – Hearing of Dispute – Notice – Held, fixation of date of hearing of dispute is a matter of procedure so that parties are aware that dispute shall be taken up by Labour Court on a date fixed but once party has put in appearance, such party is not expected to be served with another notice of hearing of dispute as the notice of hearing before the Labour Court has a specific object in mind that the party should be aware of the matter pending before it and lead evidence as they may consider

appropriate – Further, notice of first hearing is not required to be given when party has already appeared before Labour Court on the basis of notice issued by Court – Labour Court is not expected to follow a party after a notice was served upon it: *Principal, Maharshi Vidya Mandir Vs. Labour Court, Sagar, 2018(3) MPLJ 148: 2018(3) JLJ 140: 2018(III) MPJR 198.*

– **Rule 10-B(3)** – Notice – Held, sub-rule (3) of rule 10-B is a procedural provision and a separate notice is not contemplated after the parties have put in appearance before the Labour Court– Provision has to be read in the context of which such rule appears and not in isolation – Purpose of the notice in terms of sub-rule (3) of rule 10-B is that the parties must be aware of the proceedings pending before it – Sub-rule (3) of rule 10-B of the Rules pertains to matter of procedure and thus is not a mandatory provision: *Principal, Maharshi Vidya Mandir Vs. Labour Court, Sagar, 2018(3) MPLJ 148: 2018(3) JLJ 140: 2018(III) MPJR 198.*

### **Industrial Employment (Standing Orders) Act, M.P., (XXVI of 1961)**

– **Section 2(2)** and Industrial Employment (Standing Orders) Rules M.P. 1963, Rule 7 – By virtue of Section 2(2), unless Government notifies that particular rules which are applicable to that department (PWD) will exempt the application of provisions of Act of 1961, till that time, the provisions of Act, Rules and Orders issued thereunder will govern that department: *Superintending Engineer, PWD, Gwalior Circle & Anr. Vs. Dev Prakash Shrivastava & Ors. 1999(1) MPLJ 466: 1999(1) JLJ 391: 1999(I) MPJR 1.*

– **Section 21, Schedule I, Item XI and Standard Standing Order 11** – Retirement on attaining particular age is not covered by Standing Order 11: *M.P. State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 JLJ 16.(M.P. State Road Transport Corporation, Bhopal Vs. Ramchandra 1977 MPLJ 341: AIR 1977 MP 243: 1977 JLJ 292 partly overruled)*

– **Section 21, Schedule I, Item XI and Standard Standing Order 11** – Scope of– Retirement on attaining particular age is not covered by Standing Order 11 – Road Transport Corporation Act, 1950, Section 45(2)(c), Road Transport Corporation Employees Service Regulations, M.P., Regulation 59, Industrial Employment (Standing Orders) Act, 1946, Section 13-B and M.P. Industrial Employment (Standing Orders) Act 1961, Section 2(2) and standard standing Orders 14-A – Scope of – Regulations cannot prevail over matters regulated by Standing Orders – Regulation apply to Industrial Workmen in respect of matters not covered by Standing Order – Regulation 1 – Not effective before Ist June 1970 – Constitution of India – Article 254 – Applies only when competing legislations both pertain to concurrent list – Inherent supremacy of Parliament

to legislate in respect of matter in Union list: *M.P. State Road Transport Corporation Vs. Heeralal*, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 JLJ 16. (*M.P. State Road Transport Corporation, Bhopal Vs. Ramchandra* 1977 MPLJ 341: AIR 1977 MP 243: 1977 JLJ 292 partly overruled)

### **Industrial Employment (Standing Orders) Rules, M.P., 1963**

– **Annexure Clause 2(i) & (vi) and Industrial Employment (Standing Orders) Act, M.P. 1961, Schedule, Item I** – Classification of Employees – Held, the classification contemplated in Item-I of Schedule to Act and Clause (2) of the Annexure to Rule is classification applicable only for the entry stage, i.e., the stage at which person enters employment – Such classification cannot relate to stage of promotion or to promotion post which can be governed only by service conditions applicable to employees. – An employee may be asked to work in a higher post for some time on account of administrative exigencies, but he cannot be deemed to have been promoted nor can secure the same end by stating that what he is seeking is classification and not promotion – What cannot be achieved directly cannot be permitted to be achieved in an indirect manner: *M.P. State Road Transport Corporation Vs. Narain Singh Rathore & Ors.*, 1994 MPLJ 959: 1994 JLJ 648: 1994(II) MPJR 234.

### **Industrial Relations Act, M.P. (XXVII of 1960)**

– **Section 2(13)** – Appointment is not made in terms of statutory rules or against a clear vacancy or on any permanent post – The employee could not be declared or granted a permanent status in accordance with the provisions of the Act: *Mamta Shukla (Smt.) Vs. State of M.P.*, I.L.R. (2011) M.P. 1807: 2011(3) MPLJ 210: 2011(3) MPHT 81: 2011(2) JLJ 94.

– **Section 66 & 67** – Revision – Scope & Jurisdiction – Held, if findings of Labour Court are based on no material and/or they are perverse or arbitrary, the Industrial Court has jurisdiction to interfere under the revisional jurisdiction u/s 66 & 67 and set aside the order of the Labour Court: *Nandkumar Singh Vs. State Industrial Court Indore & Ors.*, AIR 1977 MP 254: 1977 MPLJ 438: 1977 JLJ 545. (*Further Approved in 1984 (Suppl) SCC 12*)

– **Section 66 & 67** – Phrase “Exercise of Jurisdiction Illegally and with Material Irregularity” – Scope–Held, it is well settled that perverse or arbitrary findings or findings based on no material, fall within the ambit of the phrase “exercise of jurisdiction illegally and with material irregularity” justifying interference in revision – If Court illegally assumes jurisdiction by giving a patently erroneous decision on jurisdictional facts, case

would fall within the clause “exercised jurisdiction not vested in it by law”: *Nandkumar Singh Vs. State Industrial Court Indore & Ors.*, AIR 1977 MP 254: 1977 MPLJ 438: 1977 JLJ 545. [Further Approved in 1984 (Suppl) SCC 12]

### **Insurance Act (IV of 1938)**

– **Assignment of policy and nomination of policy** – Distinction between: *The Controller of Estate Duty, M.P. Jabalpur Vs. Kewalram*, I.L.R. (1990) M.P. 1: 1989 MPLJ 488: 1989 JLJ 473.

### **Interpretation of Statutes**

– **Amendments** – Held, the golden rule of interpretation of a statute is that interpretation must depend on the text and the context – Neither can be ignored, both are important – That interpretation is best which makes the textual interpretation match the contextual – A statute is best interpreted when we know why it was enacted: *Viva Highways Vs. M.P. Road Development Corporation Ltd.* AIR 2017 MP 103: 2017(2) MPLJ 681.

– **Cardinal Principle** – Every Statute is prima face prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligations: *Wali Mohd. Vs. Batul Bi*, I.L.R. (2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) JLJ 5.

– **Cardinal rule** – Statute is prospective unless specially made retroactive: *Gulabchand Vs. Rukmani Devi*, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.

– **Commencement of Statute** – Omission of Date in Notification – Held, if the Statute omits to specify a date from which it has to be commenced, it will come to operation from the date of publication of notification – If however, it requires any authority to specify a date for its commencement, the law will not come into effect until that date is fixed: *Ramjilal Vs. Municipal Committee, Pipariya*, AIR 1959 MP 82: 1960 JLJ 1174.

– **Constitution of India, Article 235** and M.P. Govt. Servant (Temporary and Quasi – Permanent Service) Rules, 1960, Rule 3-A – Provisions may be read differently in order to make it Constitutional: *Samaru Das Banjare Vs. State of M.P.*, I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.



– **Construction of statutes** – Cardinal rule of – Intention of enactment to be gathered from the language employed – Duty of Court to give effect to the words used in a statute: *S.S. Harischandra Jain Vs. Dr. Captain Indersingh Bedi*, I.L.R. (1978) M.P. 811: AIR 1977 MP 199: 1977 MPLJ 417.

– **Construction of Welfare legislation** – Language of Act Clear and unambiguous– Effect to be given to it – Inconvenience and hardship can be no consideration: *Rajaram Bhiwaniwala Vs. Nandkishore*, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.

– **Construction which renders provision superfluous to be avoided:** *Rama Rao Vs. Shantibai*, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.

– **Court cannot supply the deficiencies by judicial legislation:** *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1975) M.P. 8: AIR 1973 MP 218: 1973 MPLJ 653: 1973 JLJ 748.

– **Creation of New right** – Specific language necessary therefore: *Smt. Mankunwar Bai Vs. Sunderlal Jain*, I.L.R. (1979) M.P. 676: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.

– **Determination of Term** – Aid from subsequent statute can be taken to determine meaning of particular term: *Gulabchand Vs. Rukmani Devi*, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.

– **Dictionary Meaning** – Interpretation of any term has to be made in the context in which it is used – Even when Court seeks aid from Dictionary meaning of a particular word out of many meanings of dictionary, the one which is consistent with the policy of Legislature has to be adopted: *Govindrao Vs. Bhavarlal*, 2011(4) MPLJ 362: 2012(1) JLJ9.

– **Directory & Mandatory Provisions** – Held, to interpret whether a provision is mandatory or directory, no universal rule can be laid down whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience– It is the duty of Courts of justice to ascertain the real intention of the legislature by carefully attending to the whole scope of the statute – Stress is on the intention and not on the language employed of the law maker and that has to be gathered not only from phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other: *Dr. Kirti Deshmankar Vs. Union of India*, AIR1990 MP357:1990 MPLJ 494:1990 MPJR786.

– **Directory & Mandatory Provisions** – Held, for a provision to be mandatory, the language alone is not decisive and Court must have regard to the context, subject-matter and object of provision – Court is required to consider the nature and design of statute; the consequences which would follow from construing it the one way or the other; impact of other provisions whereby necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for contingency of the non-compliance with the provisions; the fact that the non-compliance with the provision is or is not visited with some penalty; the serious or the trivial consequences, that flow therefrom; and the factors which are required to be determined whether the provision is mandatory or directory – The interpretation of the Rules has to be keeping in view the object of the Act – Interpretation which defeats the purpose of the Act, cannot be accepted: *Principal, Maharshi Vidya Mandir Vs. Labour Court, Sagar, 2018(3) MPLJ 148: 2018(3) J LJ 140: 2018(III) MPJR 198.*

– **Directory & Mandatory Provisions** – Held, the use of word “shall” in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid: *Principal, Maharshi Vidya Mandir Vs. Labour Court, Sagar, 2018(3) MPLJ 148: 2018(3) J LJ 140: 2018(III) MPJR 198.*

– **Earlier Act ambiguous** – Later Act can be seen to clarify ambiguity: *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 J LJ 425.*

– **Effect of rule to be determine on fair and reasonable construction of words used:** *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. the State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 J LJ 811.*

– **Elementary principles of:** *Col. Harbans Singh Vs. Smt. Margrat Bhingardive, I.L.R. (1990) M.P. 179: AIR 1990 MP 191: 1990 MPLJ 112: 1990 J LJ 97.*

– **Executive Construction** – Policy of renewal of existing licence has been in vogue since 2006-07 – Construction placed on ambiguous rule by State Government and continuing for a long period of time is an admissible aid to its interpretation and cannot be disregarded except for cogent reasons: *Chingalal Yadav Vs. State of M.P., I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) J LJ 360: 2010(2) MPHT 251.*

– **Executive Construction** – Principle of executive construction is relevant as

admissible aid for construction of a statutory provision which suffers from ambiguity: *Chingalal Yadav Vs. State of M.P.*, I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) JLJ 360: 2010(2) MPHT 251.

– **Expression in one Act** – Used also in another Act– The same meaning cannot be given – Meaning of words and expressions depends upon context in which they appear – Explanation to section – Not to be read as exception – May be used to extend the meaning, but cannot dispense with the basic condition – Two interpretations possible – That which save private rights should be accepted: *Rao Shankar Pratapsingh Vs. The State of Madhya Pradesh*, I.L.R. (1959) M.P. 639: 1960 JLJ 1: AIR 1960 MP 86: 1959 MPLJ 1100. (Overruled in *Ramnarayan v. State ILR* (1962) MP 84: 1962 MPLJ 1: 1961 JLJ 1364: AIR 1962 MP 93.)

– **Flaw in the language used by legislature** – Court can interpret provision in case of ambiguity – Court cannot supply the deficiencies by judicial legislation – No inconsistency between the rule and the provision of the Act under which it is made – Not permissible to construe it upon a priori notions derived from other statutes and to take help of the back ground or any other extrinsic aid – United State of Gwalior, Indore, Malwa (Madhya Bharat) Motor Vehicles Rules, 1949 – Rule 80 – No obligation cast to serve copy of order on persons for whom there is no obligation – Limitation in their case starts running on the date they obtain certified copy of order – Conception of knowledge cannot be introduced: *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1975) M.P. 8: AIR 1973 MP 218: 1973 MPLJ 653: 1973 JLJ 748.

– **Hardship** – No ground for putting narrow construction: *Shyamlal Vs. Umacharan*, I.L.R. (1960) M.P. 377: 1960 MPLJ 1002: 1960 JLJ 892: AIR 1961 MP 49.

– **Harmonious Construction** – Conflict between two enactments – Harmonious construction has to be applied in resolving the conflict between two enactments or rules: *Mamta Shukla (Smt.) Vs. State of M.P.*, I.L.R. (2011) M.P. 1807: 2011(3) MPLJ 210: 2011(3) MPHT 81: 2011(2) JLJ 94.

– **Harmonious Construction** – When there are two provisions in enactment which cannot be reconciled with each other, effect should be given to both: *J.S.J. Real Estate Pvt. Ltd Vs. Collector, Dewas*, I.L.R. (2009) M.P. 915: AIR 2009 MP 138: 2009(2) MPLJ 577: 2009(2) JLJ 5: 2009(2) MPHT 426: 2009(II) MPJR 218.

– **In construing provisions regarding limitation** – Equitable considerations out of place – Strict grammatical meaning of words to be seen: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. the State Transport Appellate Authority*, M.P. Gwalior, I.L.R. (1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 JLJ 811.

– **Intention of Legislation** – Intention of Legislature must be found by reading the statute as a whole: *State of M.P. Vs. Puran Lal Nahir*, I.L.R. (2012) M.P. 691: 2012(1) MPLJ 677: 2012(1) MPHT 375: 2012(1) JLJ 179: 2012(II) MPJR 330.

– **Intention of legislature** – Equitable considerations: *Sharadchand Vs. Vishnupant*, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 JLJ 227.

– **Jurisdiction of Court** – 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: *Trinity Infrastructure (M/s) Vs. State of M.P.*, I.L.R (2020) M.P. 2024: 2020(4) MPLJ 511: 2020(4) JLJ 11

– **Language capable of two meanings** – Absurdity should be avoided: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa*, I.L.R. (1987) M.P. 736.

– **Meaning of the words used in a statute plain** – Intention of Legislature has to be gathered from those words: *Daryaobai Vs. Surajmal*, I.L.R. (1980) M.P. 920: AIR 1979 MP 114: 1979 MPLJ 413: 1979 JLJ 273.

– **No inconsistency between the rule and the provision of the Act under which it is made** – Not permissible to construe it upon a priori notions derived from other statutes and to take help of the back ground or any other extrinsic aid: *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1975) M.P. 8: AIR 1973 MP 218: 1973 MPLJ 653: 1973 JLJ 748.

– **No words to be added unless provision rendered absurd or nugatory**: *Nathu Prasad Vs. Singhai Kapoorchand*, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 JLJ 340.

– **Powers** – Interpretation of statutes should not lead to manifest absurdity, rigidity, palpable injustice or absurd in convenience or anomaly – Powers of a Magistrate is not unlimited and is regulated by law – He cannot order the doing of an act in excess of the power conferred on him by law: *State of M.P. Vs. Rakesh Kumar Gupta*, I.L.R.(1998) M.P. 721: 1998(2) MPLJ 249: 1998(2) JLJ 6.

– **Preamble important guide to construction** – Can be resorted to when enactment not clear – Legislative intent to be gathered from all parts of statute taken together – Meaning of words in one part of statute explicit and clear – Another part not to be used to diminish or control effect of first part – Words not having clear meaning – Other parts can be considered to throw light on intention of legislature – General rule –

Not to import words which are not there – Can be imported in order to give sense and meaning to them: *Smt. Jankibai Vs. Ratan*, I.L.R. (1962) M.P. 1: AIR 1962 MP 117: 1962 MPLJ 78: 1961 MPLJ Note 190: 1961 J LJ 1389.

– **Principle governing the operation of a Statute on a particular new Section**

– *Sitaram Vs. State of M.P.*, I.L.R. (1982) M.P. 855: AIR 1980 MP 4: 1979 MPLJ 817: 1979 J LJ 696. (Special Bench)

– **Principle of Construction** – No part or statute should be rendered devoid of any meaning: *Ram Ratan Gupta Vs. State of M.P.*, I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 J LJ 186.

– **Principle of interpretation** – Court, power of, to travel outside the words used to find out secret intention – Provision conferring jurisdiction on special bodies, persons or courts – Provision to be strictly construed: *Ayyub Khan Vs. Fundilal*, I.L.R. (1969) M.P. 343: AIR 1968 MP 57: 1967 MPLJ 904: 1967 J LJ 822.

– **Principle to be followed in interpreting law** – Court to give effect to intention of legislature as expressed in the words used – No outside consideration can prevail: *Nathu Prasad Vs. Singhai Kapoorchand*, I.L.R. (1977) M.P. 1131: AIR 1976 MP 136: 1976 MPLJ 306: 1976 J LJ 340.

– **Principles of:** *S.S. Harischandra Jain Vs. Dr. Captain Indersingh Bedi*, I.L.R. (1978) M.P. 811: AIR 1977 MP 199: 1977 MPLJ 417.

– **Provisions of Law** – If a provision is made to deal with specific situation, the same would prevail over the general situation: *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey*, I.L.R. (2014) M.P. 1698: 2014(1) MPLJ 348: 2014(1) J LJ 92: 2013(5) MPHT 294.

– **Ratio Decidendi** – *Ratio decidendi* of a judgment to be culled out only on reading the entire judgment – Observation in a judgment cannot be read in isolation or by reading a line here and there: *Asif Mohd. Khan Vs. State of M.P.*, I.L.R. (2015) M.P. 3141: AIR 2015 MP 203: 2015(4) MPLJ 406: 2015(3) J LJ 181: 2016(1) MPJR 40.

– **Reference to language of repealed Act** – Cannot be taken in aid to construe provision of repealing Act: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar*, I.L.R. (1969) M.P. 524: AIR 1970 MP 1: 1969 J LJ 859: 1969 MPLJ 672. (Overruled in *Sharadchand Vs. Vishnupant*, I.L.R. (1979) M.P. 1: 1978 MPLJ 362: AIR 1978 MP 143: 1978 J LJ 227)

– **Rule** – Supreme Court held, that rule of interpretation is that definition given in one statute cannot be exported for interpretation of another statute – If two statutes

dealing with same subject use different language then it is not permissible to apply the language of one statute to other while interpreting such statutes – The same words may mean one thing in one context and another in a different context – It is well settled principle of interpretation that dictionary meaning and the common parlance test can also be adopted and not the scientific meaning: *State of M.P. Vs. Yugal Kishore Sharma*, I.L.R. (2018) M.P. 844: 2018(2) MPLJ 450: 2018(2) JLJ 27: 2018(1) MPJR 298.

– **Rule of harmonious construction** – Meaning: *The Ratlam Bone and Fertilizer Co., Ratlam Vs. State of M.P.*, I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.

– **Rules regarding construction** – *M/s. Shri Ganesh Trading Company, Sagar Vs. State of M.P.*, I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.

– **Salutary rule of** – Two statutory provisions – Not to be so construed as to encourage frivolous litigation or render one of them otiose: *Rajeev Khandelwal Vs. Arun Pannalal*, I.L.R. (1987) M.P. 670: AIR 1987 MP 262: 1987 MPLJ 599: 1988 JLJ 416.

– **Scope** – Legislature is deemed not to waste its words or to anything in vain – Court cannot enlarge the scope of statutory provisions or intention when the language of provision is plain and unambiguous – Real intention must be gathered: *Union of India Vs. Registrar General, High Court of M.P., Jabalpur*, I.L.R. (2012) M.P. 837: AIR 2013 MP 98: 2012(1) MPLJ 303: 2012(1) MPHT 382: 2012(1) JLJ 145.

– **Taxing provision to be strictly construed in a manner favorable to citizen** – *Balu Vs. Amichahd*, I.L.R. (1972) M.P. 1.

– **Taxing Statute** – Machinery Section – Held, in the case of a machinery section in a taxing statute, that construction should be preferred which makes the machinery workable: *Ramjilal Vs. Municipal Committee, Pipariya*, AIR 1959 MP 82: 1960 JLJ 1174.

– **Taxing Statute to be construed in favour of subject** – *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P. Nagpur*, I.L.R. (1974) M.P. 376: 1973 JLJ 604: 1973 MPLJ 484.

– **True meaning of a phrase in a Statute has to be judged from the context** – *Narsingh Vs. Kamandas*, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.

– **Two provisions contradictory** – Leading provision will override subordinate one: *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State of M.P.*, I.L.R. (1975) M.P. 216: 1974 MPLJ 581: 1974 JLJ 425.

– **Two views possible** – The view more in consonance with justice and convenience should be preferred: *Sardarilal Vs. Narayanlal, I.L.R. (1980) M.P. 1109: AIR 1980 MP 8: 1980 J LJ 110: 1981 MPLJ 76.*

– **Word “May”** – Discretionary and enabling word unless provision using the word made exercise of the power imperative on the authority: *Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur, I.L.R. (1969) M.P. 534: AIR 1968 MP 1: 1967 J LJ 859: 1967 MPLJ 837.*

– **Words and Expressions** – Words and Expressions in entries in Schedule to be construed in popular commercial sense and not on scientific, technical or rigid dictionary meaning: *M/s. Sukhu Ram Tamrakar, Durg Vs. State of M.P., I.L.R. (1978) M.P.1103: AIR 1978 MP 97: 1978 MPLJ 120: 1978 J LJ 160: 1978 Tax LR 1773.*

– **Words clear** – Intention to be gathered as expressed in unambiguous and clear words: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 J LJ 275.*

– **Words clear and unambiguous and not inconsistent with other provisions of Act** – Help of provisions of other Act or of the background or other extrinsic aid cannot be taken: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 J LJ 811.*

– **Words to be construed in natural and popular sense:** *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 J LJ 836.*

### **Iron and Steel (Control of Production and Distribution) Order, 1941**

– **Clause 11-B** – The iron and Steel (Scrap Control) Order 1943 – Clause 8 – Constitution – Article 19 (1) (f) and (g) – Clause 11-B of iron and Steel (Control of Production and Distribution) Order – *Ultra Vires* – Clause 8 of Iron and Steel (scrap control) Order – Not *ultra Vires*– Delegation of power to subordinate agency – Circumstances under which it is valid: *State Vs. Haidarali, I.L.R. (1958) M.P. 458: AIR 1957 MP 179: 1957 MPLJ 549: 1957 J LJ 658: 1957 CriLJ 1266.*

### **Iron and Steel (Scrap Control) Order, 1953**

– **Clause 8** – Not *ultra-vires* – Delegation of power to subordinate agency – Circumstances under which it is valid: *State Vs. Haidarali, I.L.R. (1958) M.P. 458: AIR 1957 MP 179: 1957 MPLJ 549: 1957 J LJ 658: 1957 CriLJ 1266.*

**(J)****Jiwaji University Act, M.P. (XV of 1963)**

– **Section 35(a)** – If conditions of service are to be regulated statutorily–Statutes are to be made by court and not by regulations of executive council: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*

– **Section 35(a)** – Service Governed by contract of employment – Dismissal even without proper enquiry is not nullity or void: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*

– **Section 38 & 39** – Lay down special procedure for making ordinance–Resolution d/11-2-65 – executive council never intended to exercise its quasi-legislative power of making ordinance–Judgment merely administrative decision to follow ordinance of Vikram University–Section 40– Executive Council did not act under its powers in whole-sole adopting regulations of Vikram University – Powers on executive authorizes under two Acts different – Topics on which ordinances and regulations could be made different–Executive Council of Jiwaji University could not adopt all ordinances and Regulations of Vikram University–Section 40 (1)(c)–Confers no powers to make regulations regarding conditions of service–Section 35 (a)– If conditions of service are to be regulated statutorily-statutes are to be made by court and not by regulations of Executive council – Service Governed by contract of employment–Dismissal even without proper enquiry is not nullity or void : *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*

– **Section 40** – Executive council did not act under its powers in whole-sale adopting regulations of Vikram University–Powers on Executive authorities under two Acts different: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*

– **Section 40** – Topics on which ordinances and regulations could be made different–Executive council of Jiwaji University could not adopt all ordinances and Regulations of Vikram University: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*

– **Section 40(1)(c)** – Confers no powers to make regulations regarding conditions of service: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570: 1974 MPLJ 139: 1974 JLJ 171.*



### **Jurisdiction**

– **Court not invalidate a statute on ground of abdication of legislative power or excessive delegation:** *The Collective Farming Society Ltd., Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187: AIR 1974 MP 59: 1974 MPLJ 1: 1974 JLJ 16.*

– **Court under special Act** – Exercises special jurisdiction and not ordinary jurisdiction: *The State of M.P. Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.*

– **Jurisdiction to try an offence** – Not same thing as jurisdiction to try offender: *The State of M.P. Vs. Ramesh Nai, I.L.R. (1976) M.P. 386: 1975 MPLJ 1: 1975 JLJ 167: 1975 CriLJ 713.*

– **Objection to** – Can be taken in execution–Nullity is a nullity and can be so declared at any stage: *Govind Das Vs. Lala Parmeshwaridas, I.L.R. (1957) 223: AIR 1957 MP 71: 1957 JLJ 426.*

## **(K)**

### **Khudkasht**

– **Not a right:** *Rao Shankar Pratapsingh Vs. The State of M.P., I.L.R. (1959) M.P. 639: 1960 JLJ 1: AIR 1960 MP 86: 1959 MPLJ 1100.*

### **Krishi Upaj Mandi Adhinyam, M.P. (XXIV of 1973)**

– **Section 17 & 19** – Levy of Market Fees – Conditions – Held, section 19 of the Act which empowers Market Committee to levy market fees, does not provide that performance of all the duties which the Committee has to perform under the provisions of Section 17, is a condition precedent for levy of market fees – If Market Committee fails to perform any statutory duty, appropriate proceedings for compelling the Committee to perform its statutory duties, can be taken: *Bhanwarlal Chandmal Vs. State of M.P. & Ors., 1981 MPLJ 485: AIR 1981 MP 220: 1981 JLJ 612.*

– **Section 19 & 21** – Assessment of Market Fees – Held, although Rules have not been framed as contemplated u/s 21 of the Adhinyam, prescribing the manner in which a Market Committee is required to proceed in the matter of assessment in the event of failure by an assessee to produce his account, Market Committee has power to proceed to assess the market fees u/s 19 in a quasi judicial manner under the provisions of Section 21 of the Act as the petitioner failed to produce accounts when called upon to do so: *Bhanwarlal Chandmal Vs. State of M.P. & Ors., 1981 MPLJ 485: AIR 1981 MP 220: 1981 JLJ 612.*

**(L)****Land Acquisition Act (I of 1894)**

– **Section 4(1)** – Term “Locality” – Interpretation – Held, ordinarily naming the village would amount to specifying the locality unless it is shown in a particular case that the village specified is much too large to be treated as a locality, there being smaller units like tolas or mohallas within that village and having a name which can be more appropriately called a locality – This would be a question of fact in each case and where a village has been specified in notification u/s 4(1), it would be presumed to be valid unless the person challenging its validity shows that in fact that the village named does not amount to specifying the locality on the facts and in the circumstances of the case: *Hajari Ghasiram Vs. State of M.P.*, 1976 MPLJ 293: AIR 1976 MP 76: 1976 JLJ 253.

– **Section 54** – Court Fess Act, 1870, Article 1-A of Schedule 1 - *Ad valorem* Court Fees – State acquiring land under Land Acquisition Act – Award passed by Land Acquisition Officer challenged in reference under Section 18 of Land Acquisition Act – Reference Court enhancing compensation – Appeal – Award passed by the reference Court is a decree in view of amended provision of Section 26(2) – *Ad Valorem* Court Fee is payable under Article 1-A of Schedule 1 and not fixed Court Fee under Article 11 of Schedule 2: *State of M.P. Vs. Seth Goverdhandas, I.L.R. (1993) M.P. 41: AIR 1993 MP 70: 1993 MPLJ 536: 1993 JLJ 280: 1993(I) MPJR 106.*

**Land Revenue Act, Central Provinces (II of 1917)**

– **Section 2(5)** and C.P. Tenancy Act (I of 1920), Section 2 (2) – Word “Agricultural” in – “Agricultural practice” occurring in section 2(5) – Meaning to be given thereto – Expression “allowed to lie fallow according to agricultural practice” – Meaning of – Khudkasht–Not a right – Explanation to Section 2(5) – Applies to cases where originally land was khudkasht and was allowed to lie fallow with the idea of bringing it under cultivation after it regained fertility – Period of rest to regain fertility – Depends upon various factors –Purpose of explanation – Abolition of Proprietary Rights (Estates, Mahals, alienated Lands) Act, 1950, MP (I of 1951), section 2(b) – Does not contemplate modification of definition of khudkasht by taking the meaning of “Agriculture” as given in the C.P . Tenancy Act, 1920 – Fiction Created in section 2(5) of the Land Revenue Act attaches to the process and not to the land– Created only for purpose of enabling proprietor to claim sir rights in such khudkasht lands – Interpretation of Statutes – Expression in one Act – Used also in another Act –The same meaning cannot be given – Meaning of words and expressions depends upon context in which they

appear – Explanation to section – Not to be read as exception – May be used to extend the meaning, but cannot dispense with the basic condition – Two interpretations possible – That which saves private rights should be accepted – Words and phrases – “Cultivation” – Connotation: *Rao Shankar Pratapsingh Vs. The State of M.P., I.L.R. (1959) M.P. 639: 1960 J.L.J. 1: AIR 1960 MP 86: 1959 MPLJ 1100.*

– **Section 202(3)** – Confiscation – Plaintiff cutting wood in forest – Order to auction the seized wood and to credit the sale proceeds in treasury – Order was clearly an order of confiscation within purview of Section 202(3) of the Act – No decree could be passed in favour of plaintiff for the value of wood: *State of M.P. Vs. Devilal, 1970 MPLJ 145: 1970 J.L.J. 112: AIR 1970 MP 179. (Also See: State of M.P. Vs. Devilal AIR 1970 MP 187: 1970 MPLJ 359.)*

### **Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)**

– **Section 15** and Notification dated 7.5.56 under Section 16 – Power of Government to appoint Naib – Tahsildar and Additional Naib – Tahsildar – Power of Tahsildar – Can be exercised by Additional Naib – Tahsildar after appointment: *Ayyub Khan Vs. Fundilal, I.L.R. (1969) M.P. 343: AIR 1968 MP 57: 1967 MPLJ 904: 1967 J.L.J. 822.*

– **Section 36** – Second Appeal – Restrictions – Held, the restrictions placed on the powers of the Second Appellate Courts u/s 36 of the Act of 1950 apply not only to second appeals preferred before the Board of Revenue but also to second appeals preferred before the Commissioner and Settlement Commissioner: *Mangilal Surat Singh Vs. Board of Revenue, 1983 MPLJ 254: AIR 1983 MP 134: 1983 J.L.J. 385.*

– **Section 36** and Madhya Bharat Official Language Act, Samvat 2007 – Held, in the erstwhile State of Madhya Bharat, Hindi was prescribed as the language for use in Acts passed by the State Legislature and the legislative intent was accordingly expressed in Hindi version of Act of 1952, amending section 36 of the Act – Hindi and English are both authorized versions and it is permissible to rely on the Hindi version in case of a doubt: *Mangilal Surat Singh Vs. Board of Revenue 1983 MPLJ 254: AIR 1983 MP 134: 1983 J.L.J. 385.*

### **Land Revenue Code, M.P. (XX of 1959)**

– **Appeal or revision provided in the Code** – further appeal or revision available in cases arising under Ceiling Act: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 J.L.J. 934.*

– **Section 2(1)(i)** – Holding – Requirements of: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 JLJ 275.*

– **Section 22(2)** – Sub-Divisional Officer has been conferred powers of the Collector to appoint a Patwari and as a consequence thereof he also has the power to remove a Patwari from service: *Kala Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 575: 2011(1) MPLJ 547: 2011(1) MPHT 408.*

– **Section 26** – Word “Disabled” in – Not to be construed narrowly so as to cover only such disability as may be occasioned due to an act independent of volition or person holding rank of Collector: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. .885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 44** – Conditions under which right of Second Appeal is available: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 44** – Words “any order passed in first appeal” in– Are wide enough and include any appellate order whether passed under sub-section (1) or (2): *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 44(1)** – Competent Authority is Revenue Officer –Appeal lies to authority competent to hear appeals under this provision: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 44(1)** – Competent Authority not a Revenue Officer–Appeal lies to Board of Revenue: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **Section 50** – Revision –*Suo motu* – When a person against whom *suo motu* exercise of power is being made is not put to an irreparable loss, period of one year from the date of detection of illegality, impropriety or irregularity in the order/proceedings would be reasonable period for exercise of *suo motu* powers of revision u/s 50 of Code for protection of the government land or public interest. [Minority View (Mr. Justice Abhay M. Naik)]: *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1: AIR 2011 MP 27: 2010(III) MPJR 347: 2010(4) MPLJ 178: 2010(3) JLJ 77: 2010(5) MPHT137.*

– **Section 50** – Revision – The *suo motu* powers can be exercised by the revisional authority envisaged u/s 50 of the Code within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings

committed by a revenue officer subordinate to it even if the immovable property is government land or having some public interest. [Majority View (Mr. Justice A.K. Shrivastava & Mr. Justice S.S. Dwivedi)]: *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.*, I.L.R. (2011) M.P. 1: AIR 2011 MP 27: 2010(III) MPJR 347: 2010(4) MPLJ 178: 2010(3) JLJ 77: 2010(5) MPHT137.

– **Section 57** and Limitation Act, 1963, Section 27 & 29 – Held, provisions of Limitation Act will have application to the extent permissible u/s 29 and where special period of limitation is prescribed under the provisions of the Code, the same shall prevail over the limitation prescribed under the Limitation Act and further the extinguishment of the right u/s 27 of the Limitation Act will not automatically result in the accrual of Bumiswami rights or any superior right on the ground of adverse possession: *State of M.P. Vs. Balveer Singh*, AIR 2001 MP 268: 2001(2) MPLJ 644: 2001(1) MPJR 546: 2001(3) MPHT 255.

– **Section 57(1) & (2)** – Civil Suit – Maintainability – Held, a civil suit is directly maintainable in respect of disputes with the State other than the disputes contemplated u/s 57(1) of the Code: *State of M.P. Vs. Balveer Singh* AIR 2001 MP 268: 2001(2) MPLJ 644: 2001(1) MPJR 546: 2001(3) MPHT 255.

– **Section 57(2) & 2(1)(k)** – Held, the right contemplated u/s 57(2) is a right other than the cultivator right in respect of the land as defined u/s 2(1)(k) which stands secured in favour of a Bumiswami, occupancy tenants or a Government lessee as defined in Code and this right has to be taken to be confined to the proprietary rights including those rights which vested in the State by operation of law under the enactments in force prior to the coming into effect of the Code: *State of M.P. Vs. Balveer Singh* AIR 2001 MP 268: 2001(2) MPLJ 644: 2001(1) MPJR 546: 2001(3) MPHT 255.

– **Section 150 & 155** – Expression ‘Arrears of land revenue’ and ‘Moneys recoverable as an arrears of land revenue’ – Distinction between– Section 150(2) and(3) – Arrears of land revenue– Recovery of– Aggrieved party’s remedy before Sub-Divisional Officer– Remedy of a Civil Suit– Constitution of India– Article 226(3) and Section 58(2) of the Constitution (42<sup>nd</sup> Amendment) Act, 1976 – Remedy of a Civil suit contemplated by section 150(3) of the land Revenue Code, M.P. 1959– Is an alternative remedy– Land Revenue Code, Madhya Pradesh, 1959– Section 155– “Moneys recoverable as an arrears of land revenue”– Proceedings before Sub-Divisional Officer and Civil Suit not available– Civil suit not an alternative remedy – Section 257– Question whether land revenue claimed is really due or not–Jurisdiction of the Sub-Divisional

Officer to decide– Bar of suit: *Manoharlal Vs. State of M.P., I.L.R. (1978) M.P. 710: AIR 1978 MP 152: 1978 MPLJ 113: 1978 JLJ 89.*

– **Section 164** – Vires of Section 164(1) and (2) (before amendment)–Section not retrospective– Sub-section (2)– Not dependent on sub-section (1) or a proviso to sub section (1) – Effect of death of tenure– Holder before or after coming into force of the Code– Death or remarriage of female heir– Does or does not divest her of her property– Mode of succession after death of female tenure holder– Section 164(2)(c) – Has wider operation– Female *Bhumiswami* inheriting as widow or as mother or father’s mother or father’s father’s mother– Property must have at one time belonged to her husband – Hindu Succession Act, 1956– Section 4(2) – Words “Tenancy rights” – Whether includes *Bhumiswami* or *Bhumidhari* tenure-holder: *Nahar Vs. Mst. Dukulhin, I.L.R. (1975) M.P. 753: AIR 1974 MP 141: 1974 MPLJ 257: 1974 JLJ 250.*

– **Section 165(7)** – Assessment made in respect of a portion of land held in *Bhumiswami* right irrespective of area–Such parcel of land would constitute a holding: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 JLJ 275.*

– **Section 165(7)** – The word “Holding” in– Has to be given same meaning as in Section 2 (1) (i), unless there is anything repugnant in the subject or context– Section 2(i) – Requirements of holding – Section 2 (1) (i) Portion of land” – Meaning of – Section 165 (7) – Assessment made in respect of a portion of land held in *Bhumiswami* right irrespective of area– Such parcel of land would constitute a holding– Interpretation of Statutes– Words clear– Intention to be gathered as expressed in unambiguous and clear words: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 JLJ 275.*

– **Section 165(7)** – Assessment made in respect of a portion of land held in *Bhumiswami* right irrespective of area– Such parcel of land would constitute a holding– Interpretation of Statutes– Words clear– Intention to be gathered as expressed in unambiguous and clear words: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 JLJ 275.*

– **Section 178(1)**, Proviso – Question of Title Raised – Procedure to be followed :-

- (i). When there are more *Bhumiswamis* than one, to any holding (which has been assessed for purpose of agriculture) every one of them has the right to apply to Tahsildar for a partition of his share.

- (ii). Proviso to Section 178(1) of the Code is attracted as soon as any question of title is raised – Revenue Authority has no jurisdiction to enter into any such question, whether the question of title raised is genuine or bogus, strong or weak, *bonafide* or *malafide*.
- (iii). When question of title is raised, partition shall not be made – Revenue Authority shall stay its hands to await decision of Civil Court.
- (iv). Revenue Authority has no jurisdiction to give any direction to any particular party to institute a Civil Suit, much less to fix any time for that purpose.
- (v). Application for partition will in such case remain in abeyance until question of title is decided – Revenue Authority may for statistical purposes consign the proceeding to record room to be recalled when decision of Civil Court is received – Application for partition cannot be dismissed.
- (vi). When the decision of Civil Court is received, Revenue Authority shall proceed to make the partition having regard to the decision of the Civil Court.

: *Nagjiram Vs. Mangilal & Ors. AIR 1977 MP 8: 1976 MPLJ 759: 1976 J LJ 478.* (Note: Section 178(1) proviso was substituted by another proviso & Sub-section (1-A) was inserted vide M.P. Act No. 18 of 1978)

– **Sections 185(1)(ii), 185(3) & 168(5)** and Land Revenue and Tenancy Act, Madhya Bharat, 1950, Section 74, 75 and 76–Disabled Person – Occupancy Tenant – Requirement – Held, a sub-tenant continuing to occupy an agricultural holding of a disabled person in pursuance of a lease granted prior to 02.10.51 in Madhya Bharat Area would not get the status of an occupancy tenant, if the disabled person on the date of coming into force of the Code, i.e 02.10.59, remains a disabled person – It is only if he continued to be a disabled person that Section 185(3) of the Code would apply – Section 75 did not have an effect of terminating the lease granted by a disabled person and therefore if *pacca tenant* remained disabled, Section 168(5) of the Code becomes applicable: *Sunder Mahila Vs. Prahlad, 1981 J LJ 239: 1981 RN 98.*

– **Section 234 & 237** – Judgments passed in Amar Singh's case and in Dayaram's case referred to Full Bench to resolve the conflict between the law laid down by both of these judgments – After detailed scrutiny of both the judgments, the Full Bench – Held – Amar Singh's case was decided before incorporation of sub clause 3 in section 237 of

M.P. LRC whereas Daya Ram's case was decided after incorporation of Sub clause 3 in Section 237 of M.P. LRC. – Before incorporation of sub clause 3 in Section 237 by amendment Act, (M.P. Act no. 1 of 1998), the collector had no jurisdiction to divert unoccupied land reserved for Nistar Rights into agricultural land, the power to divert Nistrar Land into agricultural land was vested with Sub Divisional Officer – Sec. 234(3) and 237(3) operates in two separate spheres-234(3) deals with Nistrar Patrak whereas 237(3) provides for diversion of certain lands-Law laid down by referred two judgments are not in conflict: *Goverdhan Gurjar Vs. State of Madhya Pradesh, I.L.R. (2007) M.P. 1177: 2007(4) MPLJ 618: 2008(1) MPHT 49: 2007(III) MPJR 261.*

– **Section 241 and Rules published by notification No.218-6477-VI-N-(Rules) dated 06.01.1960 in the M.P. Rajpatra dated 22.01.1960 framed in exercise of powers u/S 241 of the Code** – Held – (1) The reminder communication incorporated in Rule 4 need not be filed immediately on the lapse of the first three months from the date of filing the original application, (2) The provision of Rule 4 does not envisage filing of repeated or more than one reminder, (3) The deemed permission stipulated in Rule 4 comes into operation only on the lapse of three months from the date of filing the one and only reminder/communication, (4) In case a reply is communicated to the petitioner by the Collector then the running of time of three months on the lapse of which the deemed communication comes into operation is arrested and in such cases the Collector has the power and authority to take his time in deciding the application, (5) The permission or the deemed permission granted under Rule 4 is limited to and remains alive only till the end of the calendar year in which it has been granted, (6) The judgment in the case of Raghuvir Singh v. Board of Revenue & ors. [1984 RN 382] is hereby over-ruled not being good law: *Raju Bai (Smt.) (Dead) Through L.R.- Dimak Chand Vs. Collector, Balaghat, I.L.R. (2010) M.P. 2031: 2010(4) MPLJ 452: 2010(4) MPHT 319.*

– **Section 244** – Confers special power on Gram Panchayat to dispose of Abadi sites– Power exercisable only after rules are framed– Expression “subject to the rules made in this behalf” in– Must be read as “Subject to rules to be made in this behalf”: *Gram Panchayat Gorakhpur Vs. Khushali, I.L.R. (1974) M.P. 1: AIR 1973 MP 19: 1973 MPLJ 105: 1973 JIJ 21.*

– **Section 247(7)**, Minor Mineral Rules, M.P. 1996, Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 – Prosecution & Penalty Provisions – Held – Under Code of 1959, penalty is imposable on market value of minerals extracted or removed whereas under Rules of 1996, Rule 53 imposes penalty on amount of royalty payable on illegally extracted minerals – Penalty in



terms of Rule 53 is legal and valid till such time it does not exceed four times of the market value of minerals extracted, which as per Rule of 1996 would mean minor minerals – Extraction or removal of minerals other than minor minerals shall continue to attract penalty in terms of Section 247(7) of the Code of 1959 apart from prosecution under Rule 18 of the Rules of 2006: *Nitesh Rathore Vs. State of M.P.*, I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) J LJ 599: AIR 2019 MP 11.

– **Section 250 & 257** – Bhumiswami Rights – Jurisdiction of Civil Court – Held, a Bhumiswami is not bound to avail himself of the speedy remedy provided in Section 250 of the Code – It is open to him to take recourse to the summary remedy u/s 250 or even without it straightaway bring a suit in Civil Court for declaration of his title and possession – Even if there has been a decision u/s 250 by a Revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land: *Ramgopal Vs. Chetu Batte*, 1976 MPLJ 325: AIR 1976 MP 160: 1976 J LJ 278: 1976 RN 146. (View approved by Supreme Court in *Rohini Prasad Vs. Kasturchand* (2000) 3 SCC 668 and was distinguished in *Babu Vs. Nazim* (2001) 5 SCC 375)

– **Section 251** – Provides for abolition of certain kinds of rights in tanks which were saved under section 5(e), (f) and (g) of the Abolition Act: *Raghubar Singh Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 385: AIR 1971 MP 209: 1971 MPLJ 594: 1971 J LJ 387.

– **Section 251** – Words “vesting of tanks” in– Meaning of – Abolishes rights in tanks situated on unoccupied lands in which villagers had right of irrigation or Nistar: *Raghubar Singh Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 385: AIR 1971 MP 209: 1971 MPLJ 594: 1971 J LJ 387.

– **Section 257** – Question whether Land Revenue claimed is really due or not – Jurisdiction of the Sub-Divisional Officer to decide – Bar of suit: *Manoharlal Vs. State of M.P.*, I.L.R. (1978) M.P. 710: AIR 1978 MP 152: 1978 MPLJ 113: 1978 J LJ 89.

– **Section 257** – Bhumiswami Rights – Held, determination of question of Bhumiswami rights lies within the province of Civil Court excepting the cases falling within the ambit of those specified u/s 257 of the Code – There can be no distinction as to the forum with respect to the rights of Bhumiswami acquired after coming into force of the Code of 1959 and the Bhumiswami rights acquired on the basis of pre-existing rights: *State of M.P. Vs. Balveer Singh*, AIR 2001 MP 268: 2001(2) MPLJ 644: 2001(1) MPJR 546: 2001(3) MPHT 255.

### Law

– **Rules, Orders and Notification** – Law includes Rules, Orders and Notification issued by Government or subordinate authority is exercise of delegated legislative power: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.*

– **Order or Notification** – Order or Notification issued in exercise of non-statutory power or in exercise of statutory power which is purely executive–Does not amount to law: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.*

### Legislation

– **Law empowering State Government to enter into contract** – Exercise of that power amounts to exercise to executive power– Includes contracts made by State under statutory authority: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377: AIR 1974 MP 101: 1974 MPLJ 95: 1974 JLJ 186.*

### Legislature

– **Power of, in enacting fiscal measure** – Very wide: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) MP 216: 1974 MPLJ 581: 1974 JLJ 425.*

### Letters Patent (Nagpur)

– **Clause X** – Appeal–Tax Laws – General Sales Tax Act, M.P. 1958 (II of 1959)–Sections 39 and 43–Power to impose penalty for alleged concealment of turn over– Provision relates to additional power and confers jurisdiction on the Commissioner for imposition of penalty–Proceeding can be initiated in *suo-motu* power of revision by the Commissioner–Order of Single Judge set aside: *Addl. Commissioner of Sales Tax, Jabalpur Vs. M/s. Moujilal Das Singh, I.L.R. (2004) M.P. 240.*

– **Clause X** and Civil Procedure Code (V of 1908), Section 96, Order 9, Rules 7 and 13 and Civil Procedure Code (Amendment) Act, 1976 – Suit for partition, mesne profits and possession – Suit proceeded *ex parte* against defendants – Application under Order 9, Rule 7 of the court rejected – Suit decreed *ex parte* against defendants– Application for setting aside *ex parte* decree under Order 9, Rule 13 rejected, upheld by High Court and S.L.P. before Supreme Court dismissed as withdrawn – Appeal under Section 96 of the Code filed thereafter dismissed as not maintainable – Letters Patent Appeal – Reference to larger Bench as to maintainability of First Appeal – Civil

Procedure Code (Amending) Act, 1976 – Explanation added to Rule 13 of Order 9 of the Code – Legislative intention – Embargo – Remedy of this provision cannot be resorted to when an appeal against such *ex parte* decree has been disposed of except by way of withdrawal – Section 96(2) of the Code – Appeal – No bar even if filed after exhausting remedy under Order 9, Rule 13, C.P.C. – Appeal maintainable – Even proceedings of Appeal under Section 96 and application under Order 9, Rule 13 of the Code can be prosecuted simultaneously – Reference answered accordingly – Words “ratio decidendi” – What constitutes binding is ratio decidendi – ‘Precedent’ – A decision is a precedent for what it decides and not what is inferable from it: *Smt. Archana Kumar Vs. Purendu Prakash Mukherjee, I.L.R. (2000) M.P. 309: AIR 2000 MP 279: 2000(2) MPLJ 491: 2000(3) MPHT 35: 2000(2) JLJ 84: 2000(II) MPJR 14.*

– **Clause X, XIII**, Constitution of India Articles 226, 227, – Civil Procedure Code, 1908, Section 96, Order 41, Rule 22–Intra-Court Appeal from writ Court order–Different from an LPA from First Appeal under Section 96 CPC–Cross-objection or cross-appeal – Not maintainable – Respondent cannot await service of notice to file cross appeal in LPA – Respondent may prefer LP A subject to Rule XIII for condonation of delay – May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order – Reference answered accordingly: *Jabalpur Development Authority Vs. Y. S. Sachan, I.L.R. (2004) M.P. 231: 2004(2) MPLJ 178: 2004(2) JLJ 9.*

– **Clause X** and Civil Procedure Code, 1908, Section 100-A, Order 47, Rules 1 and 2 – Whether Letters Patent Appeal lies against order rejecting application for restoration of review application of judgment passed in Second Appeal – Husband of first appellant filed suit for declaration, permanent injunction – Suit was dismissed – First and Second Appeals too were dismissed – Application for review of judgment passed in second appeal was filed which was dismissed for want of prosecution – Appellants filed an application for restoration of review application – Single Judge dismissed the application on merits holding that there is no sufficient cause to set aside earlier order – Held – Section 100-A of C.P.C. imposes total ban on further appeal from second appellate judgment of Single Judge – Order dismissing application for restoration of review application may affect the rights of parties but that itself is not sufficient to render the order appealable – When appeal cannot be filed against main judgment then appeal cannot lie against subsequent order – Letters Patent Appeal not maintainable: *Smt. Seema Mitra Vs. Smt. Lotika Mitra, I.L.R. (1994) M.P. 283: AIR 1995 MP 128: 1995 MPLJ 4: 1995 JLJ 375: 1994(II) MPJR 260.*

– **Clause X** and Civil Procedure Code, (Amendment) Act, 2002, – Section 100-A – Insertion of Section 100-A – Affect of insertion of Section 100-A CPC on pending Letters Patent Appeal – Letters Patent is substantive right, vested from inception of the suit – Provision of Section 100-A not applicable on Letters Patent Appeals pending on 1.7.2002, the date of insertion of section 100-A – Enactments dealing with substantive rights are prospective unless expressed contrarily: *Laxmi Narayan Vs. Shiv Lal Gujar*, I.L.R. (2002) M.P. 783: AIR 2003 MP 49: 2003(1) MPLJ 10: 2002(4) MPHT 463: 2002(2) JLJ 327: 2002(II) MPJR 405.

– **Clause X** – Declaration by Single Judge – Jurisdiction & Validity – Held, Division Bench has no jurisdiction to question the validity of order/declaration and having no power to revise the order of Single Bench granting the necessary declaration under clause 10 of the Letters Patent – Matter of granting declaration is the absolute discretion of Single Judge, unfettered by any limitations – Single Judge is final authority in judging whether a case is fit for appeal and Division Bench cannot question the merits of such decision: *Ramnarayan Trivedi & Ors. Vs. State of M.P. & Ors.*, AIR 1962 MP 93: 1962 MPLJ 1: 1961 JLJ 1364.

– **Clause X** – Declaration by Single Judge – Application for – *Suo Motu* Powers – Held, power of declaring a case fit for appeal under clause 10 is not restricted to cases only where an application has been filed – A judge can act suo motu in granting leave under that clause: *Ramnarayan Trivedi & Ors. Vs. State of M.P. & Ors.*, AIR 1962 MP 93: 1962 MPLJ 1: 1961 JLJ 1364.

– **Clause X** – Jurisdiction – Nature of Order – Held, High Court in exercise of powers under Article 226 of Constitution exercises extraordinary original jurisdiction – Such jurisdiction is civil and not criminal – An order passed by Single Judge disposing of a petition under Article 226 of Constitution, thus amounts to a judgment from which an appeal lies under Clause 10 of Letters Patent before a Division Bench of this Court: *Deva Vs. Durgashankar*, AIR 1986 MP 195: 1986 JLJ 380.

– **Clause X** and M.P. High Court Rules & Orders, Rules under Clause 27, Chapter IV, Rule 10 – Term “immediately” – Delay & Explanation – Held, the intention of Rule 10 of Chapter IV is that there should be no undue delay in making the necessary application – Word “immediately” has to be reasonably construed so as not to require from applicant which is impossible – Applicant may not be able to apply immediately after delivery of judgment for variety of reasons – The word “immediately” should be so read as to advance its purpose and not to defeat justice – Further, it should be open to Single Judge concerned to consider the circumstances which led to the delay and if he is

satisfied that delay was for sufficient cause, he may condone it: *Ramnarayan Trivedi & Ors. Vs. State of M.P. & Ors.*, AIR 1962 MP 93: 1962 MPLJ 1: 1961 JLJ 1364. (*Rao Shankar Pratap Singh, Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 639: 1960 JLJ 1: AIR 1960 MP 86: 1959 MPLJ 1100. Overruled on this point*)

– **Clause X** – Civil Procedure Code, 1908, Section 104 (2), Order 43 Rule 1– Question referred to Full Bench as to whether Letters Patent Appeal maintainable against order passed by Single Judge in appeal filed under Order 43 Rule 1– Held– Letters Patent provides that where trial judge has passed an order an appeal would lie to Division Bench–No second appeal lies against an appellate order passed under O.43 Rule 1– Appeal filed by appellant not maintainable: *Dr. Mahesh Chandra Choubey Vs. Shri M.M. Dubey, I.L.R. (1994) M.P.12: AIR 1994 MP 151: 1994 MPLJ 657: 1995 JLJ 141: 1994(I) MPJR 353.*

– **Clause X** and Representation of the People Act (XLIII of 1951), Section 98 and 99 – Election petition interlocutory order passed by Single Judge – Amounts to ‘Judgment’–Appealable under clause 10: *Laxmi Narayan Nayak Vs. Ramratan Chaturvedi, I.L.R. (1985) M.P. 710: AIR 1986 MP 165: 1986 MPLJ 261: 1986 JLJ 238. (Overruled in Upadhyaya Hargovind Vs. Dhirendrasingh AIR 1988 SC 915: (1988) 2 SCC 1.)*

– **Clause X & XXVI** and M.P. Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981, Section 1 – Maintainability – On dismissal of writ petition, appeal was filed under Clause 10 before Division Bench – On difference of opinion between the Judges of Division Bench, matter was referred to Full Bench – Held, in view of the judgment of the Apex Court in Jamshed’s case 2005(2) MPLJ 181 (SC), LPA itself is not maintainable – Thus rendering an opinion in present case would be a Sisyphean endeavour for simple reason that after the judgment of Apex Court, there is no jurisdiction on the part of this Court to decide the LPA – If it is not maintainable, any observation made therein would have no fruitful effect and in fact, in a way, would be totally unwarranted – In such situation, decision of the Single Bench will hold the field – Further, Clause 26 though has not been repealed by legislature, covers a different spectrum altogether and it should not be read in juxtaposition with Clause 10, which is no more in the statute book: *Precision Technofab and Engineering Pvt Ltd. Vs. State of M.P. 2006(1) MPLJ 403: 2006(1) MPHT 246: 2006(1) JLJ 339.*

– **Clause XXVI** and M.P. High Court Rules (Civil), Chapter I, Rule 11 – Referee Bench – Scope & Jurisdiction – Held, on difference of opinion between two Judges of Division Bench, when the matter is referred to a third Judge, he can only express his

“opinion” on the “point” on which the Judges of Division Bench are divided in opinion – Third Judge cannot “decide” the point nor can he enter into any other point on which the Judges of Division Bench were not divided in opinion – If third Judge expresses his opinion on any other point or finally decides the case as a whole. The latter part of his opinion has to be ignored as without jurisdiction, be it styled as “order” or “judgment” – When the third Judge recorded his opinion on the referred point, the case must be laid before the Division Bench as per the method provided in Clause 26 for deciding the case finally – It is also not necessary that the case must be laid before the same Division Bench which first it – Where one of the Judges of Division Bench which first heard the case, has retired or is not otherwise available, Chief Justice can constitute another Division Bench to decide the case according to the method provided under Clause 26 of the Letters Patent and they can also render the judgment/decision in accordance with the majority of the opinion of the Judges of the referring Bench and the Refere Bench: *Firm Ladhuram Vs. K.U.M. Samiti AIR 1978 MP 10: 1977 MPLJ 641: 1977 JLJ 651.*

### **Limitation Act, Indian (IX of 1908)**

– **And General Clauses Act (X of 1897)** – Section 10–Section 4 of Limitation Act is applicable to suits, appeals and applications– Other cases governed by General Clauses Act, Section 10– Principle underlying these provisions applicable when act is to be done under order of the Court: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **To be construed according to plain meaning of the language used** – Court to give full effect to language used – Section 15– Word “execution” in– Meaning of – Embraces various processes of execution and any of them – Words “has been stayed by an injunction or order” in– Relatable to the factual position – Condition under which period can be excluded– Decree-holder–Prevented from taking steps which he likes – Limitation does not run against him: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P.789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **Section 4** – Expiry on a day which is holiday– Act done on reopening day, act is in time: *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153: AIR 1977 MP 1: 1976 MPLJ 734: 1976 JLJ 797.*

– **Section 12(2)** – Application for certified copy of decree made before decree signed– Time from the date of Judgment till signing of decree to be excluded in computing period of limitation: *Messrs Chhotelal Keshoram, Rajnanadgaon, M.P. Vs.*

*The Union of India, Represented by the General Manager South Eastern Railway, Calcutta, I.L.R. (1974) M.P. 8: AIR 1973 MP 146: 1973 MPLJ 404: 1973 JLJ 400.*

– **Section 15** – Condition under which period can be excluded: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **Section 15** – Decree holder prevented from taking steps which he likes – Limitation does not run against him: *Ramnarayan Vs. Anandilal, I.L.R. (1971) MP 789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **Section 15** – Word “execution” in– Embraces various processes of execution and any of them: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **Section 15** – Words “has been stayed by an injunction or order” in– Relatable to the factual position: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **Section 28** and Land Revenue Code, M.P., (XX of 1959) – Rights of Bhumiswami in agricultural lands – Whether can be acquired by adverse possession – Right to claim mutation based on adverse possession – Whether can be claimed: *Kashiram Vs. Nathu, I.L.R. (1983) M.P. 183: AIR 1980 MP 183: 1980 MPLJ 670: 1980 JLJ 879.*

– **Article 182(2)** – Does not include Appeal from order refusing to set aside *ex-parte*–Decree Application by Judgment debtor to set aside *ex-parte* decree – Is not a step-in-aid within the meaning of Article 182(2) of the Limitation Act: *Surajdin Vs. Shrinivas, I.L.R. (1998) M.P. 365: 1998(1) MPLJ 438: 1998(2) MPLJ 460: 1998(1) JLJ 203.*

– **Article 182(5)** – Requirement of “Final orders” in – Means and includes appellate order when appeal filed against order of executing Court: *The C.P. Syndicate Ltd. Nagpur Vs. Firm Hasan Ali, I.L.R. (1959) M.P. 1: AIR 1959 MP 288: 1959 MPLJ 458: 1959 JLJ 383.*

– **Article 182(5)** – Expression “Application in accordance with law” – Meaning of – Question whether particular step is a step-in-aid of execution – Depends on facts and circumstances in each case – Essentials of – Application for bringing on record legal representatives of deceased party to decree – Application a step in-aid of execution: *Onkarsingh Vs. Meharbansingh, I.L.R. (1963) M.P. 589: AIR 1963 MP 176: 1963 MPLJ 209: 1963 JLJ 203: 1963 JLJ (SN) 46 (published as Gulab Singh Vs. Meharbansingh).*

### **Limitation Act, Indian (XXXVI of 1963)**

– **Article 113** – Every threat for recovery – Furnishes fresh cause of action – Suit can be filed within 3 years therefrom: *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P.627: AIR 1980 MP 1: 1979 MPLJ 801: 1979 JLJ 714.*

– **Article 113** – Party not availing of earlier causes of action – Not prevented from availing of the same later: *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P. 627: AIR 1980 MP 1: 1979 MPLJ 801: 1979 JLJ 714.*

– **Article 113** and Arbitration Act, Indian (X of 1940), Sections 16, 30 and 33 – State starting recovery proceedings for alleged dues and threatening to recover – Suit for injunction – Governed by Articles 113 – Every threat for recovery furnishes fresh cause of action – Suit can be filed within 3 years therefrom – Party not availing of earlier causes of action – Not prevented from availing of the same later Award – Ground for interference – Arbitrator wrongly holding claim referred to as barred by limitation – It is a ground for remitting award for decision on merits: *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P. 627: AIR 1980 MP 1: 1979 MPLJ 801: 1979 JLJ 714.*

### **Local Government Act, C.P. and Berar (XXXVIII of 1948)**

– **Section 89** – Authorises imposition of fee but not tax – Requirements necessary for imposition on the purchase money by the purchaser amounts to a tax and not fee: *Dhaniram Vs. Janapad Sabha, Janjgir, I.L.R. (1966) M.P. 521: AIR 1965 MP 219: 1965 JLJ 346: 1965 MPLJ 408.*

– **Section 90** – Vires of: *Achchelal Vs. The Janapada Sabha, Sihora, I.L.R. (1963) M.P. 777: AIR 1963 MP 74: 1963 MPLJ 92; 1963 JLJ 5.*

– **Section 90** – Vires of – Constitution – List II-Item 5 – Word “Power” in – A large word and its meaning cannot be limited – Includes power of making laws and imposing taxes: *Achchelal Vs. The Janapada Sabha, Sihora, I.L.R. (1963) M.P. 777: AIR 1963 MP 74: 1963 MPLJ 92; 1963 JLJ 5.*

– **Rule 3 under Section 188(2)(ix)** – Imprint got on ballot paper by keeping the ink wet deliberately with purpose – Imprint amounts to making mark within the meaning of the rule – Imprint made intentionally in concert with candidate – Secrecy of ballot is violated – No provision in Act for making enquiry regarding validity of ballot paper – Chairman rejecting vote – Action cannot be said to be lacking in jurisdiction or propriety – Rules framed under Section 182 (2) (ii), (iii) and (ix) – Non-compliance with –



Constitutes distinct and independent condition – Not related to improper reception or refusal of a vote – Constitution – Articles 226 and 227 – Provisions not to be invoked for adjudication of controverted questions of fact: *Hariprasad Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 154: AIR 1959 MP 343: 1959 MPLJ 669: 1959 JLJ 414.*

### **Lok Parisar (Bedakhali) Adhiviyam, M.P. (XLVI of 1974)**

– **Section 2(e)** – Public Premises – Municipalities are constitutional bodies – Property owned and controlled by local authority/Municipalities – Will fall within the ambit of Section 2(e) (iii) of the Act: *Smt. Meena Agrawal Vs. Chief Municipal Officer, Municipal Council, Shivpuri, I.L.R. (2006) M.P. 952: 2008(3) MPLJ 153: 2007(5) MPHT 443: 2007(1) JLJ 188.*

### **Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P., 1994**

– **Rules 7, 9 & 10** and Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 6 – Appointment – Civil Judge – Eligibility – Good Character – Petitioner successfully cleared/passed the preliminary examination, main examination and the interview and his name was recommended for appointment as Civil Judge – Subsequently, on the information of petitioner involvement in the criminal cases, his name was removed by the State Government from the selection list holding him not eligible – Petitioner filed a writ petition which was further referred to the larger bench – Held – Acquittal in a criminal case is not a certificate of good conduct of a candidate nor is sufficient to infer that candidate possess good character – Decision of acquittal passed by a criminal Court on the basis of compromise would not make the candidate eligible for appointment as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post – Test for each of them is based on different parameters – Competent authority has to take a decision in respect of suitability of candidate discharge the functions of a civil post – Supreme Court held that even if a candidate has made a disclosure of the concluded trial but still the employer has a right to consider the antecedents and cannot be compelled to appoint a candidate – Decision of the State Government that petitioner is not eligible for appointment, cannot be said to be illegal or without jurisdiction – Questions of Law referred to Larger Bench answered accordingly: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627: 2018(2) MPLJ 419: 2018(1) JLJ 169: 2018(II) MPJR 178.*

**(M)****Madhya Bharat High Court of Judicature Act (VIII of 1949)**

– **Section 25** – Judgment of Division Bench of High Court – Appeal to Full Bench under section 25 of M.B. High Court of Judicature Act, upholding judgment of Division Bench – Division Bench is Court immediately below Full Bench – Judgment one of affordance – No leave can be granted: *Gulabchand Vs. Seth Kudilal, I.L.R.(1960) M.P. 205: AIR 1959 MP 151: 1960 MPLJ 334: 1959 JLJ 78.*

**Madhya Pradesh Govt. Servants (Temporary and Quasi-Permanent Service) Rules, 1960**

– **Rule 3-A** – Requirement of reasons to be recorded thereby – Implications of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **Rule 3-A** – Resolution of the High Court recording that petitioner “not found fit for confirmation” – Cannot be construed to mean an order arresting the effect of deeming provision contained in Rule 3-A acquiring the status of *Quasi-Permanent*: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **Rule 3-A** – The words ‘otherwise order’ occurring in – Import of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **Rule 3-A** – Words “appointing authority” in – Have to be read in case of Judicial Officers as ‘competent authority’: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **Rule 3-A & 12** and Constitution of India, Articles 309, 234 and 235 – No inconsistency between Rules and Articles 234 – Rules are not invalid – Interpretation of Statute – Article 235 and Rule 3-A – Provisions may be read differently in order to make it constitutional – Words ‘appointing authority’ in Rule 3-A – Have to be read in case of Judicial Officers as ‘competent authority’ – Natural Justice – Principles of – Applicable to *Quasi-Judicial* and administrative functions – Rule of reasons – Connotation of The words “reason” and “conclusions” – Distinction between and import of – Rule 3-A – Requirement of reasons to be recorded thereby – Implications of – The Words ‘otherwise order’ occurring in Rule 3-A – Import of – Resolution of the High Court recording that petitioner “not found fit for confirmation” – Cannot be construed to mean an order

arresting the effect of deeming provision contained in Rule 3-A acquiring the status of *Quasi-Permanent* – Petitioner acquiring status of *Quasi-Permanent* Servant – Termination of his service under Rule 12 is invalid and liable to be quashed – Constitution of India – Article 141 – Conflicting view of law by Supreme Court – Later view to be accepted as correct view – Practice and Rule 3-A – Validity of an order has to be Judged by reasons so mentioned and not by fresh reasons in the shape of affidavits or otherwise: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 J LJ 460.*

– **Rule 12** – Petitioner acquiring status of *Quasi-permanent* servant – Termination of his service under Rule 12 is invalid and liable to be quashed: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 J LJ 460.*

### **Madhyastham Adhikaran Adhiniyam, M.P. (XXIX of 1983)**

– **Revenue Recovery Certificate** – Challenge to – Maintainability – Held – Challenge to revenue recovery certificate under the guise of challenge to only termination of contract is not tenable because the consequential relief is to that of challenge to revenue recovery certificate: *Shri Gouri Ganesh Shri Balaji Constructions “C” Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346: AIR 2018 MP 134: 2018(3) MPLJ 163: 2018(III) MPJR 52.*

– **Section 2(d) & 7-B(1)(b)**, Proviso and Limitation Act (36 of 1963), Section 9 – Arbitral Tribunal – Reference – Limitation – Applicability – Held – As concluded by Apex Court, proceedings before Arbitral Tribunal are proceedings before the Court – Further held – Once time has begun nothing stops it, said principle is not only a principle in terms of Section 9 of the Act of 1963 but is also applicable to proceedings under the Act of 1983 – If aggrieved person has not availed the remedy within period of limitation, his right to sue stands extinguished and such right does not revive on account of decision of the final authority after six months – Proviso to Section 7-B(1)(b) would be applicable even if final authority has not given any decision within six months: *Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2018) M.P. 2668: 2018(3) J LJ 684: AIR 2018 MP 241: 2019(1) MPLJ 99: 2019(II) MPJR 110.*

– **Section 2(1)(d)** – “Ascertained Amount” and “Consequential Relief” – Held – The expression “ascertained amount” appearing in Section 2(1)(d) of the Act of 1983 includes the amount of consequential relief – Further held – Consequential relief, if not claimed with reference cannot be claimed subsequently: *Shri Gouri Ganesh Shri Balaji Constructions “C” Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346: AIR 2018 MP 134: 2018(3) MPLJ 163: 2018(III) MPJR 52.*

– **Section 2(1)(d)** – “Claim of ascertained money” & “Works Contract” – Amendment – Held, the words “Claim of ascertained money” have a definite connotation and therefore only such difference arising out of execution or non-execution of a “works contract” which are related with claims of above nature will be covered under section 2(1)(d) of the Adhinyam of 1983 – Basic reason for introducing the amendment is to clarify that the definition of works contract will include concession agreement – No new liabilities are fastened on the parties by bringing the said amendment – Substituted definition of “works contract” is clarificatory in nature and hence it will be retrospective in operation: *Viva Highways Vs. M.P. Road Development Corporation Ltd.*, AIR 2017 MP 103: 2017(2) MPLJ 681.

– **Sections 2(1)(d), 7-A(1) & (2)** and Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – Jurisdiction and Maintainability – Consequential Relief and Ascertainment Amount – Termination of Contract – Application for appointment of Arbitrator u/S 11(6) of the Act of 1996 – Held – As per Section 7-A(2) of the State Act of 1983, if the aggrieved person omits to claim a relief though available on the date of seeking reference, he is debarred from claiming such relief in a subsequent proceedings – In a reference, if consequential relief is not claimed, the reference itself is not maintainable and liable to be declined – Mere astuteness in drafting of a plaint/reference seeking simpliciter termination of contract without seeking consequential relief (ascertainable), would not be maintainable – Further held – Jurisdiction of the State Arbitral Tribunal cannot be ousted for the reason that party is claiming only declaration and not consequential relief as without the consequential relief, declaration is meaningless: *Shri Gouri Ganesh Shri Balaji Constructions “C” Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346: AIR 2018 MP 134: 2018(3) MPLJ 163: 2018(III) MPJR 52.*

– **Sections 2(1)(d)(as amended by Act No. 36 of 1995), 3, 7, 7-B & 17-A** – Dispute – Reference to Tribunal – Tribunal constituted is under obligation to resolve "all disputes or differences" pertaining to works contract – Counter claim is a cross reference – Opposite party against whom reference is made can also refer a counter claim – But Tribunal cannot admit a counter claim if not referred to by final authority or where reference has not been filed before Tribunal within the period of limitation prescribed: *Ravi Kant Bansal Engineers & Contractors Mahadji Park, Lashkar, Gwalior M.P. Vs. M.P. Audyogik Kendra Vikas Nigam Limited Gwalior, I.L.R. (2006) M.P. 781: AIR 2006 MP 184: 2006(2) MPLJ 299: 2006(2) MPHT 264: 2006(2) JLJ 186: 2006(III) MPWN 48: 2006(II) MPJR 183.*

– **Sections 2(1)(d) & 7** and Arbitration and Conciliation Act (26 of 1996), Section 7, 8, 11 & 42 – Dispute – Jurisdiction of Tribunal – Held, Tribunal can decide only such disputes which are covered by the definition of “dispute” and such dispute must be for “ascertained money” – It means the sum which is “known” or “made certain” or “fixed” or “determined” or “quantified” – Even if the concession agreements are works contract, remedy before the Tribunal under Act of 1983 is not available – Applicants may pursue their remedy under the Act of 1996 – Conjoint reading of Section 2(1)(d) and Section 7 of the Adhinyam makes it clear that a reference to Tribunal can be made and entertained only when it is in relation to the “dispute”: *Viva Highways Vs. M.P. Road Development Corporation Ltd.*, AIR 2017 MP 103: 2017(2) MPLJ 681.

– **Sections 2(1)(d), 3 & 7** – “Works Contract” – Held, any agreement by whatever name called, if it falls within the meaning and definition of “works contract” as per Adhinyam of 1983, it must be treated as a works contract and in that case, appropriate forum is the Tribunal constituted u/s 3 of the Adhinyam if difference between the parties are covered u/s 2(1)(d) of the Adhinyam – Even in cases where the parties have incorporated a clause in such agreement regarding resolution of dispute by some other forum or under the Act of 1996, the forum subject to above, would be the Tribunal under the Adhinyam of 1983 – This conclusion will presently not include the cases of terminated contract, which aspect is pending consideration before a Larger Bench of the Supreme Court: *Viva Highways Vs. M.P. Road Development Corporation Ltd.*, AIR 2017 MP 103: 2017(2) MPLJ 681.

– **Section 7**, Arbitration and Conciliation Act, 1996, Section 11, Constitution of India, Article 254 – Inconsistency between Laws made by Parliament and by Legislatures of States – Whether the provisions of 1983 Adhinyam have been saved by 1996 Act or 1983 Adhinyam stand impliedly repealed by 1996 Act – Petitioner entered into contract with respondents for construction of Central Spillway of Rajeev Sagar Tank. Conditions of contract provides that any claim valued at Rs. 50,000/- or more will be considered by Superintending Engineer – Petitioner made claim of Rs. 21.81crores which was rejected by S.E. – Petitioner filed application under Section 11(6) of 1996 Act for appointment of arbitrator instead of referring dispute to Tribunal – Objection raised by respondents that application under Section 11(6) is not maintainable – Held – State Legislature was competent to make law in respect of arbitration in Entry 13 of Concurrent List though Arbitration Act, 1940 made by Central Legislature was already in same field – Parliament competent to make 1996 Act in same field – Provisions of 1983 Adhinyam have been expressly saved – Provision of 1983 Adhinyam are not repugnant to the provisions of 1996 Act and are not void and do not stand impliedly repealed by 1996 Act. Application

under Section 11(6) of 1996 Act not maintainable: *Shri Shankaranarayana Construction Company Vs. State of M.P., I.L.R. (2007) M.P. 1309: AIR 2008 MP 5: 2008(1) MPLJ 78: 2007(4) MPHT 444: 2008(1) JLJ 50: 2008(1) MPJR 20.*

– **Section 7**, M.P. Land Revenue Code, 1959, Sections 146,147 – Whether State Govt. can recover damages for breach of contract from Contractor without seeking adjudication of its claim before the Tribunal – Agreements of Appellants with State Government of public works were terminated and issued orders for recovery of money under clauses 4.3.3.3 and 4.3.38.1 as arrear of land – Appellants raised dispute before Superintending Engineer but he did not decide the claim – Applications filed under Section 7 of Adhiniyam, 1983 which are pending adjudication – Held – Where Contractor disputes amount claimed by State Govt. as payable by Contractor to State Govt. cannot be said to be due – State Govt. has no power to recover any amount which is disputed by Contractor as payable under the Contract prior to the decision of Superintending Engineer or Tribunal under Adhiniyam, 1983: *B.B. Verma Vs. State of M.P., I.L.R. (2007) M.P. 1167: AIR 2008 MP 202: 2007(4) MPLJ 610: 2008(1) MPHT 17: 2007(III) MPJR 251.*

– **Section 7-B** – Jurisdiction of Tribunal – Held, no reference shall be admitted by Tribunal unless dispute is first referred for decision of final authority in a manner as provided under terms of the contract – Right of contractor to approach Tribunal arises after he has approached final authority after decision of Superintending Engineer in terms of the contract – If contractor has failed to approach final authority as provided under terms and conditions of works contract, petition will not be admitted by Tribunal – Dispute to the final authority should be preferred in the manner prescribed under works contract – Since in the present case it is provided that in the case of abandonment or cancellation or in any dispute of works contract, the dispute must be raised before the Superintending Engineer within a period of 30 days. On his failure to decide the dispute within 60 days or after decision of the dispute, appeal must be preferred within 30 days, which shall be decided by Chief Engineer within 90 days. Therefore, if appeal has not been preferred to the final authority in accordance with the terms of the works Contract, petition will not be maintainable before the Tribunal: *State of M.P. Vs. Kamal Kishore Sharma, 2006(2) MPLJ 113: 2006(1) JLJ 322: 2006(1) MPHT 565. (Overruled in Sanjay Dubey Vs. State of M.P., I.L.R. (2012) M.P. 2091: 2012(4) MPLJ 212: 2012(5) MPHT 97: 2013(1) JLJ 20. (Special Bench) in so far as they contain any observation or findings, inconsistent with conclusion of this judgment.)*

– **Section 7-B** – Jurisdiction of Tribunal – (i) Where works contract contains Clause for referral of dispute to the authorities, the jurisdiction of the Tribunal can be invoked only after approaching the authority as provided under the Works Contract (ii), Where the dispute has arisen under an agreement prior to coming into force of Section 7-B (2-A) of the Act which does not contain clause for referral of dispute, an aggrieved person has to approach the Tribunal within a period of three years, (iii) Where the dispute has arisen after coming into force of Section 7-B (2-A), an aggrieved person can approach the Tribunal within a period of three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract, (iv) In case the works contract is rescinded, the limitation would start from the date when the agreement is rescinded and in case of claim for damages for breach of contract, limitation would commence from the date when the final bill is prepared, (v) Dispute to the authorities has to be submitted within the time which has been prescribed in the clause – Dispute cannot be submitted to the authorities within 3 years as per the provisions of Limitation Act, (vi) Clause 29 providing for limitation for submission of dispute before the authorities is not violative of the provisions of Limitation Act: *Sanjay Dubey Vs. State of M.P., I.L.R. (2012) M.P. 2091: 2012(4) MPLJ 212: 2012(5) MPHT 97: 2013(1) JLJ 20. (Special Bench) (State of M.P. Vs. Kamal Kishore Sharma 2006(2) MPLJ 113 FB Overruled in so far as they contain any observation or findings, inconsistent with conclusion of this judgment)*

– **Section 7-B(1)(b)**, Proviso and Limitation Act (36 of 1963), Section 9 – Reference – Limitation – Held – In terms of Section 7-B(1)(b), reference is required to be made within one year from date of communication of decision of final authority – Proviso gives six months to final authority to take decision – If final authority fails to take a decision within six months, it amounts to deemed rejection of reference and confers cause of action to aggrieved person to seek reference from Arbitral Tribunal: *Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2018) M.P. 2668: 2018(3) JLJ 684: AIR 2018 MP 241: 2019(1) MPLJ 99: 2019(II) MPJR 110.*

– **Section 19** and Limitation Act, 1963, Section 5 & 29(2) – Revision – Limitation – Held, High Court cannot condone the delay if revision is preferred by aggrieved party beyond a period of three months u/S 19 of the Act of 1983 – It is however open to High Court to exercise *suo motu* revisional jurisdiction u/S 19 of the Act even beyond period of three months of passing of award – However such power has to be exercised within reasonable time considering the facts and circumstances of the case and

nature of the order which is being revised: *M.P. State Electricity Board, Jabalpur Vs. Pandey Construction Co., 2005(2) MPLJ 550: 2005(2) MPHT 206: 2005(I) MPJR 509: 2005(2) JLJ 316.*

– **Section 19** and Limitation Act, 1963, Section 5 & 29(2) – *Suo motu* Revision – While rejecting revision petition filed by aggrieved party as barred by limitation, if circumstances so warrant, High Court may decide the power of *suo motu* revision and call for record and award from Tribunal – Further held, no specific time limit can be fixed for exercising *suo motu* revisional power u/s 19 of the Act of 1983 – The power has to be exercised within reasonable time which depends upon the nature of the order to be revised and other facts and circumstances of the case: *M.P. State Electricity Board, Jabalpur Vs. Pandey Construction Co., 2005(2) MPLJ 550: 2005(2) MPHT 206: 2005(I) MPJR 509: 2005(2) JLJ 316.*

– **Section 19**, Limitation Act, Indian 1963, Section 5 – Condonation of delay – Provisions of Limitation Act do not apply to revision preferred under Section 19 of Act, 1983: *State of Madhya Pradesh Vs. M/s Shekhar Constructions, I.L.R. (2008) M.P. 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) JLJ 23. (Special Bench)*

– **Section 19**, Limitation Act, 1963, Sections 5 & 29(2) – Question whether in view of Section 29(2) of Adhiniyam, 1983, provisions of Sections 4 to 24 applies to revision filed under Adhiniyam, to condone delay referred to Larger Bench – Held – Provisions of Limitation Act do not apply to revision preferred under Section 19 of Adhiniyam, 1983: *State of Madhya Pradesh Vs. M/s Shekhar Constructions, I.L.R. (2008) M.P. 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) JLJ 23. (Special Bench)*

– **Section 19** – *Suo Motu* power of Revision – High Court can exercise the power of revision *suo motu* within a reasonable period of time: *State of Madhya Pradesh Vs. M/s Shekhar Constructions, I.L.R. (2008) M.P. 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) JLJ 23. (Special Bench)*

– **Section 19** – *Suo motu* exercise of power – High Court can exercise the power of revision *suo moto* – Such power can be exercised within reasonable period of time considering facts and circumstances of case and nature of order which is being revised – View taken in case of Pandey Construction is in accord with language employed under Section 19 – Reference answered accordingly: *State of Madhya Pradesh Vs. M/s Shekhar Constructions, I.L.R. (2008) M.P. 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) JLJ 23. (Special Bench)*



– **Section 20(1) & (2)** and Arbitration Act 1940 – Section 20 (1) – Cognizance of dispute by Arbitration Tribunal under Adhinyam–Jurisdiction of Civil Court barred – Applicability – Jurisdiction barred only from date of constitution of Arbitration Tribunal i.e. 1-3-1985 – Pending application for reference u/S 20 (1) of Arbitration Act before Civil Court before Tribunal was constituted, is saved by Section 20(2) of Adhinyam: *State of M.P. Vs. M/s Chahal & Company, New Delhi, I.L.R. (1995) M.P. 142: 1995 MPLJ 885.*

### Master and Servant

– **Withdrawal of resignation before it became operative** – Validity – Ravishanker University Act, M.P. 1963 – Sections 23 and 35 – Ordinance no. 20 – Has force of law – Teacher can enforce right granted by the provision – Provides safeguard to Principal against termination of service – Relation of servant governed by statute – Servant can invoke writ jurisdiction for enforcing right – In case of contractual relationship– Remedy is suit –Writ jurisdiction can be invoked even if power conferred is discretionary– Statute 22(3)(iii) – Authorises university for prescribing of service conditions –Service conditions have force of law – Governing body not authorised to terminate services of Principal without obtaining approval of University – Constitution of India – Article 226 – Issue of writ of Mandamus – Whether can be issued against University for taking decision regarding grant of approval to the resolution of governing body of the college – Precedent – One Division Bench – No power to ignore decision of another Division Bench – Proper remedy to refer case to Full Bench: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President, Governing Body Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298:1975 MPLJ 290:1975 JLJ 93.*

### Maxim

– **“Functus officio”** – Meaning of: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

– **“Persona designata”** – Meaning of: *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943: AIR 1973 MP 52: 1973 MPLJ 43: 1972 JLJ 934.*

– **“Persona designata”** – Test for deciding whether a person is *persona designata* – Municipalities Act, Madhya Pradesh, 1961–Section 20 – “District Judge” in – Not a *persona designata*– Civil Courts Act, Madhya Pradesh, 1958 – Section 7(2) – Statutory powers conferred on District Judge – Can be delegated to Additional District Judge – Words “any of the functions of a District Judge including the functions of the Principal Civil Court of original jurisdiction” in – Wide enough to authorize District

Judge to delegate power under M.P. Municipalities Act. Madhya Pradesh, 1961 – Municipalities Act, Madhya Pradesh, 1961 – Section 20 – Confer powers on that authority for the disposal of the petition – Municipalities (Election Petition) Rules, Madhya Pradesh, 1962 – Rules 11 to 15, 17 and 18 – Do not curtail ordinary procedure – Confer procedural powers already vested – Rules superfluous and redundant Election – Right to stand for election when conferred by a statute – Becomes a civil right – Disposal of a dispute entrusted to Civil Court – Procedure of that Court to apply unless prohibited: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JLJ 53.*

– **“Ut res magis valeat quam pereat”** – Golden rule of construction of a statute – Each & every word of the statute be given beneficial effect – Can be invoked only in cases of ambiguity: *State of MP Vs. M/s. Chahal & Company, New Delhi, I.L.R. (1995) M.P. 142: 1995 MPLJ 885.*

– **Vigilantibus noa dormientibus jura sub veniunt** – Means – Laws come to the assistance of those who are vigilant and not those who sleeps upon their rights – We can extend this maxim to the revisional authority who has to exercise his *suo motu* power: *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1: AIR 2011 MP 27: 2010(III) MPJR 347: 2010(4) MPLJ 178: 2010(3) JLJ 77: 2010(5) MPHT137.*

### **Medical and Dental Postgraduate Entrance Examination Rules, M.P., 1999**

– **Rule 3(VI)(iv)** – Incumbent already admitted to postgraduate course debarred from appearing in Entrance Examination for three years – Held – Object of Rule is to ensure that resources of State spent on giving postgraduate education to students are not wasted by leaving postgraduate courses in midstream and seeking admission in some other postgraduate course of his choice – Direction to permit candidates to participate in counseling on the basis of result of subsequent entrance examination not tenable in law – However, as Petitioner by interim order was allowed to participate in counseling and was given admission in postgraduate course allotted to him and he must have completed the course therefore, admission given to petitioner pursuant to interim order will not be disturbed: *Rajeev Dalela Vs. State of M.P., I.L.R. (2007) M.P. 1154: 2007(4) MPLJ 469: 2008(1) JLJ 237: 2007(4) MPHT 350: 2007(III) MPJR 214.*

### **Medical Colleges**

– **Revised Rules framed by Government for selection of candidates for appointment as House Job Officers in the Medical Colleges of The State, 1984 Rule 3 & 4 and Constitution of India, Article 19** – Rules providing cent percent reservation

for institutional candidates are discriminatory and violative of Article 14 – They cannot be allowed to stand unless 25% seats are left open for outsiders and non-institutional candidates: *Smt. Mitali Choudhary Vs. State of M.P.*, I.L.R. (1991) M.P.500: AIR 1991 MP 108: 1991 MPLJ 5: 1991 JLJ 69: 1991(I) MPJR 153.

### **Medico-Legal Institute (Gazetted) Service Recruitment** **Rules, M.P., 1987**

– **Rule 4(1)** – Regularization of Service – Private respondent not entitled for regularization from the date of initial appointment, because not appointed against substantive post and was not kept on probation in terms of the Service Rules: *Geeta Rani Gupta (Dr.) Vs. State of M.P.*, I.L.R. (2016) M.P. 2148: 2015(4) MPLJ 476: 2018(2) JLJ 268.

### **Mines Act Indian (XXXV of 1952)**

– **Section 2(1)(j)** – See – Electricity Duty Act, M.P., 1949, Section 3(1), Part B, Entry 3: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JLJ 5.

– **Section 2(1)(j) & 2(1)(jj)** – Mines – Definition & Scope – Discussed & explained: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JLJ 5.

– **Section 2(1)(j) & 2(1)(jj)** – Mining Activity – Held – If a person carrying on business of stone crushing, is purchasing mineral from other source and is not directly obtaining mineral through mining, digging and quarrying etc which is used in stone crusher for converting into Gitti, then he cannot be said to be involved in mining activity: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 608: 2020 (1) MPLJ 615: 2020 (2) JLJ 5.

– **Section 72-C** – Offence under – Nature of – Section 79(ii) – Complaint – Commencement of period of limitation – Inspector receiving information about accident on 12<sup>th</sup>, 16<sup>th</sup> March and 14<sup>th</sup> April 1973 – Enquiry made and completed on 14<sup>th</sup> April 1973 when commission of offence discovered – Complaint filed on 7-9-1973 is within limitation – Criminal Procedure Code, 1973 – Section 201 – Complaint filed on 7-9-1973 without copies of complaint – Magistrate making endorsement of its presentation but returning it for purposes of copies – Complaint represented on 15-9-73 with copies – Complaint deemed to have been filed on 7-9-73: *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. V.L. Jain*, I.L.R. (1983) M.P. 121: AIR 1982 MP 97: 1982 MPLJ 320: 1982 JLJ 156.

– **Section 79(ii)** – Complaint – Commencement of period of limitation – Inspector receiving information about accident on 12<sup>th</sup>, 16<sup>th</sup> March and 14<sup>th</sup> April 1973 – Enquiry made and completed on 14<sup>th</sup> April 1973 when commission of offence discovered – Complaint filed on 7-9-1973 is within limitation: *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. V.L. Jain, I.L.R. (1983) M.P. 121: AIR 1982 MP 97: 1982 MPLJ 320: 1982 JLJ 156.*

**Mines and Minerals (Regulation and Development) Act**  
**(LXVII of 1957)**

– **Section 18** – Levy should have some relation to the services rendered in order to be fee – Rule cannot impose tax unless statute specifically authorizes imposition: *M.P. Lime Manufacturers Association, Katni Vs. State of M.P., I.L.R. (1991) M.P. 1: AIR 1989 MP 264: 1989 MPLJ 561: 1989 MPJR HC 781: 1989 JLJ 605. (Approved by Apex Court in 1991 (Supp) 1 SCC 430)*

– **Section 23(C)**, Land Revenue Code, M.P. (20 of 1959), Section 247(7), Minor Mineral Rules, M.P. 1996 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006 – Legislative Competence – Contradictions – Held – Rules of 1996 and 2006 are the Rules made by State Government in exercise of powers vested in State Government in terms of the Act of 1957 – Such Rules neither contradict Section 247(7) of Code of 1959 nor suffers from any other vice of illegality – Rules of 2006 are applicable to all minerals including minor minerals whereas Rules of 1996 are only in respect of minor minerals: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11.*

**Minor Mineral Rules, M.P., 1996**

–**Section 2(xvi-b) & 68(1)**, Third Proviso – Contractors engaged in Government and Semi-Government organizations, using minor minerals for civil work purchased from open market must be regulated by dispensation envisaged in this decision and would be obliged to follow the terms delineated hereunder: - (1) Contractor shall either furnish bills of purchase of minerals from authorised dealer or an affidavit disclosing source from where he purchased minerals, which were used in construction work. (2) The authorities if are satisfied with bills produced by contractor, may process the bills, but in case of any doubt, authorities may insist contractor to file affidavit in support of its contention in respect of purchase of minerals from open market by bills. (3) In case contractor is unable to produce bills for purchase of minerals or royalty receipt in this regard, authorities shall insist contractor to file affidavit pointing out specifically the manner in which minerals

were purchased, disclosing particulars of person from whom minerals were purchased. On filing of affidavit, authorities shall be within their right to verify the aforesaid facts. They can also verify facts from record of Mining Department of concerned district. (4) On completion of aforesaid process, authorities shall clear the bills of contractor submitted in connection with execution of works contract and amount of royalty, if any recovered from the bills, shall be released in favour of the contractor. (5) In case, authorities are not satisfied with contention of contractor or on verification, facts are not found correct then they shall pass a reasoned order in rejecting the contention of contractor. (6) If contractor fails to produce the bills/affidavit as indicated hereinabove, he may represent his case to concerned authority showing his inability to produce bills or affidavit and it shall be for State Government or authority to consider the representation and pass a suitable order in that regard within two months from the date of receipt of the representation, or any such “additional” terms as may be directed by Court in the given case or from time to time: *Phaloudi Contructions & Infrastructures Pvt Ltd. Vs. State of M.P., AIR 2016 MP 137: 2016(2) MPLJ 704.*

– **Rule 2(xvi-b) & 68(1)** Third Proviso – Term “Contractor” –Held – Contractor as defined in Rule 2(xvi-b) is a contractor who is granted trade quarry – Petitioners have not been granted trade quarry, they are the contractors engaged in Government contract – Expression contractor in third proviso to Rule 68(1) is clarified by words “engaged in construction work” – It has to be read together and not disjunctively: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620: 2018(1) MPLJ 402: 2018(1) JLJ 483: AIR 2018 MP 106. (Special Bench)*

– **Rule 4 & 68(1)** Third Proviso – Statutory Interpretation – Principle of Harmonious Construction –Held – No word in statute is superfluous and each word has its meaning – A proviso to statute has to be read as a whole by giving harmonious construction to all provisions of law so that none of the provisions is rendered redundant – In view of such principle, third proviso is additional relaxation to Rule 4 and Rule 68(1) and is not illegal nor enlarges the scope of Rule 68(1) of the Rules of 1996: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620: 2018(1) MPLJ 402: 2018(1) JLJ 483: AIR 2018 MP 106. (Special Bench)*

– **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: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R (2020) M.P. 2024: 2020 (4) MPLJ 511: 2020 (4) JLJ 11*

– **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: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R (2020) M.P. 2024: 2020 (4) MPLJ 511: 2020 (4) JLJ 11*

– **Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18(6)** – Contradictions – Held – Both Rules are not contradictory and occupy separate fields – 2006 Rules is in respect of transportation and storage of minerals including minor minerals contemplating only criminal proceedings whereas Rule 53 of 1996 Rules does not contemplate criminal proceedings but imposition of penalty in graded manner and forfeiture of minor minerals, tools, machines and vehicles etc. – Provisions of Rule 53 are in addition to provisions of prosecution under Rules 2006 in respect of minor minerals: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11. (Overruled in Rajkumar Sahu Vs. State of M.P. 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113)*

– **Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18(6)** – Power of Confiscation – Competent Authority – Interpretation of Statutes – Held – Provisions of two statutes by same legislature have to be harmoniously read and if harmonious reading is not permissible then the later statute will amount to deemed repeal of the earlier: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11. (Overruled in Rajkumar Sahu Vs. State of M.P. 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113)*

–**Rules 53(1), (2) & (3)(a)** – Forfeiture of Mineral or Tools, Machines and Vehicles – Penalty – Held – Forfeiture of mineral or tools, machines and vehicles cannot be resorted to without giving an opportunity to violator to pay penalty in terms of Rule 53(1) of Rules of 1996 – Similarly, forfeiture of seized tools, machines and vehicles etc. in terms of Rule 53(3)(a) can be resorted to only when penalty in terms of Rule 53(1) is not paid – Forfeiture of vehicle, carrying mineral extracts without any transit pass, cannot

be invoked at the first instance without giving the violator, an opportunity to pay penalty – Such process alone will save Rule 53(2) from vice of discrimination and arbitrariness: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11. (Overruled in Rajkumar Sahu Vs. State of M.P. 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113)*

– **Rules 53(1), (2), (3), (4) & (5)** – Exercise of Discretion – Held, the scheme of Rule 53 provides for initiating an offence, collecting necessary evidences, giving an opportunity of hearing, determining and taking a decision regarding imposition of penalty and, taking an “*appropriate decision*” in respect of forfeiture, furnish adequate and sufficient safeguards upon the exercise of discretion by the competent authority under Rules 53(4), 53(5), 53(1), 53(2) and 53(3) for the purposes of taking a decision regarding forfeiture. The discretion to pass different orders in each case has rightly been conferred upon the competent authority and merely on this ground the discretion cannot be held to be unfettered or uncontrolled – Even if such guidelines would have been absent in Rule 53 of the Rules of 1996, the fact that the order passed by the competent authority was and is subject to appeal and revision under the Rules of 1996, is in itself sufficient and adequate safeguard against arbitrary exercise of discretionary powers: *Rajkumar Sahu Vs. State of M.P., 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113.(Special Bench) (Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599 Overruled)*

– **Rule 53(2) & (3)** – Notice of Penalty – Compounding – Held – Benefit to seek compounding has to be exercised before serving of notice of imposition of penalty in terms of Rule 53(2) or in the event of seizure of tools, machines, vehicles and other material in terms of Rule 53(3) – Competent Authority is not required to give any option for compounding but the violator himself to volunteer and seek compounding: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11. (Overruled in Rajkumar Sahu Vs. State of M.P. 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113)*

– **Rule 53(2) & (3) [as amended by Notification dated 18.05.17]** – Power of Forfeiture – Penalty – Held, power of forfeiture/ confiscation can be exercised by competent authority under Rule 53(2) & (3) irrespective of the fact that contravention is made by the defaulter for the first time – Such power can be exercised in isolation, simultaneously or collectively with the power to impose penalty and would depend upon payment of penalty by the offender and even if offender pays the penalty imposed under Rule 53(1), competent authority has the power to pass orders of forfeiture and such power is not circumscribed by the provisions of or the fact of payment of penalty:

*Rajkumar Sahu Vs. State of M.P., 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113. (Special Bench) (Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11 Overruled)*

– **Rule 53(2) & (3) [as amended by Notification dated 18.05.17]** – Power of Forfeiture – Power to order forfeiture would be subject to the provisions of rule 53 itself, namely exception and relaxation mentioned in proviso to Rule 53(3)(b) and Rule 53(6), depending upon facts of each case: *Rajkumar Sahu Vs. State of M.P., 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113. (Special Bench) (Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11 Overruled)*

– **Rule 53(2) & (3) [as amended by Notification dated 18.05.17]** – Power of Forfeiture/ Discharge – Held, The provisions of the Rules make it further clear that in case the authority, after imposition of penalty, decides not to forfeit but to discharge the mineral, tools, machines, vehicles, etc., it shall make sure that the offender has first deposited the penalty imposed upon him before permitting discharge – Perusal of the Rules make it clear that the pre-condition of deposit relates to and applies only to those cases where authority takes a decision to discharge the seized goods, vehicle, material, etc. and does not apply to or relate to cases where an order of forfeiture is passed: *Rajkumar Sahu Vs. State of M.P., 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113. (Special Bench) (Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11 Overruled)*

– **Rule 53(2) & (3) [as amended by Notification dated 18.05.17]** – Power of Forfeiture/ Discharge – Scope – Held, Rule 53(2) and 53(3) nowhere states or requires that order of forfeiture can be passed only in cases where penalty under Rule 53(1) is imposed by the authority – Apparently, the two powers, i.e. of penalty and forfeiture are distinct and can be exercised collectively or individually in appropriate cases: *Rajkumar Sahu Vs. State of M.P., 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113. (Special Bench) (Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11 Overruled)*

– **Rule 53(6)** – Word “Vehicles” – Omission – Interpretation – Held – The omission to incorporate the word “vehicles” in the last line of Rule 53(6) is unintentional and meaningless – Expression “other material” in the last line of Rule 53(6) would include “vehicles” – Material would include everything tangible including vehicles: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315: 2018(4) MPLJ 193: 2018(3) JLJ 599: AIR 2019 MP 11. (Overruled in Rajkumar Sahu Vs. State of M.P. 2019(2) MPLJ 438: AIR 2019 MP 92: 2019(III) MPJR 113)*



– **Rule 68(1) Third Proviso** – “No Mining Dues” Certificate – Held – Since minor mineral vests in State and there is absolute prohibition in extraction of mineral other than by quarry lease or a trade quarry or permit quarry, therefore contractor who is engaged in construction work is required to prove that such mineral is royalty paid – If State Government insist on “No Mining Dues” Certificate, the same cannot be said to be illegal – Further, State Government advised to develop and adopt alternate mechanism of issuance of online “No Mining Dues” certificate: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620: 2018(1) MPLJ 402: 2018(1) JLJ 483: AIR 2018 MP 106. (Special Bench)*

– **Rule 68(1) Third Proviso** – “No Mining Dues” Certificate – Periodical Certificates – Held – Condition of issuance of “No Mining Dues” certificate on furnishing of copy of work completion certificate is not reasonable – Running bills require periodical payments – Mining officer shall give “No Mining Dues” certificate at least quarterly on basis of running bills submitted by contractor engaged in construction work: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620: 2018(1) MPLJ 402: 2018(1) JLJ 483: AIR 2018 MP 106. (Special Bench)*

### **Money Lenders Act, C.P. and Berar (XIII of 1934)**

– **Section 3** – To be construed narrowly: *Rajaram Bhiwaniwal Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7** – Does not invalidate interest already realized: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7** – Provisions not enacted to benefit debtor – But enacted to penalize creditor: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7** – Scheme of the Section – Section 7(b) – Word “found” in – Meaning of – Enables the Court to re-open the account – Interpretation of Statute – Construction of Welfare legislation – Language of Act clear and unambiguous – Effect to be given to it – Inconvenience and hardship can be no consideration – Doctrine of *stare decisis* – Implication of – Moneylenders Act, C.P. and Berar, 1934 – Section 7(b) and (c) – Word “Due” in – Meaning payable – Words “Interest Due” in – Means interest claimed as due and does not include interest already paid – Provisions not enacted to benefit debtor – But construed narrowly – Section 7 – Does not invalidate interest already realized : *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7(b)** – Word “found” in – Meaning of – Enables the Court to re-open the account: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7(b) & (c)** – Word “Due” in – Meaning payable: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 7(b) & (c)** – Words “Interest Due” in – Means interest claimed as due and does not include interest already paid: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660: AIR 1975 MP 104: 1975 MPLJ 225: 1975 JLJ 347.*

– **Section 11-F** – Meaning of – To be gathered from all provisions of the Act – Prohibits collective carrying on of business and not individual advance of loan: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1: AIR 1962 MP 117: 1962 MPLJ 78: 1961 MPLJ Note 190: 1961 JLJ 1389.*

– **Section 11-F & 11-H** – Providing for imposing penalty – Not declaring contract illegal or void – Does not amount to prohibition of contract – Intention of legislature to be determined on construction of statute – Object of imposing penalty is to protect general public or a class – Implication is prohibition of contract, if object of imposing the penalty is protection of revenue – Implication is prohibition of contract – Meaning of section 11-F to be gathered from all provisions of the Act – Prohibits collective carrying on of business and not individual advance of loan – Section 11-H prohibits proceeding with suit – Interpretation of Statute – Preamble important guide to construction – Can be resorted to when enactment not clear – Legislative intent to be gathered from all parts of statute taken together – Meaning of words in one part of statute explicit and clear – Another part not to be used to diminish or control effect of first part – Words not having clear meaning – Other parts can be considered to throw light on intention of legislature – General rule – Not to import words which are not there – Can be imported in order to give sense and meaning to them: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1: AIR 1962 MP 117: 1962 MPLJ 78: 1961 MPLJ Note 190: 1961 JLJ 1389.*

– **Section 11-H** – Prohibits proceedings with suit: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1: AIR 1962 MP 117: 1962 MPLJ 78: 1961 MPLJ Note 190: 1961 JLJ 1389.*

### **Motor Vehicle Rules, 1949**

– **Appeal** – Before coming into force of M.P. Transport Appellate Tribunal (Appeal and Revision) Rules, 1972 – No power in Transport appellate Tribunal to dismiss appeal in default: *Smt. Mustaq Bi Vs. State Transport Appellate Tribunal,*

*Madhya Pradesh, Gwalior, I.L.R. (1976) M.P. 1008: AIR 1976 MP 20: 1975 MPLJ 827: 1976 JLJ 18.*

– **Rule 80** – No obligation cast to serve copy of order on persons for whom there is no obligation – Limitation in their case starts running on the date they obtain certified copy of order – Conception of knowledge cannot be introduced: *Dhanna Singh Vs. State Transport Appellate Tribunal, Gwalior, I.L.R. (1975) M.P. 8: AIR 1973 MP 218: 1973 MPLJ 653: 1973 JLJ 748.*

### **Motor Vehicles (Taxation of Passengers) Act, M.P. (XVII of 1959)**

– **Section 5** – Return filed by assessee – Assessment found to be correct – Act does not contemplate passing of order – Assessee has voluntarily to pay tax according to his return – Section 5 and 6 and Motor Vehicles (Taxation of Passengers) Rules, M.P. 1959 – Rules 4 and 7 – Filing or receipt for payment of tax – Is not made a part of the return – Section 10(2) – Tax is first charge on stage carriage and on its accessories and can be recovered by attachment and sale thereof as arrears of land revenue, but cannot be recovered as arrears of land revenue by attachment and sale of other property – Section 7 and 8 – Not applicable to a case of assessee whose return has been found to be correct and who has deposited tax according to his return – In such cases there is no question of escapement of assessment – Section 12 – Notice of demand under section 7, 8 and 9 is only appealable: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553: AIR 1972 MP 87: 1972 MPLJ 274: 1972 JLJ 240: 1972 Tax LR 2013.*

– **Section 5 & 6** and Motor Vehicles (Taxation of Passengers) Rules, M.P. 1959 – Rules 4 and 7 – Filing or receipt for payment of tax – Is not made a part of the return: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553: AIR 1972 MP 87: 1972 MPLJ 274: 1972 JLJ 240: 1972 Tax LR 2013.*

– **Section 7 & 8** – Not applicable to a case of assessee whose return has been found to be correct and who has deposited tax according to his return – In such cases there is no question of escapement of assessment: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553: AIR 1972 MP 87: 1972 MPLJ 274: 1972 JLJ 240: 1972 Tax LR 2013.*

– **Section 10(2)** – Tax is first charge on stage carriage and on its accessories and can be recovered by attachment and sale thereof as arrears of land revenue, but cannot be recovered as arrears of land revenue by attachment and sale of other property:

*Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553: AIR 1972 MP 87: 1972 MPLJ 274: 1972 JLJ 240: 1972 Tax LR 2013.*

– **Section 12** – Notice of demand under sections 7, 8 and 9 is only appealable: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553: AIR 1972 MP 87: 1972 MPLJ 274: 1972 JLJ 240: 1972 Tax LR 2013.*

### **Motor Vehicles Act (IV of 1939)**

– **Act contains no provision for restoration of the application** – Authority does not possess inherent power except when given by statute: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

– **Appeal** – Is a continuation of proceedings before Regional Transport Authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

– **Section 2(28-A)** – Definition of “route” – Meaning of: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R. (1978) M.P. 619: AIR 1977 MP 46: 1977 MPLJ 1: 1977 JLJ 13.*

– **Section 47** – Bad operational record of a partnership firm – Whether relevant when any partner or partners apply for grant of permit in their individual capacity: *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196: AIR 1978 MP 116: 1978 MPLJ 351: 1978 JLJ 302.*

– **Section 47** – Grant of stage carriage permit – Relevant considerations – Bad operational record of a partnership firm – Whether relevant when any partner or partners apply for grant of permit in their individual capacity – Partnership – Legal connotation of: *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196: AIR 1978 MP 116: 1978 MPLJ 351: 1978 JLJ 302.*

– **Section 47(3)** – Issue of number of stage carriage permits – May be determined in the context of new route: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 47(3)** – Procedure prescribed in – Applicable not only to new route but also to existing route: *Rambharose Anant Prasad, Bus Operator, Rewa Vs. State*

*Transport Appellate Authority, Gwalior, I.L.R. (1977) M.P. 90: AIR 1976 MP 71: 1975 MPLJ 863: 1976 JLJ 47.*

– **Section 47(3) & 57** – No order under Section 47 (3) passed – Application made for a new route – Cannot be considered under Section 57 without calling fresh application: *Anand Ram Vs. The Regional Transport Authority, Rewa, I.L.R. (1973) M.P. 191: AIR 1971 MP 170: 1971 MPLJ 493: 1971 JLJ 427.*

–**Section 47(3) & 57(8)** – New Permit – Held, an application to vary the conditions of any permit by inclusion of a new route or routes or new area etc. shall be treated as an application for grant of new permit and therefore all provisions including S. 47 (3) of the Act thereof which are applicable to applications for grant of a new permit are attracted to applications under S.57 (8) of the Act which are treated as applications for the grant of a new permit – Provisions of S. 47 (3) of the Act are attracted while dealing with an application for grant of extension of a permit, which is required to be treated as an application for the grant of a new permit, by virtue of provisions of S. 57 (8) of the Act: *Rajmal Vs. State Transport Appellate Tribunal AIR 1982 MP 69.*

– **Sections 47, 48 & 64** and Rules under Section 68 – Regional Transport Authority exercising powers under – Acts in *Quasi-Judicial* capacity – Tribunal has to give reasons for decision – Civil Procedure Code – Applicability of, to proceedings under Chapter 4 of Motor Vehicles Act – Interpretation of Statute – Effect of rule to be determined on fair and reasonable construction of words used – Words clear and unambiguous and not inconsistent with other provisions of Act – Help of provisions of other Act or of the background or other extrinsic aid cannot be taken – In construing provisions regarding limitation – Equitable considerations out of place – Strict grammatical meaning of words to be seen – Section 64 and Motor Vehicles Rules, C.P. and Berar – Rules 73 – Starting point of limitation for appeal – Is date of receipt of order: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 JLJ 811.*

– **Section 57** – Makes no distinction between old and new routes: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 57(2)** – Even in respect of existing route, Application can be invited – Power cannot be exercised so as to interfere with right of applicants who have made applications under section 57 (2) – Applications to be considered in accordance with

Section 57: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R.(1974) M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 57(2)** – If fresh applications are not invited in advance – No fresh applications can be invited after applications have become ripe for consideration: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 57(2)** – Once application is published – It cannot be kept pending for inviting fresh applications – Same procedure applies to a case of renewal: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 57(3)** – Procedure laid down in Section 57 is mandatory – Authority bound to follow procedure while dealing with application made under Section 57 (2) – Section 47 (3) – Issue of number of stage carriage permits – May be determined in the context of new route – Section 57 – Makes no distinction between old and new routes– Section 57(2) – Even in respect of existing route, applications can be invited – Power cannot be exercised so as to interfere with right of applicants who have made applications under Section 57 (2) – Applications to be considered in accordance with Section 57 – If fresh applications are not invited in advance – No fresh applications can be invited after applications have become ripe for consideration – Once application is published, it cannot be kept pending for inviting fresh applications – Same procedure applies to a case of renewal: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974)M.P. 197: AIR 1973 MP 209: 1973 MPLJ 451: 1973 JLJ 594.*

– **Section 57(5) & (7)** – Does envisage dismissal for default – Act contains no provision for restoration of the application – Authority does not possess inherent power except when given by statute – Section 64 and Rule 73 – Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority – Appeal – Is a continuation of proceedings before Regional Transport Authority– Rule 73 (c) – Does not exclude power to order remand – Power of remand is inherent in every appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

– **Section 57(8)** – Applicability & Scope – Held, a fiction is created by S. 57(8) of the Act by which an application to vary the conditions of a permit by the inclusion of a new route etc. has to be treated as an application for the grant of a new permit and therefore it has to be processed in accordance with the procedure laid down by S. 57 of the Act in regard to the representation and hearing etc. If such an application has to be

treated as an application for the grant of a new permit all the provisions of the Act which apply to an application for the grant of a new permit, are also attracted to it: *Rajmal Vs. State Transport Appellate Tribunal, AIR 1982 MP 69.*

– **Section 57(8)** – Appeal & Revision – Jurisdiction – Held, Regional Transport Authority has jurisdiction to consider whether grant of extension was permissible or not and whether grant of extension applied for is hit by provisions of Chapter IV-A or not – Even if, Regional Transport Authority took a decision which may ultimately found to be wrong, it cannot be said that there was inherent lack of jurisdiction and thus a complete nullity – Appellate or Revisional Authority may aside such decision: *M.P. State Road Transport Corporation, Bhopal Vs. Regional Transport Authority, Jabalpur, AIR 1978 MP 1: 1977 MPLJ 863: 1977 JLJ 849.*

– **Section 58 & 64** – Appellate Authority – Powers & Scope –Held, person aggrieved by refusal of permit may appeal but the decision which Appellate Authority can give, has to be limited only to the legality or validity of the ‘refusal’ and beyond that, no other decision can be given in appeal to bind parties to appeal or the Authority granting the impugned permit –In finally disposing of the appeal, no direction can be made by Authority for extending the life of the permit impugned in appeal so as to nullify the statutory exercise of deliberately limiting the life of permit u/s 58 – Decision made u/s 64 would be final or binding and cannot transgress the bounds of Section 58: *Sindh Transport Co. Vs. State Transport Authority, M.P. Gwalior, 1989 MPLJ 831: AIR 1990 MP 74: 1990 JLJ 11: 1990 MPJR 211.*

– **Sections 58, 64 & 68** – Appellate Authority – Extension of Life of ‘Permit’ – Held, neither the permit holder has any right nor are there any inherent powers in Appellate Court under the Act of 1939 to extend the statutory permit period so as to make good the loss, the permit holder suffered for non-operation of the permit during the period it remained suspended –Any such direction by Appellate Tribunal for extension of life of the permit granted would be ultra vires and as such non est in law: *Sindh Transport Co. Vs. State Transport Authority, M.P. Gwalior, 1989 MPLJ 831: AIR 1990 MP 74: 1990 JLJ 11: 1990 MPJR 211.*

– **Sections 62(1)(C), 68-F(1-C) & (1-D)** – Proposed scheme is under consideration and not finalized & published – Application for grant of temporary permit to a private party other than, State Transport undertaking/Corporation – Power of R.T.A. to Grant Temporary permit object of granting such period under – Circumstances in – The words “Any person” and “Covered by such Scheme” – Means and includes: *Arun Kumar Lath Vs R.T.A., Bilaspur, I.L.R. (1991) M.P. 323: 1992 MPLJ 1.*

– **Section 64** and Motor Vehicles Rules, C.P. and Berar – Rule 73 – Starting point of limitation for appeal – Is date of receipt of order: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1969) M.P. 901: AIR 1968 MP 215: 1968 MPLJ 707: 1968 JLJ 811.*

– **Section 64 and Rule 73** – Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

– **Section 68-C & 68-F(1-D)** – Route “covered” by a scheme –68-F, Sub – Sections (1-A) and (1-C) – Lifts ban on temporary permits – Allows grant of temporary permits in respect of area or route or portion thereof specified in scheme – Section 68-F , sub-sections (1-A), (1-C) and (1-D) – Expression “specified in the scheme “and “covered by the scheme” – Have same meaning – Section 2(28-A) – Definition of “route” – Meaning of: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R. (1978) M.P. 619: AIR 1977 MP 46: 1977 MPLJ 1: 1977 JLJ 13.*

– **Section 68-D and Scheme 30, Clause (3)** –Permit – Held, proviso to 68-D (3) prohibits approval of any scheme relating to any interstate route without previous approval of the Central Government – Proviso speaks of scheme for interstate route and not intra-state scheme which overlaps a portion of an interstatal route – Clause (3) of Scheme No. 30 only protects existing operators under existing permits issued under reciprocal agreement who were in operation on the date of publication of the scheme – Petitioners were not operators under any existing permits under reciprocal agreement on the date of publication of the scheme – Thus, they have no right to claim a fresh permit or grant under any reciprocal agreement as the same is prohibited by Clause (3) of Scheme No. 30: *Mujahid Faridi Vs. State Transport Appellate Tribunal, 2001(4) MPLJ 521.*

– **Section 68-F , Sub-sections (1-A), (1-C) & (1-D)** – Expression “specified in the scheme” and “covered by the scheme” – Have same meaning: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R. (1978) M.P. 619: AIR 1977 MP 46: 1977 MPLJ 1: 1977 JLJ 13.*

– **Section 68-F , Sub-sections (1-A) & (1-C)** – Lifts ban on temporary permits Allows grant of temporary permits in respect of area or route or portion thereof specified in scheme: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R.(1978) M.P. 619: AIR 1977 MP 46: 1977 MPLJ 1: 1977 JLJ 13.*

– **Sections 68-F(1-C), 62 & 68-B** – Temporary Permit – Duration – Held, grant of temporary permit u/s 68-F(1-C) is subject to provisions of Section 62 of the Act and as



such cannot be granted for a period exceeding four months at a time: *Premchand Jain Vs. Regional Transport Authority, Gwalior & Ors.* 1977 MPLJ 94: 1976 J LJ 885.

– **Sections 68-F(1-C), 68-C, 68-D, 68-E & 68-FF** – Private Operators – Temporary Permit – Held, in making provisions under the Act regarding nationalizing any route or routes and envisaging publication of any scheme in regard thereto, Legislature has not envisaged total ban on issuance of any kind of permit, such as temporary permit on *ad hoc* basis, to a private operator – Legislature envisaged the circumstances mentioned in Section 68-F(1-C) and proviso to Section 68 FF, where temporary permit may be granted to private operators – It was done to take care of public interest so that travelling public is not put to inconvenience as a result of any failure of any State Transport Undertaking operating on the route notified, whether u/s 68-D or u/s 68-C, namely under “approved” or “proposed” scheme: *Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Regional Transport Authority, Rewa & Ors.*, 1989 MPLJ 773: AIR 1990 MP 17: 1989 J LJ 730.

– **Sections 68-F(1-C), 68-E & 68-C** – Temporary Permit – “Approved” & “Proposed” Scheme – Held, under certain circumstances, when the “proposed” scheme of modification does not militate against the “approved” scheme, in any manner, it will be within competence of concerned authority to issue temporary permit to any private operator on *ad hoc* basis exercising jurisdiction in that regard in respect of “proposed” scheme u/S 68-F(1-C) – Further, a proposed scheme simpliciter of modification of “approved” scheme does not ipso facto suspend or render invalid an “approved” scheme – Scope and extent of proposed modification published as per Section 68-E r/w Section 68-C has to be carefully analyzed in each and every case before granting temporary permit u/S 68-F(1-C): *Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Regional Transport Authority, Rewa & Ors.*, 1989 MPLJ 773: AIR 1990 MP 17: 1989 J LJ 730.

– **Section 92-A & Amendment Act No. 47 of 1982** – Operation – Held, the provisions of Section 92-A cannot be availed of by the parties involved in accidents which took place before 01.10.1982 i.e. the date of coming into force of Section 92-A of the Act – It is a piece of substantive law creating new rights and liabilities thus, retrospective operation cannot be given, treating it as a procedural law – Legislature never intended to give benefit of the new provision based on no fault liability to parties involved in accidents taking place prior to coming into force of the said provision: *New India Assurance Company Ltd Vs. Nafis Begum & Ors.*, 1991 MPLJ 700: AIR 1991 MP 302: 1991 J LJ 490: 1991(I) MPJR 431.

– **Section 92-A, 110-D** and Letters Patent (Nagpur), Clause 10 – Letters Patent Appeal – Claims Tribunal passed award granting compensation under *No Fault liability* – Appeal filed by Insurance Company dismissed by Single Judge – Whether Letters Patent Appeal maintainable – Held – Decision dismissing appeal by Single Judge is Judgment – Letters Patent Appeal against such judgment maintainable: *The Oriental Insurance Company Limited, Jabalpur Vs. Annamma Abraham, I.L.R. (1994) M.P. 305: AIR 1995 MP 244: 1995 MPLJ 699: 1995(I) MPJR 171: 1995 JLJ 567. (Also See Oriental Insurance Company Vs. Saraswati Bai 1995 MPLJ 291: 1995 JLJ 11: 1997(I) MPJR 303).(Gaya Prasad Vs. Suresh Kumar 1991(II) MPJR 427: 1992 MPLJ 485: 1992 JLJ 143 FB Overruled)*

– **Section 95(1)** and Motor Vehicles Rules, M.P., 1974, Rule 111 – Liability of insurance company – Gratuitous travellers – Persons travelling in truck not presently loaded with their goods, but for purposes of fetching their goods from another place – Not deemed to be traveling for hire or reward – Accident occurring – Insurance Company not liable: *Kallu Maharaj Vs. Meena Bai, I.L.R. (1990) M.P. 67: AIR 1989 MP 167: 1989 JLJ 490: 1989 MPLJ 387. [See also National Insurance Co. Vs. Baljeet (2004)2 SCC 1: AIR 2004 SC 1340: 2004(2) MPLJ 4.]*

– **Sections 95(1)(b)(ii) & 2(8)** and Motor Vehicles Rules, 1974 – Goods Vehicle – Policy of insurance – Owner/agent of goods accompanying goods traveling in goods vehicle would be deemed to be passengers being carried for hire or reward – Insurance company liable to cover risk of such hire/agent/or his employee: *Harishankar Tiwari Vs. Jagru, I.L.R. (1987) M.P. 1: AIR 1987 MP 234: 1987 MPLJ 594: 1987 JLJ 712: 1987 ACJ 1.*

– **Section 95(2)(b)** – Adverse inference – Could be drawn against an insurance company only when it fails to produce the copy of the policy even after direction of Tribunal: *United India Fire and General Insurance Co. Ltd., Indore Vs. Natwarlal, I.L.R. (1989) M.P. 69: 1988 MPLJ 676: 1988 JLJ 639.*

– **Section 95(2)(b)** – Liability of Insurance Company to pay in excess of statutory limit – Only when policy covers that liability – Such liability not to be decided on abstract doctrine of burden of Proof – Adverse inference – Could be drawn against an insurance company only when it fails to produce the copy of the policy event after direction of Tribunal: *United India Fire and General Insurance Co. Ltd., Indore Vs. Natwarlal, I.L.R. (1989) M.P. 69: 1988 MPLJ 676: 1998 JLJ 639.*

– **Section 96 & 110** – Defence open to insurer in case of claim for compensation – Insured necessary party to claim proceedings: *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **Section 96 & 110** – Negligence of owner or driver – Condition precedent for impossible liability: *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **Section 96 & 110** – Power conferred on Tribunal to award compensation clothes Tribunal with necessary authority to use means to make grant effective: *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **Section 96 & 110** – Relate to liability of Insurer where liability has been incurred by the insured – Lays down when and to what extent Insurer is liable – Negligence of owner or driver – Condition precedent for imposing liability – Defence open to insurer in case of claim for compensation – Insured necessary party to claim proceedings– Power conferred on Tribunal to award compensation cloths Tribunal with necessary authority to use means to make grant effective – Words and phrases – Word “Negligence” – Meaning of – Standard to be applied to determine negligence – Test to be applied to determine fact of negligence – Burden of proof – Doctrine “*res ipsa loquitur*” – Applicability of – Mere happening of event – May be proof of negligence – Liability not avoided by providing possible compensation for accident: *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **Section 103** and Motor Vehicles Act (LIX of 1988), Section 157 – Third party risks – Even in absence of intimation policy remains effective in respect of third party risks: *National Insurance Company Ltd. Vs. Kansram, I.L.R. (2000) M.P.,526: 2000(2) MPLJ 506: 2000(II) MPJR 6: 2000(2) JLJ 126.*

– **Sections 103, 103-A & 110-D** and Section 157 of Motor Vehicles Act, 1988 – Motor Accident – Transfer of vehicle before Accident without intimation to the insurer – Section 103 of Act, 1939 and Section 157 of Motor Vehicles Act 1988 – Third party risk – Even in absence of intimation policy remains effective in respect of third party risk – Reference answered accordingly: *National Insurance Company Ltd. Vs. Kansram, I.L.R. (2000) M.P., 526: 2000(2) MPLJ 506: 2000(II) MPJR 6: 2000(2) JLJ 126.*

– **Section 103-A** and Motor Vehicles Act, 1988, Section 157 – Liability of Insurer – Intimation of Transfer of Vehicle – Held, insurance policy remains effective in respect of third party risks but not in respect of transferee’s risks even if there has been

absence of application/intimation as stipulated u/s 103-A of the Act.: *Vimla Devi Vs. Dayaram* 2000(3) MPHT 197: 2000(2) JLJ 199.

–**Sections 110-A(2), 10-B, 110-C, 110-E, 110-F & 111-A** and Civil Procedure Code, 1908, Section 36 & Order 21 – Execution of Award – Jurisdiction of Tribunal – Held, Claim Tribunal possesses inherent jurisdiction to enforce its own award in accordance also with the provisions of CPC as applicable to execution of orders and decrees passed by a Civil Court and such jurisdiction cannot be altered in any manner by Rules framed u/S 111-A of the Act – Tribunal’s jurisdiction as a ‘court-substitute’ of enforcing its own order (“award”) is not affected in any manner by any provision of C.P.C. or of the Act – Jurisdiction of Tribunal in applying any provision of CPC for exercising any power in accordance with procedure prescribed in CPC is not impaired in any manner under the Act: *Sarmaniya Bai Vs. M.P. Rajya Parivahan Nigam*, AIR 1990 MP 306: 1990 MPLJ 387: 1990 JLJ 386.

–**Sections 110-A(2), 110-E & 110-F** – Execution of Award – Territorial Jurisdiction – Held, Tribunal is not debarred from exercising its inherent jurisdiction to enforce its award in an area outside its territorial limits through any civil court and in that regard it shall also be within its power to follow, on *a priori* consideration, the procedure applicable to civil courts in the absence of specific provision in that regard under the Act: *Sarmaniya Bai Vs. M.P. Rajya Parivahan Nigam*, AIR 1990 MP 306: 1990 MPLJ 387: 1990 JLJ 386.

– **Section 110-A** and Civil procedure Code, Section 80 – Notice Before Filing Application – Requirement – Held, notice u/s 80 CPC is not necessary for an application for compensation which has been filed under section 110-A of the Act of 1939 before a Claims Tribunal constituted under the Act: *Mangilal Ganpat Vs. Union of India*, AIR 1974 MP 159: 1973 MPLJ (SN) 90: 1974 MPLJ 216: 1974 JLJ 601: 1973 ACJ 352.

– **Section 110-B** – Amount of compensation – Determination of – Pecuniary advantage to the claimant by reason of death of the deceased – Consideration of – Amount of Insurance, Provident Fund, Gratuity, Family Pension, Ex-Gratia payment – Not deductible from compensation – Acceleration of interest of that claimants – Consideration of – Burden of proof – Rests on the defendant – In case of doubt, benefit to go to the claimants: *Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur*, I.L.R.(1983) M.P. 1: 1982 MPLJ 803: AIR 1983 MP 24: 1983 JLJ 113.

– **Section 110-B** – Amount of Insurance, Provident Fund, Gratuity, Family Pension, Ex-Gratia payment – Not deductible from compensation: *Sardar Rajendra*

*Singh Vs. Smt. Kashmiran Mathur, I.L.R. (1983) M.P. 1: 1982 MPLJ 803: AIR 1983 MP 24: 1983 JLJ 113.*

– **Section 110-B & D** and Letters Patent, Nagpur, Clause 10 – Appeal – Maintainability – Held, the award which finally disposes of the claim application must be regarded as a judgment within the meaning of clause 10 of the Letters Patent – First appeal against such a judgment or award, when it is finally determined, also determines the controversy between parties effectively and conclusively – Decision of the learned single judge is also to be regarded as a judgment for the purpose of clause 10 of the Letters Patent and an appeal would lie to the Division Bench under clause 10: *The Oriental Insurance Company Limited Vs. Saraswati Bai, 1995 JLJ 11: 1995 MPLJ 291: 1997(I) MPJR 303.*

– **Section 110-CC & 110-D** – Enhancement of Interest – Cross Objection – Held, in appeal u/s 110-D of the Act, High can act in absence of cross objection and enhance the rate of interest to 12% p.a. payable from the date of application till realization, on the compensation awarded: *Prakramchand Vs. Chuttan & Ors., AIR 1991 MP 280: 1991 MPLJ 739: 1991 JLJ 733: 1991(II) MPJR 265.*

– **Section 110-E** – Acceleration of interest of that claimants – Consideration of – Burden of proof – Rests on the defendant – In case of doubt, benefit to go to the claimants: *Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur, I.L.R. (1983) M.P.1: 1982 MPLJ 803: AIR 1983 MP 24: 1983 JLJ 113.*

### **Motor Vehicles Act (LIX of 1988)**

– **Sections 94, 95(2) & 145(g)** – “Third Party” – Liability of Insurance Company – Held, third party will be a party other than insurer and insured – Third party will include the passengers in the vehicles not travelling for hire or reward – Once it is held, that passenger is travelling for hire and reward in any vehicle other than public service vehicle or in breach of conditions of Section 95(2) of the Act, insurance company is not liable to indemnify third party, otherwise, insurance company is liable to indemnify such passenger: *Jugal Kishore Vs. Ramlesh Devi, 2003(4) MPLJ 546: 2003(4) MPHT 574: 2004(1) JLJ 110: 2003(II) MPJR 473.*

– **Section 140 & 142** and Workmen’s Compensation Act, 1923 – Computation – Considerations – Held, fracture of bone simpliciter in an accident through a motor vehicle cannot be termed as privation of any member or joint, unless proved by medical evidence that after union of bones disability has occurred or on account of mal-union injury has suffered permanent/partial disability – In absence of any evidence, each fracture cannot

be termed as privation of any member of joint – However, fracture in a joint where union of bones is not possible or where union of bone may cause permanent/partial disability, then interim compensation u/s 140 of the Act can be awarded – If evidence about permanent/partial disability is insufficient, Courts can certainly refer Schedule of Workmen’s Compensation Act to determine loss of earning capacity or percentage of loss of partial disability or permanent disability, as the case may be, and determine the quantum of compensation: *Kamal Kumar Jain Vs. Tazuddin & Ors.*, AIR 2003 MP 212: 2004(2) MPLJ 472: 2004(1) JLJ 298: 2004(1) MPJR 426: 2004(2) ACJ 1191: 2004(2) MPHT 386.

– **Sections 140, 144 & 217** – Interpretation of Statute – Retrospective Operation – Held, it is settled principle of interpretation of statute that no provision of Act shall be given retrospective effect unless it is clearly intended under the provision of the Act – Section 140 or Section 144 of Act does not express any such clear intention – Non-obstante clause ‘notwithstanding’ can only have prospective operation and cannot have retrospective operation: *Jivrakhan Vs. Shivcharandas & Ors.*, 1999(1) MPLJ 5: 1999(1) JLJ 129.

– **Sections 140, 144 & 217** and Motor Vehicles Act, 1939, Section 92-A – “No Fault Liability” – Retrospective Operation – Held, Section 92-A of Act of 1939 dealt with “no fault liability” and Section 140 of the Act of 1988 is the corresponding section which also deals with “no fault liability” – It does not mean that Section 140 of Act of 1988 which came into force with effect from July 1989 will have retrospective operation – Section 140 will not have retrospective effect notwithstanding Section 144 r/w 217 of the Act of 1988: *Jivrakhan Vs. Shivcharandas & Ors.*, 1999(1) MPLJ 5: 1999(1) JLJ 129.

– **Sections 140, 168 & 173**, Constitution of India, Article 227 and Civil Procedure Code, 1908, Section 115 – Whether an appeal would lie against an order passed under Section 140 of Motor Vehicles Act or not – Civil Revisions and Writ Petition were filed against order passed under Section 140 of Motor Vehicles Act – Question whether Civil Revision or writ petition is maintainable was referred by Single Judge to Larger Bench – Special Bench constituted in view of judgment passed by larger Bench in *Gaya Prasad’s case* – Held – Order passed under Section 140 of Motor Vehicles Act is an award – Appeal would lie under Section 173 of Motor Vehicles Act – Civil Revision or writ petition under Article 227 of Constitution of India not maintainable: *The Oriental Insurance Company Limited Vs. Chintaman, I.L.R. (1994) M.P. 272: AIR 1995 MP 229: 1995 MPLJ 259: 1995 JLJ 4: 1995(1) MPJR 226.*

– **Section 140 & 173** & Motor Vehicles Act, 1939, Section 110-D – Held, if an order of compensation has been passed u/S 140, no appeal is maintainable u/S 173 of the Act: *Gaya Prasad Vs. Suresh Kumar*, 1991(II) MPJR 427: 1992 MPLJ 485: 1992 J LJ 143. (Overruled in *The Oriental Insurance Company Limited, Jabalpur Vs. Annamma Abraham, I.L.R. (1994) M.P. 305: AIR 1995 MP 244: 1995 MPLJ 699: 1995(I) MPJR 171: 1995 J LJ 567* & *The Oriental Insurance Company Limited Vs. Chintaman, I.L.R. (1994)M.P. 272: AIR 1995 MP 229: 1995 MPLJ 259: 1995 J LJ 4: 1995(I) MPJR 226*)

– **Section 140 & 173** & Motor Vehicles Act, 1939, Section 110-D and Letters Patent (Nagpur), Clause 10 – Letters Patent Appeal – Claims Tribunal passed award granting compensation under *No Fault liability* – Appeal filed by Insurance Company dismissed by Single Judge – Whether Letters Patent Appeal maintainable – Held – Decision dismissing appeal by Single Judge is Judgment – Letters Patent Appeal against such judgment maintainable: (*Gaya Prasad Vs. Suresh Kumar*, 1991(II) MPJR 427: 1992 MPLJ 485: 1992 J LJ 143 *FB Overruled*) *The Oriental Insurance Company Limited, Jabalpur Vs. Annamma Abraham, I.L.R. (1994) M.P. 305: AIR 1995 MP 244: 1995 MPLJ 699: 1995(I) MPJR 171: 1995 J LJ 567. (Also See Oriental Insurance Company Vs. Saraswati Bai 1995 MPLJ 291: 1995 J LJ 11: 1997(I) MPJR 303).*

– **Section 145(g)** –“Third Party” – Held, third party includes the Government – Other than the contracting parties to insurance policy, third party includes everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy: *Jugal Kishore Vs. Ramlesh Devi*, 2003(4) MPLJ 546: 2003(4) MPHT 574: 2004(1) J LJ 110: 2003(II) MPJR 473.

– **Section 145(g) & 147(1)**, Motor Vehicles Rules, 1994, Rule 97(vii) – Liability of Insurer – Whether insurer liable to indemnify for death of deceased as a passenger was a third party – Deceased working as labour for owner of tractor-trolley – Deceased died in accident while travelling in tractor-trolley – Claims Tribunal awarded compensation but exonerated Insurance Company – Held – Third Party would mean party other than Contracting Parties to Insurance policy – However Insurer not liable for any bodily injury or death of third party unless liability is fastened on insurer under provisions of Section 147 of Act or under terms and conditions of Insurance Policy – Rule 97 of Rules of 1994 has been made by State Government to give effect to provisions of Chapter V of Act – Rule 97 has no bearing in interpreting provisions of Chapter XI – Decision of Division Bench in case of *National Insurance Co. Ltd. v. Sarvanlal and others* relying on Rule 97 of Rules of 1994 holding insurer liable for death or bodily injury of passenger does not lay down correct law –Reference answered accordingly: *Bhav Singh Vs. Smt. Savirani*,

*I.L.R. (2007) M.P. 1302: AIR 2008 MP 1: 2008(1) MPLJ 72: 2007(4) MPHT 460: 2008(1) MPJR 11: 2008(1) JLJ 134.*

– **Section 145(g) & 157** – Third Party – Meaning and Scope of – Question whether owner under any circumstance can be treated as third party – Held – Insured who is party to policy of Insurance is not a third party – Section 157 goes to show that owner of vehicle and insured under insurance policy is one and same person – Owner of vehicle cannot be a third party for purposes of Chapter XI of Motor Vehicles Act: *Smt. Sunita Lokhande Vs. The New India Assurance Company Limited, I.L.R. (2007) M.P. 1145: 2008(1) MPHT 42: 2008(1) MPLJ 54: 2008(1) JLJ 249.*

– **Section 147** – Liability of Insurance Company – Owner was driving auto-rickshaw– Auto Rickshaw turned turtle and driver/owner suffered injuries and died subsequently– Claims Tribunal determined compensation of Rs. 4,41,500 but held that since additional premium was not paid to insurer to cover risk of owner, therefore, insurer is not liable to pay compensation – Claimants/Appellants relied upon clause in insurance policy which specifies persons or classes of persons including owner/insured entitled to drive the vehicle – Question whether merely by aforesaid condition of policy enabling owner to drive vehicle, risk of owner was covered by insurance policy when no separate premium was paid to cover owner's risk referred to Larger Bench – Held – Clause in Insurance Policy only specifies persons or classes persons entitled to drive vehicle and it says that any person including insured can drive insured vehicle provided such person holds an effective licence– Such a clause by itself does not cover the risk of owner/insured unless additional premium was paid so as to cover risk of owner driving vehicle –Reference answered accordingly: *Smt. Usha Baghel Vs. United India Insurance Company Limited, I.L.R. (2007) M.P. 1141: 2007(4) MPHT 180: 2007(4) MPLJ 409: 2007(3) JLJ 422.*

– **Section 147(5)** – Policy – Question whether own damage would cover damage to person of owner or it is confined to properties of vehicle owner – Held – Expression own damage has to be read along with express terms and conditions of Insurance Policy – If on reading of terms and conditions of insurance policy it is found that additional premium has also been paid for injury or death of owner then Insurance Company will also be liable for compensation for injury or death of owner in addition to property: *Smt. Sunita Lokhande Vs. The New India Assurance Company Limited, I.L.R. (2007) M.P. 1145: 2008(1) MPHT 42: 2008(1) MPLJ 54: 2008(1) JLJ 249.*

–**Section 147 & 166** – Liability of Insurance Company – Question whether owner can claim compensation in respect of injury sustained by him in accident unless a



premium in respect of personal injury has been paid referred to larger bench – Deceased/owner travelling in truck – Truck turned turtle and owner/deceased eventually died – Claims Tribunal held that Insurance Company not liable to indemnify the owner of vehicle – Held – Owner cannot claim compensation in respect of injury or death suffered by him, unless additional premium in respect of such personal injury or death has been taken by way of Special Insurance Contract: *Smt. Sunita Lokhande Vs. The New India Assurance Company Limited*, I.L.R. (2007) M.P. 1145: 2008(1) MPHT 42: 2008(1) MPLJ 54: 2008(1) JLJ 249.

– **Section 147 & 149** – Requirement of policies and limits of liability & duty of insurers – Whether owner can be exonerated and Insurance Co. alone may be fastened with liability of compensation – Held – Chapter XI of Act does not empower the tribunal or Court to fasten the liability of compensation on Insurance Co. alone – The liability of compensation is to be necessarily fastened on owner and Insurance Co. in joint and several manner: *Vimla Bai Vs. Sharif Khan*, I.L.R. (2009) M.P. 2490: 2009(4) MPLJ 453: 2009(4) MPHT 425: 2009(IV) MPJR 122: 2010(1) JLJ 8.

– **Sections 149, 166, 169, 170 & 173** – Motor Accident – Vehicle insured with the appellant Insurance Company – Section 166 – Award of compensation for death of victim – Insurance company if desires to assail such an award before superior Court has a statutory remedy of appeal under Section 173 of the Act subject to restriction envisaged under Section 149 – Article 227 of the Constitution and section 115 of the Civil Procedure Code 1908 – Award passed by the Motor Accidents Claim Tribunal cannot be called in question by the insurer invoking either power of superintendence of the High Court under Articles 227 or in revisional jurisdiction under Section 115 of the Code – Section 169 of the 1988 Act – MACT deemed to be Civil Court only for limited purposes contemplated in sub-section (2) there of – Would not make it subject to the revisional or Superintending power of the High Court under the Code or the Constitution – Section 170 – Restrictions imposed by the special Act of 1988 cannot be circumvented by the filing revision under the Code or petition under Article 227 – Departure if any can only be made with permission of the MACT under Section 170 and not otherwise – Section 115 of the Code – Revision against award of MACT – Not maintainable on the face of provisions of appeal under the Act of 1988: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan*, I.L.R. (2000) M.P. 1174: AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.

– **Section 149(2) & Amendment Act of 1994** – Breach of Policy Conditions – Liability of Insurance Company – Held, even if there is violation of condition of policy and the vehicle is driven by a person not having a valid licence or if the vehicle is used

for the purpose other than for which it is insured other than the conditions mentioned u/s 149(2), in that event, insurance company will be liable to indemnify the victim in the event of accident and will be entitled to recover the amount from the insured pointing out the breach of conditions of policy: *Jugal Kishore Vs. Ramlesh Devi*, 2003(4) MPLJ 546: 2003(4) MPHT 574: 2004(1) JLJ 110: 2003(II) MPJR 473.

– **Section 157** – Motor Accident – Transfer of vehicle before Accident without intimation to the insurer: *National Insurance Company Ltd. Vs. Kansram*, I.L.R. (2000) M.P. 526: 2000(2) MPLJ 506: 2000(II) MPJR 6: 2000(2) JLJ 126.

– **Section 163-A & 166** – Whether application filed u/s 166 for compensation can be converted into application u/S 163-A at appellate stage – Held – No, after dismissal of application u/S 166, claimants not entitled to convert application u/S 163-A: *Ramlali Tiwari (Smt.) Vs. Vrindavan Tiwari*, I.L.R. (2009) M.P. 906: 2009(I) MPJR 329.

– **Section 165**, Civil Procedure Code, 1908, Section 9 – Motor Accident Claims Tribunal – Is a Civil Court: *National Insurance Co. Ltd., Gwalior Vs. Shrikant*, I.L.R. (2007) M.P. 312: AIR 2007 MP 98: 2007(3) MPLJ 130: 2007(3) MPHT 103: 2007(II) MPJR 237: 2007(2) JLJ 138.

– **Section 166**, Indian Succession Act, 1925 – Section 306, Legal Representative Suits Act, 1855 – Section 1 – Whether a claim for personal injuries received in motor accident abates on the death of claimant or would survive to his legal representatives – Person injured in Motor Accident died during the pendency of claim petition – Reference made by Division Bench – Held – Claim for personal injuries to a claimant abates on the death of claimant – Claim would not survive to legal representatives except as regards the claims for pecuniary loss to the estate of claimant – Matter remanded back to Division Bench to assess loss to the estate if any – Judgment of Division Bench in the case of Umedchand Golcha affirmed: *Smt. Bhagwati Bai Vs. Bablu Alias Mukund*, I.L.R. (2007) M.P. 24: AIR 2007 MP 38: 2007(1) MPHT 25: 2006(3) JLJ 379: 2006(4) MPLJ 579.

– **Section 166** – Claim for compensation – Question whether legal heirs of deceased owner put forth claim for compensation in absence of special policy – Held – Legal heirs of deceased/owner cannot put a claim for compensation for death or injury of deceased unless additional premium in respect of personal injury has been taken by the Insurance Company by way of special insurance contract from the owner of the vehicle: *Smt. Sunita Lokhande Vs. The New India Assurance Company Limited*, I.L.R. (2007) M.P. 1145: 2008(1) MPHT 42: 2008(1) MPLJ 54: 2008(1) JLJ 249.

– **Section 166 & 128** and Rule 123 – The driver of the motor cycle was carrying two pillion riders in violation of section 128 – Motor Cycle met with an accident with a

jeep – Pillion riders sustained injuries – Claims petition filed by Pillion riders – Tribunal held negligence on the part of the jeep driver was 80% and 20% on the part of motor cycle driver and accordingly awarded the compensation – Appeal filed by Insurance Company, contention was raised before D.B. that Pillion rider was traveling in violation of section 128 of the Act so compensation should be reduced on account of his "contributory negligence" – D.B. found conflict between Manjo Bee's case and Smt. Uma Tiwari's Case, Kanti Devi Sikarwar's case and referred the case to the Full Bench – F.B. after considering various judgments and text on the law of Torts – Held – "Contributory negligence" is distinct from the "negligence" – Merely two or more persons are traveling as Pillion rider on a motor cycle ipso facto cannot be termed as "contributory negligence" on the part of the driver of the motor cycle – Further Held – Law laid down in Manjo Bee's Case is correct law – Law laid down in Smt. Uma Tiwari's Case and Kanti Devi Sikarwar's case – Expressly overruled: *Devi Singh Vs. Vikram Singh, I.L.R. (2007) M.P. 1323: AIR 2008 MP 18: 2007(4) MPHT 535: 2008(III) MPJR 5: 2008(1) MPLJ 98: 2008(1) JLJ 68.*

– **Section 166 & 168** – Composite Negligence – Joint Tort-feasors – Held, claimant can sue the owner, driver and insurer of one of the vehicles and it is not necessary to sue owner, driver and insurer of both the vehicles – Claimant may implead the owner, driver and insurer of both the vehicles or any one of them: *Sushila Bhadoriya & Ors. Vs. M.P. State Road Transport Corporation & Anr. 2005(1) MPLJ 372: 2005(1) MPHT 486: 2005(1) JLJ 15.*

– **Section 166 & 168** – Composite Negligence – Apportionment of Liability – Held, there cannot be apportionment of liability of joint tort-feasors – In case both the joint tort-feasors are impleaded as party and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal – However on general principles of law, there is no necessity to apportion the *inter se* liability of joint tort-feasors: *Sushila Bhadoriya & Ors. Vs. M.P. State Road Transport Corporation & Anr., 2005(1) MPLJ 372: 2005(1) MPHT 486: 2005(1) JLJ 15.*

– **Section 170** – Restrictions imposed by the special Act of 1988 cannot be circumvented by the filing revision under the Code or petition under Article 227 – Departure if any can only be made with permission of the MACT under Section 170 and not otherwise – Section 115 of the Code – Revision against award of MACT – Not maintainable on the face of provisions of appeal under the Act of 1988: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174: AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.*

– **Section 170** – Restrictions imposed by the Special Act of 1988 cannot be circumvented by filing revision under the Code or petition under Article 227 – Departure if any can only be made with permission of the MACT under Section 170 and not otherwise: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174: AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.*

– **Section 173** and Civil Procedure Code, 1908, Order 41 Rule 14(3) & (4) – Appeal – Notice – Held, appeal shall not fail on account of dispensing with notice upon respondents who were ex-parte before the Court of first instance and have not submitted the address of service of notice – Object of provisions is to avoid delay in deciding the appeal, discretion is conferred on Appellate Court to dispense with service of notice – Since respondents have chosen not to appear before Court of first instance, they cannot claim right to be heard at appellate stage – No benefit can be claimed by the party against the exercise of discretion by Court in dispensing with notice – When notices have been dispensed with, appeal cannot be dismissed and Appellate Court has power to modify or enhance the quantum of compensation: *Jamuna Bai Vs. Chhote Singh, 2004(2) MPLJ 376: 2004(2) MPHT 325: 2004(1) JLJ 227.*

– **Section 173** first proviso & 168 – Held, If an appeal is filed u/S 173, challenging the award passed u/S 168 after 01.07.1989, as per first proviso to Section 173(1), it would be necessary for appellant to make requisite deposit contemplated thereunder irrespective of the date of accident: *Gaya Prasad Vs. Suresh Kumar, 1991(II) MPJR 427: 1992 MPLJ 485: 1992 JLJ 143.*

– **Section 173(2)**, Civil Procedure Code, 1908 – Section 115– Question referred to Larger Bench to determine whether revision under Section 115 of Civil Procedure Code, or Petition under Article 227 of Constitution of India would lie where an appeal has been barred to assail an award passed by the Motor Accident Claims Tribunal – Held –Accident Claims Tribunal is a Civil Court subordinate to High Court – Section 173(2) of Motor Vehicles Act merely bars the appeal against award where dispute is valued less than Rs. 10,000/-, however no express provision barring recourse to revision under Section 115 of Civil Procedure Code – Revision maintainable as High Court shall continue to have powers of superintendence – However, revision can be entertained subject to limited scope of Section 115 of Civil Procedure Code: *National Insurance Co. Ltd., Gwalior Vs. Shrikant, I.L.R. (2007) M.P. 312: AIR 2007 MP 98: 2007(3) MPLJ 130: 2007(3) MPHT 103: 2007(II) MPJR 237: 2007(2) JLJ 138.*

– **Section 173(2)**, Constitution of India – Articles 226, 227– Petition challenging the award where dispute is valued less than Rs. 10,000 – As revision under Section 115 lies therefore, no petition under Articles 226 & 227 challenging the award is maintainable: *National Insurance Co. Ltd., Gwalior Vs. Shrikant, I.L.R. (2007) M.P. 312: AIR 2007 MP 98: 2007(3) MPLJ 130: 2007(3) MPHT 103: 2007(II) MPJR 237: 2007(2) JLJ 138.*

– **Section 173** – Insurance Company if desires to assail such an award before superior Court has a statutory remedy of appeal under Section 173 of the Act subject to restriction envisaged under Section 149: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174: AIR 2001 MP 116: 2000(4) MPHT 288: 2001(1) JLJ 1: 2000(II) MPJR 567: 2000(3) MPLJ 561.*

– **Rule 73(c)** –Does not exclude power to order remand – Power of remand is inherent in every appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

### **Motor Yan Karadhan Adhiniyam, M.P. (XXV of 1991)**

– **Section 16 & 20** – Seizure – Under Section 16(3), Section 451 of Cr. P.C. is in a applicable till stage of inquiry or trial in a criminal court and Section 457 of the Cr. P.C. cannot be invoked unless seizure is by a police officer and is reported under the Code and someone is “entitled” person: *State of M.P. Vs. Rakesh Kumar Gupta, I.L.R. (1998) M.P. 721: 1998(2) MPLJ 249: 1998(2) JLJ 6.*

### **Municipal Corporation Act, Madhya Pradesh (XXIII of 1956)**

– **Section 24** and Constitution, Article 243-O & 243-ZG – Election Process – Held, election process commences only when the Election Commission notifies the election and declares schedule of election – Simply because Election Commission directed finalization of voter list, it cannot be said that election process had begun – Forwarding of proposal by Collector to State Government cannot by itself be termed as election process – As the election process has not begun, the bar under Article 243-O and 243-ZG is not attracted: *State of M.P. Vs. Manorama Gaur, 2005(2) MPLJ 323: 2005(2) JLJ 339: 2005(2) MPHT 108.*

– **Section 24(1) First Proviso** – Recalling of Mayor – Procedure & Requirement – Held, reconstruction of proviso to Section 24(1) goes to show that the two requirements of signing and presenting the proposal are different and it is not the requirement that presentation should also be by not less than  $\frac{3}{4}$ th of the total number of the elected

Councillors: *State of M.P. Vs. Manorama Gaur*, 2005(2) MPLJ 323: 2005(2) JLJ 339: 2005(2) MPHT 108.

– **Section 24(1) & (2)** – Verification of Signatures – Held, proviso to Section 47 does not contemplate that the proposal should be presented by the 3/4<sup>th</sup> of the Councillors in person or that for the purpose of verification of signatures of the signatories, their personal appearance is necessary – If physical presence of Councilor concerned is made a *sine qua non* for verification of the signatures, at times it may defeat the purpose – There may be a situation where a Councilor may not be able to appear before the concerned authority due to old age, infirmity, serious illness etc: *State of M.P. Vs. Manorama Gaur*, 2005(2) MPLJ 323: 2005(2) JLJ 339: 2005(2) MPHT 108.

– **Section 58(1)** – Appointment made without consultation of State Public Service Commission for a period exceeding six months – Validity of – Such appointment within six months in temporary only: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur, M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 JLJ 155: 1978(1) Serv LR 444.*

– **Section 58(1)** – Disagreement between Corporation and state Public Service Commission – State Government is final authority to take decision: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 JLJ 155: 1978(1) Serv LR 444.*

– **Section 58(1)** – Framing of Rules not a condition precedent for operation of the Section: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 JLJ 155: 1978(1) Serv LR 444.*

– **Section 58(1)** – Non-framing of Rules – Whether fatal to the exercise of mandatory requirement of consultation with the State Public Service Commission – Powers can be exercised in a reasonable manner: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 JLJ 155: 1978(1) Serv LR 444.*

– **Section 58(1)** – Requirement of consultation with State Public Service Commission for making permanent appointment – Mandatory – Disagreement between corporation and State Public Service Commission – State Government is final Authority to take decision – Appointment made without consultation of State Public Service Commission for a period exceeding six months – Validity of – Such appointment within six months is temporary only – Section 58 (1), second Proviso – Words “In the manner prescribed” in – Meaning of – Non-framing of Rules – Whether fatal to the exercise of mandatory requirement of consultation with the State Public Service Commission –

Powers can be exercised in a reasonable manner – Framing of Rules not a condition precedent for operation of Section 58(1): *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 J LJ 155: 1978(1) Serv LR 444.*

– **Section 58(1)** – Second proviso – Words “In the manner prescribed” in – Meaning of: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur M.P., I.L.R. (1979) M.P. 186: AIR 1978 MP 65: 1978 MPLJ 9: 1978 J LJ 155: 1978(1) Serv LR 444.*

– **Section 58(5) & (6)** – Validity – Powers of State Government – Held, Section 58(5) & (6) are not *ultra vires* and it is valid, but this power should be exercised with great caution and while transferring the employee from one corporation to another, there should be valid reason – Since the lien of incumbent is kept in parent corporation, tenure or period of lien should be specified and it should not be for all time to come State Government should also exercise this power very sparingly in exceptional cases: *Indore Nagar Nigam Karamchari Congress Vs. State of M.P. 1998(1) J LJ 326.*

– **Section 58(5) & (6)** and Constitution, Article 14 & 16 – Amendment – Validity – Held, so far as conferring of power by Amendment Act, 1988 is concerned, it cannot be said that Legislature was not competent nor it can be said that it is violative of Articles 14 & 16 of Constitution – Only the arbitrary exercise of power can render it violative of Article 14 & 16 of Constitution – Once the power has been conferred by the Legislature by enacting the valid law, the law cannot be rendered invalid because of improper exercise of power – Provisions of Act gives a controlling power to the State Government and when Government has an extensive control over the working of Corporation, it can certainly exercise the power of transfer of incumbent from one Corporation to another: *Indore Nagar Nigam Karamchari Congress Vs. State of M.P. 1998(1) J LJ 326.*

– **Sections 87, 427 & 430**, Bhopal Municipal Corporation Terminal Tax, assessment and collection bye – Laws, 1970, bye-law no. 12-A – Collection of terminal tax – Auction of right to collect tax under bye-law – Deposit of bid amount in municipal fund by successful bidder can be said to be amount credited to fund in compliance of section 87 – Bye-law providing for auction – Not legal – Recovery of terminal tax – Corporation auctioning its rights in favour of contractor under amended bye-law – Contractor and his staff required to work under authority of corporation – For violation of bye-laws, can be dealt with like municipal servants – Bye-law is therefore not in excess of authority conferred on corporation bye-law: *Sindhi Sahiti Multipurpose and Transport Co-Operative Society Ltd., Bhopal Vs. State of M.P., I.L.R. (1995) M.P. 149: 1995 MPLJ 176: 1994(II) MPJR 306: 1995 J LJ 387.*

– **Section 293(2) & (3)** – Scope of Appeal to District Judge – Section 293(2) provides that Commissioner shall determine that whether external alteration or addition to a building is a material alteration or not – Order passed under Section 293(2) of Act, 1956 is appealable to District Court – Scope of appeal to District Court is confined to order passed by Commissioner determining whether a particular alteration in or addition to an existing building is or not a material alteration: *Municipal Corporation, Bhopal Vs. Arvind Jain, I.L.R. (2007) M.P. 1132: 2007(4) MPHT 173: 2007(4) MPLJ 402: 2007(3) J LJ 414.*

– **Sections 293(3), 294(1), 295 & 403(3)** – Appeal – Respondents received notice from petitioner requiring them to produce the map of their building after making provision in F.A.R. 1:2, Coverage 70% and height upto 40 Ft. – Appeal filed by respondents before Add. District Judge allowed– Jurisdiction of Add. District Judge to entertain appeal under Section 293(3) of Act, 1956 Challenged in writ petition – Matter referred to Larger Bench by Learned Single Judge in view of two conflicting judgments – Held – Power to refuse sanction or to grant sanction for erection or re-erection of any building is exercised by Commissioner under Section 295 and not under Section 293(1) of Act, 1956 – Appeal against any notice or order issued or other action taken by Commissioner under Section 295 is to be filed before Corporation which has to be heard by Appeal Committee – Difficult to hold that appeal against order of Commissioner refusing or sanctioning erection or re-erection of building can also be filed before District Judge –View taken in *Sardarbi Noor Mohammad v. Municipal Corporation, Indore and others* is not correct view and is overruled: *Municipal Corporation, Bhopal Vs. Arvind Jain, I.L.R. (2007) M.P. 1132: 2007(4) MPHT 173: 2007(4) MPLJ 402: 2007(3) J LJ 414.*

– **Section 307(5)** – Power to require removal or alteration of work not in conformity with bye-laws or any scheme or any other requirement – The issue for reference before the Full Bench was "Whether the locus standi under Sub-section (5) of Section 307 of the Act is restricted to the person affected by the violation complained of or encompasses all persons resident within the area to which the Act applies?" – Held – The locus standi under Sub-section (5) of Section 307 of the Act of 1956 is not restricted to a person affected by the violation complained of but encompasses all persons resident within the area to which the Act of 1956 applies. The reference is answered accordingly. The Division Bench decision in the case of *Radhakishan Sharma* (1996 MPACJ 55) to the contrary is overruled – Appeal dismissed: *Dilip Kaushal Vs. State of M.P., I.L.R. (2008) M.P. 2167: AIR 2008 MP 324: 2008(3) MPLJ 591: 2008(4) MPHT 273: 2008(3) J LJ 171. 2008(IV) MPJR 172.*



– **Section 423(1)(b) & 423(2)** and Madhyastham Adhikaran Adhiniyam, M.P. (XXIX of 1983), Section 2(1)(g) – Administrator is fully under if the control of Government – Administrator is statutory body controlled by state Government – Tribunal Has Jurisdiction to decide the dispute: *Administrator, Municipal Corporation, Durg, M.P. Vs. M/s Jainco, Designers And Executors, Hatri Bazar, Durg, I.L.R. (1991) M.P. 417: AIR 1991 MP 233: 1991 MPLJ 352: 1991 JLJ 226: 1993(I) MPJR 407.*

### **Municipalities (Election of Vice-President) Rules, M.P., 1998**

– **Rule 3(3)** – See – Municipalities Act, M.P., 1961, Sections 55 & 56(3): *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943: AIR 2016 MP 10: 2015(4) MPLJ 450: 2016(1) JLJ 322: 2015(IV) MPJR 287.*

### **Municipalities (Election Petition) Rules, M.P., 1962**

– **Rules 11 to 15, 17 & 18** – Do not curtail ordinary procedure – Confer procedural powers already vested – Rules superfluous and redundant: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P., 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JLJ 53.*

### **Municipalities Act, C.P. and Berar (II of 1922)**

– **Section 15(1)** – Words “has directly or indirectly any share or interest” in – Apply both to a contract which has been performed and also to a contract which is executory: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1: AIR 1961 MP 274: 1961 MPLJ 629: 1961 JLJ 733.*

– **Section 15(1)** – Words “while owning such share or interest” in – Show that for purposes of ineligibility for election, contract which is enduring at the time of election or which remains to be performed at that time: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1: AIR 1961 MP 274: 1961 MPLJ 629: 1961 JLJ 733.*

– **Section 15(1)** – Word “contract” in, should have wider meaning – Words “has directly or indirectly any share or interest” in – Apply both to a contract which has been performed and also to a contract which is executory – Words “while owning such share or interest” in – Show that for purposes of ineligibility for election, contract which is enduring at the time of election or which remains to be performed at that time – Section 22 – Effect of section is automatic – Existence of interest for however a short time it may be produces the effect of section 22(2) – Does not contemplate that contract to be of some duration in point of time – Contemplates only incurring of disqualification after entering into office: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1: AIR 1961 MP 274: 1961 MPLJ 629: 1961 JLJ 733.*

– **Section 15(j)** – “Any local authority” in – Meaning of: *Thakur Kisansingh Vs. The State of Madhya Pradesh, I.L.R. (1957) M.P. 50: AIR 1957 MP 67: 1957 MPLJ 201: 1957 JLJ 304.*

– **Section 22** – Effect of section is automatic – Existence of interest for however a short time it may be produces the effect of section 22(2) – Does not contemplate that contract to be of some duration in point of time – Contemplates only incurring of disqualification after entering into office: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1: AIR 1961 MP 274: 1961 MPLJ 629: 1961 JLJ 733.*

– **Section 25(6)** – Scope of – Empowers Government to prescribe officers who can appeal: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P.579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

– **Section 25(6) & 176(2)(vii)** and Rule 2 (vii) – Rules regarding appeals – Are rules framed under the sections: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

– **Sections 25(6), 172 & 176(2)(vii)** and Rule 2 (ii) – Section (25) (6) – Scope of – Empowers government to prescribe officers who can appeal – Rules regarding appeals – Are rules framed under section 25(6) and section 176(2) (vii) – Rules – Validity of rules – How to be determined – Rule 2(ii) – Second Appeal by Municipality– Competency – Appeal – Right of appeal – Creature of statute: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

– **Section 57(2)** – Article 226 of Constitution supersession of Municipal Committee by Government – Government to give reasons there for – High Court, Power of, to examine the reasons to determine reasonableness and sufficiency – Test to be applied not entirely to be subjective unless the law says so: *Municipal Committee, Kareli Vs. The State of M.P., I.L.R. (1958) M.P. 13: AIR 1958 MP 323: 1958 MPLJ 531: 1958 JLJ 589.*

– **Section 66(1)(e)** – “Goods in Transit” – Cannot be said to be brought within limits of Municipal Council for purposes of use or consumption: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar, I.L.R. (1970) M.P. 1: AIR 1969 MP 1: 1968 MPLJ 586: 1968 JLJ 779.*

– **Section 66(1)(e)** – Expression “Brought within the limits of Municipality” – Implications of: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar, I.L.R. (1970) M.P. 1: AIR 1969 MP 1: 1968 MPLJ 586: 1968 JLJ 779.*

– **Section 66(1)(e)** – Stoppage of Bus within municipal limits – Does not amount to bringing it for sale, use or consumption: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar, I.L.R. (1970) M.P. 1: AIR 1969 MP 1: 1968 MPLJ 586: 1968 JLJ 779.*

– **Section 66(1)(e)** – Essentials of Octroi-Tax – Expression “Brought within the limits of Municipality” – Implications of – “Goods in Transit” – Cannot be said to be brought within limits of Municipal Council for purposes of use or consumption – Stoppage of Bus within municipal limits – Does not amount to bringing it for sale, use or consumption– Octroi Rules – Class VIII – Rule 1, Item 70 – Words “carriages and all sorts of conveyances” in – Include Motor Bus: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar, I.L.R. (1970) M.P. 1: AIR 1969 MP 1: 1968 MPLJ 586: 1968 JLJ 779.*

– **Section 67(5) & 67(7)** – Omission to Mention Date in Notification – Effect – Held, Section 67(7) gives discretion to the provincial Government, after the proposal for taxation has been sanctioned by it under sub-section (5) to decide whether or not to direct its imposition – If it decides that it should be imposed, it is required to issue a notification directing the imposition of the tax – Provincial Government may also decide, while sanctioning the proposal of taxation, that the imposition of tax shall not be forthwith – No obligation, however can attach to Provincial Government to postpone imposition of tax – Accordingly no such limitation can, in absence of any express provision to that effect be read in Section 67(7) – Where no date is specified, it shall be presumed that imposition of tax has not been postponed – As a consequence the tax shall take effect from the date on which the notification directing its imposition has been published: *Ramjilal Vs. Municipal Committee, Pipariya, AIR 1959 MP 82: 1960 JLJ 1174.*

– **Rule 2(ii)** – Second Appeal by Municipality – Competency: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

### **Municipalities Act, M.P. (XXXVII of 1961)**

– **Section 20** – Confers powers on that authority for the disposal of the petition: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412: AIR 1972 MP 1: 1971 MPLJ 765: 1972 JLJ 53.*

– **Section 29(1)(b)(iii)** and Constitution of India, Article 332(3) –Reservation of seats for Scheduled Castes and Scheduled Tribes – Has to be fixed with reference to the total number of elected councilors only: *Ram Ratan Sharma Vs. State of M.P., I.L.R. (1985) M.P. 391: 1986 MPLJ 354: 1987 JLJ 18.*

– **Section 35(c)** – A lawyer engaged by Municipal office – Does not hold an office of profit – Does not suffer from a dis-qualification – Section 55 (2) and (3) – In case of class II Municipality – Collector can call the meeting for election and preside over it – person officiating in the post and person holding the current duties of that post – Difference in powers of the two – General Clauses Act, Madhya Pradesh, 1957, Section 2 (6) and Land Revenue Code, Madhya Pradesh, 1959 Section 26 – Functions of Collector can be performed by Additional Collector or Sub-Divisional Officer in the absence of prohibition – Function of presiding over the meeting according to Section 55(3) of Municipalities Act, M.P. 1961 – Is of an officer empowered to perform duties of Collector of District – Officer holding the current charge of post and person holding a particular post and officer not vested with powers attached to that post – Difference – person holding current charge of post – Person can do only administrative functions – Land Revenue code, Madhya Pradesh, 1959 – Section 26 – Word “Disabled” in – Not to be construed narrowly so as to cover only such disability as may be occasioned due to an act independent of volition of person holding rank of Collector: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 35(c)** – Counsel appearing for municipality in litigation – Does not suffer from a disqualification: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 36(4)** – Word “Co-terminus” – Held, in the context in which word “co-terminus” has been used in Section 36(4) of the Act, it would mean that the term of President shall end with the term of the Council irrespective of the fact whether or not the office bearer has completed five years in office: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors., 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.*

– **Section 38** – Councillor can be removed only by state government: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218: AIR 1970 MP 230: 1970 MPLJ 253: 1970 JLJ 298.*

– **Section 41(1) & (2)** – Removal of Councillor – Held, it is not a requirement of Section 41(2) that while passing an order of removal of Councillor, State Government should give reasons for the same – But that does not mean that when order of removal is challenged before the Court of law, State Government is not required to put up the reasons for forming such opinion and place before the Court the necessary material which were taken into considerations while passing the order of removal: *Rana Natwar Singh Vs. State of M.P., 1980 MPLJ 729: AIR 1980 MP 129: 1980 JLJ 69.*

– **Section 47** – Proposal of Recall – Presentation – Held, proposal can be presented to the Collector by all or any of the signatory of the proposal – Even if proposal was presented by one of the Councillors, it was a valid proposal: *Naravadi Bai Choudhary Vs. State of M.P., 2005(2) MPHT 119: 2005(2) MPLJ 306: 2005(2) JLJ 379.*

– **Section 47** – Recall of President – Process – Requirement – Held, on analysis of Section 47, requirements for initiating the process of recall are :-

- (1) Proposal is to be signed by not less than 3/4<sup>th</sup> of the total number of elected Councillors.
- (2) The proposal must be presented to the Collector.
- (3) The process of recall cannot be initiated :
  - (a). within a period of two years from the date on which such President is elected and enters his/her office.
  - (b). unless half of the tenure of President elected in a by-election has not expired.
- (4) Process of recall of President shall be initiated only once in his/her whole term.
- (5) The Collector shall satisfy himself and verify that 3/4<sup>th</sup> of the total number of elected Councillors has signed the proposal of recall.
- (6) After such satisfaction and verification, the Collector shall send the proposal to the State Government.
- (7) The State Government shall make a reference to State Election Commission which shall arrange for voting on the proposal of recall in the prescribed manner.

: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors., 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.*

– **Section 47** and Constitution, Article 243-O & 243-ZG – Election Process – Held, election process commences only when the Election Commission notifies the election and declares schedule of election – Simply because Election Commission directed finalization of voter list, it cannot be said that election process had begun – Forwarding of proposal by Collector to State Government cannot by itself be termed as election process – As the election process has not begun, the bar under Article 243-O and 243-ZG is not attracted: *Naravadi Bai Choudhary Vs. State of M.P., 2005(2) MPHT 119: 2005(2) MPLJ 306: 2005(2) JLJ 379.*

– **Section 47** – Role of Collector & State Government – Held, once the proposal has been sent by Collector after verification and satisfaction, the State Government has no role but to forward the same to the State Election Commission – After having sent the proposal to State Government, Collector becomes *functus officio* – Further, it is obligatory for the State Government to forward the same expeditiously without any delay: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors.*, 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.

– **Section 47(1), First Proviso** – Recalling of President – Procedure & Requirement – Held, reconstruction of the proviso to Section 47(1) goes to show that the two requirements of signing and presenting the proposal are different and it is not the requirement that presentation should also be by not less than  $\frac{3}{4}$ th of the total number of the elected Councillors: *Naravadi Bai Choudhary Vs. State of M.P.*, 2005(2) MPHT 119: 2005(2) MPLJ 306: 2005(2) JLJ 379.

– **Section 47(1), First Proviso** – Recalling of President – Procedure & Requirement – Held, reconstruction of the proviso to Section 47(1) goes to show that the two requirements of signing and presenting the proposal are different and it is not the requirement that presentation should also be by not less than  $\frac{3}{4}$ th of the total number of the elected Councillors: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors.*, 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.

– **Section 47(1) & (2)** – Verification of Signatories – Held, proviso to Section 47 does not contemplate that the proposal should be presented by the  $\frac{3}{4}$ th of the Councillors in person or that for the purpose of verification of signatures of the signatories, their personal appearance is necessary – If physical presence of Councillor concerned is made a *sine qua non* for verification of the signatures, at times it may defeat the purpose – There may be a situation where a Councillor may not be able to appear before the concerned authority due to old age, infirmity, serious illness etc: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors.*, 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.

– **Section 47(1) & (2)** – Verification of Signatories – Held, proviso to Section 47 does not contemplate that the proposal should be presented by the  $\frac{3}{4}$ th of the Councillors in person or that for the purpose of verification of signatures of the signatories, their personal appearance is necessary – If physical presence of Councillor concerned is made a *sine qua non* for verification of the signatures, at times it may defeat the purpose – There may be a situation where a Councillor may not be able to appear before the concerned authority due to old age, infirmity, serious illness etc: *Naravadi Bai Choudhary Vs. State of M.P.*, 2005(2) MPHT 119: 2005(2) MPLJ 306: 2005(2) JLJ 379.

– **Section 47(1) & 49(1)** and Amendment Act of 1997 – Recall of President – Computation of Period of Two Years – Held, recall of President cannot be initiated within a period of 2 yrs from the date of his election – After the amendment, now President has to be elected directly by people and not by elected Councillors, thus the term of President shall commence from the date of election notified and not from the date of first meeting – Period of two years for initiating the proposal of recall shall have to be computed from date of election as notified u/S 45 which in turn, under deeming fiction contemplated u/S 49(1), be the date of his entering into the office: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors.*, 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.

– **Section 55 & 56** – Convening meeting of council – Ordinary or special meeting – Date of every meeting shall be fixed by the specified Authority – It is a general enabling provision, but it makes exception of the first meeting after general election which is to be fixed by the Chief Municipal Officer with the approval of the prescribed Authority within specified time : *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943: AIR 2016 MP 10: 2015(4) MPLJ 450: 2016(1) JLJ 322: 2015(IV) MPJR 287.*

– **Section 55 & 56(3)** and Municipalities (Election of Vice-President) Rules, M.P. 1998, Rule 3(3) – Issuance of the Notice – Notice is required to be despatched to every councillor and exhibited at the Municipal Office – Notice must be despatched “Seven clear days” before an ordinary meeting and three clear days before a special meeting: *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943: AIR 2016 MP 10: 2015(4) MPLJ 450: 2016(1) JLJ 322: 2015(IV) MPJR 287.*

– **Section 55(2) & (3)** – In case of class II Municipality – Collector can call the meeting for election and preside over It: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 55(2) & (3)** – Person officiating in the post and person holding the current duties of that post – Difference in power of the two: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda, I.L.R. (1974) M.P. 885: AIR 1973 MP 104: 1973 MPLJ 411: 1973 JLJ 405.*

– **Section 62** – Meeting for no confidence motion against president or vice president – Meeting presided over by – One of the Councillors elected by Councillors present including vice president – Held, proceedings not vitiated: *The State of M.P. Through Local Self Govt. Deptt. Bhopal Vs. Beni Pd. Rathore, I.L.R. (1995) M.P. 491: AIR 1996 MP 101: 1995 JLJ 769: 1996 MPLJ 158: 1996(I) MPJR 1.*

– **Section 62** – Recording of minutes of proceedings – No confidence motion brought against President and Vice President – It is mandatory to record number of votes cast either way – Recording of names of Councillors however is directory: *The State of M.P. Through Local Self Govt. Deptt. Bhopal Vs. Beni Pd. Rathore, I.L.R. (1995) M.P. 491: AIR 1996 MP 101: 1995 JLJ 769: 1996 MPLJ 158: 1996(I) MPJR 1.*

– **Sections 86, 87, 89, 90 & 94** and Madhya Pradesh State Municipal Services (Executive) Rules, 1973 – Appointments of C.M.O. are made by the State Govt. unlike other staff for which only confirmation by the State Govt. is required: *Suresh Chandra Sharma Vs. State, I.L.R. (2000) M.P. 645: 2000(2) MPLJ 530: 2000(2) JLJ 268: 2000(II) MPJR 449.*

–**Sections 126, 127 & 127-A**, M.P. Municipal Corporation Act, 1956, Section 138 and Constitution, Article 14 –Validity of Provision – Held, Section 138 of the Municipal Corporation Act and Sections 126, 127 and 127-A of the Municipalities Act are not defiant of Article 14 of the Constitution of India and do not suffer the frown of the equality clause or any kind of arbitrariness or irrationality – Though amendments in respect of other provisions in both the statutes have not been carried out, there is no inconsistency and a harmonious construction is possible and, therefore, on that score the aforesaid provisions cannot be declared as *ultra vires*: *Sakhi Gopal Vs. State of M.P., 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. (Also Published in AIR 2004 MP 182 as Anil Kumar Gulati Vs. State of M.P.)*

– **Section 126(1)**, M.P. Municipal Corporation Act, 1956, Section 138 and M.P. Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997, Rules 3, 4 & 5 – Annual Letting Value of Property – Fixation of Rent –Held, it would be incumbent on Municipal Corporation or the Municipality to pass a resolution by fixing the rate on per square foot basis taking into consideration the concept of standard rent fixed under the M.P. Accommodation Control Act though fixation of standard rent would not be the governing or principal primal factor but would be one of the factors – Fixation of standard rent in respect of a singular house would not meet or subserve the purpose of guidance but when there is fixation of standard rent in respect of a cluster of houses or group of houses that would be taken cognizance of by Municipality or by Municipal Corporation while fixing the annual letting value per square foot on zone basis – It is requisite on the Municipal Corporation as well as the Municipality to fix the rent on category basis taking into consideration the classifications made under the principal enactment and the 1997 Rules: *Sakhi Gopal Vs. State of M.P., 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. (Also Published in AIR 2004 MP 182 as Anil Kumar Gulati Vs. State of M.P.)*



– **Section 126(3)**, M.P. Municipal Corporation Act, 1956, Section 138(3) – Reduction of Penalty – Held, with regard to imposition of penalty as provided u/S 138(3) of Corporation Act and 126(3) of Municipalities Act, it is inappropriate to state that authorities have no discretion to reduce it or there is an unrebuttable presumption in that regard – If property owner can satisfactorily show that there was bona fide error or mistake on his part, competent assessing authority can reduce the penalty – If a property owner is affected by the resolution passed by the Municipal Corporation or Municipality can assail the same in entirety before the appropriate authority – The property owner who is under legal obligation to file the return in regard to self assessment but fails to do so, would be liable to pay surcharge which is irreducible: *Sakhi Gopal Vs. State of M.P.*, 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. [Also Published in AIR 2004 MP 182 as *Anil Kumar Gulati Vs. State of M.P.*]

– **Section 126(4)**, M.P. Municipal Corporation Act, 1956, Section 138(3) – Imposition of Penalty – Appeal – The imposition of penalty can be assailed by way of an appeal before the Mayor-in-Council inasmuch as the assessment is done by an authority so designated under the statute and the Mayor-in-Council being the microcosm of Municipal Corporation has the competence to deal with the same in appeal: *Sakhi Gopal Vs. State of M.P.*, 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. (Also Published in AIR 2004 MP 182 as *Anil Kumar Gulati Vs. State of M.P.*)

– **Section 139** and M.P. Municipal Corporation Act, 1956, Section 149 – Assessment of Property – Challenge to – Held, if a person is aggrieved with regard to assessment of a property situate inside the Corporation can assail it before the District Judge under section 149 of the Corporation Act and if a person whose property is situated in the Municipality and is grieved by an order of assessment can file an appeal before the Civil Judge as provided under section 139 of the Municipalities Act – Challenge can be made on every ground except on the ground pertaining to rate as fixation of rent is intrinsically collective and can only be assailed when resolution is challenged before the competent authority: *Sakhi Gopal Vs. State of M.P.*, 2004(1) MPLJ 390: 2004(1) JLJ 26: 2003(4) MPHT 1: 2003(II) MPJR 406. (Also Published in AIR 2004 MP 182 as *Anil Kumar Gulati Vs. State of M.P.*)

– **Section 139(5)** – Decision of District Judge under – Revisable by High Court: *Municipal Council, Khandwa Vs. Santosh Kumar*, I.L.R. (1976) M.P. 104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.

– **Section 139(5)** – Order of revision of District Judge – Order is of a Court subordinate to High Court: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.*

– **Section 139(5)** – Ordinary incidents of procedure of appeal or revision applicable: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P.104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.*

– **Section 139(5)** – Revisional authority under, functions as a Court and not *persona designata* – Ordinary incidents of procedure of appeal or revision applicable– Word “final” in – Means there is no further appeal – Revision not excluded – Decision of district Judge under – Revisable by High Court – Order of revisions of District Judge– Order is of a Court subordinate to High Court – Revision under Section 15, Civil Procedure Code – Maintainable against order of District Judge under Section 139 (5) of Madhya Pradesh Municipalities Act: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.*

– **Section 139(5)** – Word “final” in – Means there is no further appeal – Revision not excluded: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P.104: AIR 1975 MP 36: 1975 MPLJ 33: 1975 JLJ 48.*

– **Sections 283, 349 & 358** – Licence fee for industry engaged in business employing electrical or mechanical energy within the municipal area – Is a “Fee” charged for regulating dangerous and offensive trades – Must correspond to principle of *quid pro quo*: *M/s. Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs. The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111: AIR 1981 MP 62: 1981 JLJ 95: 1981 MPLJ 175.*

– **Sections 283, 349 & 358** – Licence fee – No justification shown for its enhancement – Notification enhancing such licence fee liable to be struck down: *M/s. Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs. The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111: AIR 1981 MP 62: 1981 JLJ 95: 1981 MPLJ 175.*

– **Sections 283, 349 & 358** – “Tax” and “Fee” distinction between and determination thereof – Licence fee for industry engaged in business employing electrical or mechanical energy, within the Municipal area – Is a “Fee” charged for regulating dangerous and offensive trades – Must correspond to principle of *quid pro quo* – Licence fee – No justification shown for its enhancement – Notification enhancing such licence fee liable to be struck down: *M/s. Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs.*

*The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111: AIR 1981 MP 62: 1981 J LJ 95: 1981 MPLJ 175.*

**Muslim Women (Protection of Right on Divorce) Act (XXV of 1986)**

– **Sections 3, 4 & 5** – Right to get maintenance from her husband is a vested right of a women in any religion – No provision in the Act of 1986 so as to give it retrospective operation – Substantive law relating to vested rights – Such laws are normally treated as prospective – Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C.: *Wali Mohammad Vs. Batul Bi, I.L.R. (2004) M.P. 37: 2003(2) MPLJ 513: 2003(3) MPHT 113: 2003(1) MPJR 513: 2003(2) J LJ 5.*

(N)

**Nagar Tatha Gram Nivesh Adhiniyam, M.P. (XXIII of 1973)**

– [As amended by Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, M.P. 2004], **Section 50(4) Proviso** – Preparation of Town Development Schemes – Lapse of Scheme – Proviso to Sec. 50(4) provides that draft scheme shall be deemed to have lapsed if final publication of draft scheme is not notified within a year of publication of draft notification – Held – Objects and reasons for introducing proviso is to remove hardship caused to citizens and individual landowners – Proviso applies to pending actions also – The Scheme cannot be in perpetuity and it can lapse if action is not contemplated as provided in proviso – The doctrine of delay and laches gets attracted: *Indore Development Authority Vs. M/s. Shriram Builders, I.L.R. (2009) M.P. 2136: AIR 2009 MP 169: 2009(4) MPLJ 236: 2009(2) J LJ 226.*

– [As amended by Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, M.P. 2004], **Section 50(4) Proviso** – Preparation of Town Development Schemes – Lapse of Scheme – Scheme floated earlier stood lapsed in view of proviso to Sec.50(4) – Authority can proceed to take appropriate steps afresh to float a fresh scheme : *Indore Development Authority Vs. M/s. Shriram Builders, I.L.R. (2009) M.P. 2136: AIR 2009 MP 169: 2009(4) MPLJ 236: 2009(2) J LJ 226.*

**Nagariya Sthawar Sampatti Kar Adhiniyam, Madhya Pradesh (XIV of 1964)**

– **Section 9** – Objection preferred against notice of demand – Opportunity to produce evidence not given – Order passed liable to be quashed: *Munnalal Vs. B.S.*

*Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197: AIR 1978 MP 36: 1978 MPLJ 152: 1977 JLJ 667.*

– **Rule 4(9)** – Is a special rule of evidence exclusively for the purpose of the Act— Oral Partition among members of joint Hindu Family not rendered invalid – Rule is not invalid – Nagariya Sthawar Sampathi Kar Adhinyam, M.P., 1964 – Section 9 – Objections preferred against notice of demand – Opportunity to produce evidence not given—order passed liable to be quashed Section 9 – Objection preferred against notice of demand – Opportunity to produce evidence not given – Order passed liable to be quashed: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197: AIR 1978 MP 36: 1978 MPLJ 152: 1977 JLJ 667.*

– **Rule 4(9)** – Oral Partition among members of joint Hindu Family not rendered invalid: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197: AIR 1978 MP 36: 1978 MPLJ 152: 1977 JLJ 667.*

– **Rule 4(9)** – Rule is not invalid: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197: AIR 1978 MP 36: 1978 MPLJ 152: 1977 JLJ 667.*

### **Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)**

– **Section 9 & 76** and Narcotic Drugs and Psychotropic Substances Rules, 1985, Rule 2 (c) – Chemical Examiner – No provision debarring chemical analysis of unlawfully possessed opium by any other laboratory except mentioned in rule 2(C) – Chemical analysis can be made at any laboratory in country to expedite investigation and trial: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

– **Sections 18, 37 & 50** – Grant of Bail – Offence under Section 18 – Plea in terms of Section 50 raised by accused – Court must decide the question of bonafides of plea and hold an enquiry in that regard before coming to conclusion that jurisdiction to release accused is not curbed by limitations contemplated under Section-37: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

– **Section 32-A** and M.P. Prisoner's Release on Probation Act, 1954 – Question whether person convicted under N.D.P.S. Act is governed by provisions of Act, 1954 – Petitioner convicted under Section 8 read with Section 18 of N.D.P.S. Act – Application for release on license under Act, 1954 was made before Govt. – Writ Petition of habeas corpus and release on bail filed during pendency of application for release on license –

Held – Word Suspension in Section 32-A cannot be given restricted meaning – While suspension cannot be suspended before it attains finality then it cannot be suspended after it attains finality – Judgment passed in Jagtar Singh approved – Petitioner not entitled to be released on probation: *Rajendra Singh Vs. State of M.P., I.L.R. (1994)M.P. 289: 1995 MPLJ 541: 1995 JLJ 727: 1995(I) MPJR 219.*

– **Section 36-A(1)(c)**, Criminal Procedure Code, 1973 – Section 167(2)Proviso – Charge sheet not filed within 90 days of the arrest of accused – Accused not entitled for bail as per provision of Section 167(2) of Criminal Procedure Code – Special Court and High Court equally placed in respect of competence under Section 37 of NDPS Act – Proviso to Section 167(2) of Criminal Procedure Code not applicable: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

– **Section 36 & 37** – Powers of Special Court and High Court – Not effected by provisions of Section 36-A: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) MP 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

– **Section 37** – Bail–Grant of – Reasonable ground – Judicial discretion has to be exercised independently – Burden is not on accused to prove his innocence – Court has to act on the basis of material available in the Case Diary: *Ramdayal Vs. Central Narcotic Bureau, I.L.R.(1993) MP 358:1992 MPLJ 834:1992(II) MPJR 250:1993JLJ 24.*

– **Section 37 & 50** – Waiver of limitations contemplated under Section 37 – Neither High Court, nor Special Court has jurisdiction to accept the plea without investigating its truth and validity: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

– **Section 53**, Evidence Act Indian, 1872, Section 25 – Police Officer – Officer invested with the powers of an Officer-in-Charge of a police station under Section 53 of the Act – Is not a police officer: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358: 1992 MPLJ 834: 1992(II) MPJR 250: 1993 JLJ 24.*

### **National Security Act (LXV of 1980)**

– **Section 3(2)** – Held, when Detaining Authority’s subjective satisfaction is challenged on the ground of his now-awareness of the detenu being held in confinement on the date of detention order, the order is vitiated on that ground alone as jurisdictional competence of the authority to pass the order is vitiated – Petitioner was already in custody when order of detention was passed – Detaining authority’s failure to explain or explain away the time-gap between the date of detention order and the date of its

execution does not by itself render the continuance of the petitioner's detention invalid; it would depend on the facts and circumstances of each case; but in the facts and circumstances of the present case, the failure of the detaining authority in explaining away the time-gap has vitiated the detention – Taint was attracted to the impugned order of detention because the unexplained delay in execution of order cast a doubt as to reality and genuineness of subjective satisfaction of the detaining authority arrived at earlier and not because the detaining authority failed to record its satisfaction as to necessity of detention subsisting on the date of execution: *Ajay Dhakad Vs. State of M.P.*, 1990 MPLJ 196: 1990 J LJ 82: 1989 MPJR 692.

– **Section 5 & 5A** – Order of detention – Multiple grounds – Non-mentioning of material facts – Detention order if it is saved by Section 5A, cannot be set aside due to non-mentioning of material facts like acquittal or detention of detenu: *Mangal Singh @ Mangu Vs. State of M.P.*, I.L.R. (2015) M.P. 3157: AIR 2015 MP 195: 2015(4) MPLJ 439: 2016(1) J LJ 48: 2015(IV) MPJR 275.

– **Section 5A** – Grounds of detention severable – Detention order passed on more than one ground – If detaining Authority is able to demonstrate that even one ground is valid for issuing the order of detention, the fact that other grounds are vague, non-existent, not relevant, not connected, etc. would make no difference: *Mangal Singh @ Mangu Vs. State of M.P.*, I.L.R. (2015) M.P. 3157: AIR 2015 MP 195: 2015(4) MPLJ 439: 2016(1) J LJ 48: 2015(IV) MPJR 275.

– **Section 5A** – Ground of detention severable – Whether required to be specifically pleaded – No – It is a matter of legal presumption under Section 5A and need not to restate in Counter Affidavit to be filed by the detaining authority: *Mangal Singh @ Mangu Vs. State of M.P.*, I.L.R. (2015) M.P. 3157: AIR 2015 MP 195: 2015(4) MPLJ 439: 2016(1) J LJ 48: 2015(IV) MPJR 275.

– **Section 11** – Constitution of India – Articles 14, 21, 22, 22 (3), 22 (4), 22 (5) and 39A – Procedure of Advisory Board – Petitioner detained under National Security Act – Grounds of detention served on him – Petitioner did not make a written representation – Advisory Board after giving personal hearing held that there is sufficient cause for detention – State Govt. confirmed the detention – Detention challenged on the ground that Board had an obligation to ask whether he requires assistance of a friend to submit a written representation – Held – Absence of assistance of a friend where the detenu has not made such demand cannot import unreasonableness or arbitrariness in the proceedings of Board – Board has not failed to perform its statutory duty by not putting questions in relation to presentation of representation and requirement of friend: *Shakir*

*Vs. State of M.P., Through Collector Morena, I.L.R. (1994) M.P. 19: 1994 MPLJ 685: 1994 JLJ 566: 1994(I) MPJR 403.*

### **Natural Justice**

– **Principles of** – Applicable to *Quasi* - Judicial and administrative functions – Rule of reasons – Connotation of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **Rule of**, not codified: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa, I.L.R. (1979) M.P. 289: 1978 JLJ 182: 1978 MPLJ 172: AIR 1978 MP 86.*

### **Negligence**

– **Driver while acting in the course of his employment giving lift to a person in disregard of statutory rule of prohibition** – Accident occurring – Owner is vicariously liable: *Narayan Lal Vs. Rukmani Bai, I.L.R. (1980) M.P. 807: AIR 1979 MP 74: 1979 MPLJ 405: 1979 JLJ 461: 1979 ACJ 261.*

– **Standard to be applied to determine negligence:** *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **Test to be applied to determine fact of negligence:** *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

### **Negotiable Instruments Act (XXVI of 1881)**

– **Section 4** – Essentials of promissory note – Stamp Act, Indian, 1899 – Section 2(5) – Essentials of Bond – Distinguishing features between bond and promissory note – Peculiar features of bond – Instrument falling within both categories – Instrument chargeable with higher duty – Negotiable Instruments Act – Section 13(1) – Explanation 1 – Effect of – Answers to questions referred: *Santsingh Vs. Madandas, I.L.R. (1977) M.P. 1059: AIR 1976 MP 144: 1976 MPLJ 238: 1976 JLJ 235.*

– **Section 13 (1)** – Explanation 1 – Effect of – Answers to questions referred: *Santsingh Vs. Madandas, I.L.R. (1977) M.P. 1059: AIR 1976 MP 144: 1976 MPLJ 238: 1976 JLJ 235.*

### **Notification**

– **Notification issued under statutory power exempting from general provisions of statute** – Has force of law: *State of Madhya Pradesh Vs. Ramcharan*, I.L.R. (1978) M.P. 601: AIR 1977 MP 68:1977 MPLJ 176:1977 JLJ 124:1977 CriLJ 597.

### **(O)**

### **Obiter Dicta**

– **Of Supreme Court Binding on High Court** – Two reasons given for conclusion – None can be regarded as *Obiter*: *Seth Surajmal Vs. The State of M.P.*, I.L.R. (1957) M.P. 507: AIR 1958 MP 103: 1957 MPLJ 788: 1957 JLJ 1011.

### **Octroi Rules**

– **Class VIII – Rule 1, Item 70** – Words “carriages and all sorts of conveyances” in – Include Motor Bus: *Municipal Council, Pandhurna Vs. Shri R.P. Dubey S.D.O., Sausar*, I.L.R. (1970) M.P. 1: AIR 1969 MP 1: 1968 MPLJ 586: 1968 JLJ 779.

### **Official Languages Act (XIX of 1963)**

– **Section 3(4)** – See – Constitution, Articles 343 & 344: *Raghvendra Prasad Gautam Vs. Union Bank of India*, I.L.R. (2010) M.P. 2275: 2010(4) MPLJ 466: 2010(4) MPHT 309: 2011(1) JLJ 136: 2010(IV) MPJR 1.

### **Opium Act, Indian (I of 1878)**

– **As amended – Sections 9(a) & 20(G)** – Criminal Procedure Code – Sections 190 (1) (a) (b) and 251-A – Case started on report of police officer under opium Act – Report if police report under section 190 (1)( b) – Criminal Procedure Code – Procedure prescribed by Section 251-A – Whether applicable: *Ashiq Miyan Vs. The State of Madhya Pradesh*, I.L.R. (1966) M.P. 1: AIR 1966 MP 1: 1965 MPLJ 889: 1965 JLJ 897: 1966 CriLJ 235.

### **Order**

– **Order dismissing a petition in motion hearing** – Has a binding force: *Balkishandas Vs. Harnarayan Das*, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.



**(P)****Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994**

– **Rule 3(3)** – Term “Dispatch” – Held, the use of word “Dispatch” cannot be read as “receipt” of the notices by members of Panchayat – Law intends that notice of meeting should be sent to members seven days in advance of meeting to enable them to participate in the motion of no-confidence – Rule does not intend that motion of no-confidence should be taken up only after each and every member of the Panchayat has been actually served with the notice – Use of word “dispatch” clearly shows that mere non-service of notice of meeting on one or few members would not frustrate the consideration of motion of no-confidence, as in any case, the passing of it depends on existence of requisite majority: *Bhulin Dewangan Vs. State of M.P., 2001(2) MPLJ 372: 2000(4) MPHT 69: 2000(2) JLJ 253.*

– **Rule 3(3)** and Panchayat (Method of Service of Notice and Document) Rules, M.P. 1995, Rule 3 – Service of Notice – Mode – Held, Latter part of Rule uses the words “shall be caused” indicating that rule is mandatory and required due compliance – Dispatch of notice for effecting service on members in one of the modes prescribed in Rules of 1995 would be due compliance of the provision: *Bhulin Dewangan Vs. State of M.P., 2001(2) MPLJ 372: 2000(4) MPHT 69: 2000(2) JLJ 253.*

**Panchayat (Sarpanch, Up-Sarpanch, President, Vice President) Nirvachan Niyam, 1995**

– **Rules 2(c), 17 & 22**, Panchayat Raj Adhiniyam, 1993 (I of 1994) Sections 19, 26 and 33 – “Returned candidate” – Means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected – Unless notification is issued there cannot be any returned candidate hence no election petition could be filed on the basis of certificate issued under Rule 17 of the Election Rule: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291: 2001(2) MPLJ 419: 2001(2) MPHT 242: 2001(II) MPJR 174.*

**Panchayat Act, M.P. (XXXV of 1981)**

– **Section 18** and M.P. Gram Panchayat (No Confidence Motion Against Sarpanch or Up-Sarpanch) Rules, 1981, Rule 6(ii) – Method of Voting – Validity – Held, the passing of the no-confidence resolution by secret ballot is prohibited and was clearly

contrary to law. The mere fact that in the minutes it has been mentioned that all the nine *panchas* who were present, voted by secret ballot in support of the resolution, would not validate the result which has been obtained by a procedure which is not only contrary to law, but is also prohibited by law – If in a meeting held on a motion of no confidence, the voting takes place by secret ballot, Rule 6(2)(ii) cannot be complied with and this is how there would be a non-compliance of that part of Rule 6 which would result into defeating the intention of the framers of the Rules: *Prabhulal Vs. Gram Panchayat, AIR 1986 MP 200: 1986 J LJ 730.*

### **Panchayat Act, Madhya Pradesh (VII of 1962)**

– **Section 357(1)** – Alternative remedy of an Election Petition – Not less convenient, beneficial and effectual: *Malam Singh Vs. Collector, Sehore, I.L.R. (1973) M.P. 371: AIR 1971 MP 195: 1971 MPLJ 531: 1971 J LJ 379.*

– **Section 357(1)** – Improper rejection of a nomination paper – Can be urged as a ground in election petition for setting aside election: *Malam Singh Vs. Collector, Sehore, I.L.R. (1973) M.P. 371: AIR 1971 MP 195: 1971 MPLJ 531: 1971 J LJ 379.*

– **Section 357(1)** – Rejection of nomination cannot be challenged in any other way: *Malam Singh Vs. Collector, Sehore, I.L.R. (1973) M.P. 371: AIR 1971 MP 195: 1971 MPLJ 531: 1971 J LJ 379.*

– **Section 357(1)** – Word “Election” in – Meaning and scope of – Improper rejection of a nomination paper – Can be urged as a ground in election petition for setting aside election – Rejection of nomination cannot be challenged in an any other way – Alternative remedy of an election petition – Not less convenient, beneficial and effectual – Constitution of India – Articles 226 and 227 – Do not contain any bar to exercise writ jurisdiction in respect of elections to local bodies – High Court will not like to exercise writ jurisdiction in such election matter if alternative remedy of election petition is available: *Malam Singh Vs. Collector, Sehore, I.L.R. (1973) M.P. 371: AIR 1971 MP 195: 1971 MPLJ 531: 1971 J LJ 379.*

### **Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993 (I of 1994)**

– **Section 6(2)** – Constitutional Validity– Held, both limbs of the provision are distinct and separate – The first limb/part/portion of Section 6(2) which intends that “not less than one-fifth of the total member of the Gram Sabha shall form a quorum” is constitutionally valid but the second limb of the provision intending that “out of which not less than one-third shall be women members and members of Scheduled Castes and Scheduled Tribes shall be represented in proportion to their population in the Gram

Sabha” is unconstitutional: *Than Singh Vs. State of M.P. AIR 2005 MP 170: 2005(2) MPLJ 353: 2005(1) MPJR 541: 2005(2) MPHT 127: 2005(2) JLJ 178.*

– **Section 6(2)** and Constitution, Article 14, 15(3) & (4) – Held, in the second part of Section 6(2), the classification that has been made in the quorum does not stand the test of equality clause as enshrined under Article 14 of Constitution – Further, the second limb of Section 6(2) is not saved by the conception of affirmative or protective discrimination as conceptually inhered under Articles 15(3) and 15(4) of Constitution.: *Than Singh Vs. State of M.P., AIR 2005 MP 170: 2005(2) MPLJ 353: 2005(1) MPJR 541: 2005(2) MPHT 127: 2005(2) JLJ 178.*

– **Section 6(2)** and Constitution, Article 243, 243-A, B, D, G & H – Held, there is no constitutional mandate under Article 243, 243-A, B, D, G & H that provide constituent of quorum pertaining to mandatory presence of specific women members and members of the Scheduled Castes and Scheduled Tribes: *Than Singh Vs. State of M.P. AIR 2005 MP 170: 2005(2) MPLJ 353: 2005(1) MPJR 541: 2005(2) MPHT 127: 2005(2) JLJ 178.*

– **Section 21** and Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, M.P. 1994, Rule 3(3) – No-Confidence Motion – Notice – Procedure – Held, when a notice of no-confidence motion duly signed by the requisite not less than 1/3<sup>rd</sup> of total elected members of concerned Panchayat is received, prescribed authority shall not sit idle over it for unreasonable long period of time – He shall within not more than 15 days from receipt of notice, call a meeting for considering the no-confidence motion: *Bhulin Dewangan Vs. State of M.P., 2001(2) MPLJ 372: 2000(4) MPHT 69: 2000(2) JLJ 253.*

– **Section 21(4)** and Constitution, Article 227 – Compliance of Mandatory Provision – Discretion of Court –Held, proceedings of the no-confidence motion or other proceedings under the Act are assailable under Article 227 of Constitution – Where the provision is mandatory, every non compliance of the same need not necessarily result in nullification of the whole action – This Court under Article 227 has a discretion not to interfere even though a mandatory requirement has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused: *Bhulin Dewangan Vs. State of M.P., 2001(2) MPLJ 372: 2000(4) MPHT 69: 2000(2) JLJ 253.*

– **Section 40(1)(b)** – Period of Completion of Inquiry – Mandatory or Directory – Held – There is no consequence provided in Statute that in case of non-completion of inquiry within the period prescribed, inquiry will stand abated – Inquiry against an elected representative cannot be set at naught only for reason that it has not been

completed within the time mentioned in proviso – Failure to complete inquiry within prescribed time will not confer any advantage to the member who is facing inquiry – Conduct of inquiry is a *quasi-judicial* function – Provision would be treated as directory and not mandatory: *Om Kar Mahole Vs. State of M.P., I.L.R. (2018) M.P. 2792: 2019(2) MPLJ 379: AIR 2019 MP 1: 2019(I) MPJR 169.*

– **Section 40(1)(b)** – Word “shall” – Interpretation – Held – The use of word “shall” is not determinative of the fact whether the proviso is mandatory – Such provision is not to make the inquiry proceedings redundant if the inquiry is not completed within period prescribed so as to allow the elected member to go scot free: *Om Kar Mahole Vs. State of M.P., I.L.R. (2018) M.P. 2792: 2019(2) MPLJ 379: AIR 2019 MP 1: 2019(I) MPJR 169.*

– **Section 53(2)** – This general provision will apply where instead of the Panchayats performing functions entrusted to them, the State Government itself undertakes to execute such functions of the Panchayats through its own agencies – This provision obviously does not apply where the Panchayat fails to perform a particular duty conferred on it under the Adhiniyam despite a direction by the State Government or prescribed authority to perform such duty: *Pawan Rana Vs. State of M.P., I.L.R. (2009) M.P. 2752: AIR 2010 MP 1: 2009(4) MPLJ 66: 2009(4) MPHT 377: 2009(IV) MPJR 153: 2009(3) JLJ 276.*

– **Sections 69(1), 70(1), 86(1) & 86(2)** – Appointment of Panchayat Karmi– In case Gram Panchayat fails to make appointment of a Panchayat Karmi despite direction issued by State Government or prescribed authority – State Government or prescribed authority can direct C.E.O. of Janpad Panchayat within whose territorial jurisdiction a Gram Panchayat is located to appoint a Panchayat Karmi– View taken by D.B. in Leelawati's case [ILR (2008) MP 2817] approved – Whereas view taken in W.P. No.206/2008 Smt. Madhu Bhadoria v. State of M.P. & Ors. Overruled: *Pawan Rana Vs. State of M.P., I.L.R. (2009) M.P. 2752: AIR 2010 MP 1: 2009(4) MPLJ 66: 2009(4) MPHT 377: 2009(IV) MPJR 153: 2009(3) JLJ 276.*

– **Section 86(2)** – Object of provision is to ensure that if the Panchayat fails to perform any particular duty conferred on it under the Act despite directions issued by State Government or prescribed authority u/s 86(1) – State Government or prescribed authority must have the required powers to get the directions complied with and when State Government or prescribed authority exercises such necessary powers, it will be deemed as if Panchayat has exercised its powers under the Act: *Pawan Rana Vs. State of*

*M.P., I.L.R. (2009) M.P. 2752: AIR 2010 MP 1: 2009(4) MPLJ 66: 2009(4) MPHT 377: 2009(IV) MPJR 153: 2009(3) JLJ 276.*

– **Section 87(1) & 86(2)** – A drastic measure contemplated by the legislature against a Panchayat and can be resorted to strictly in the circumstances mentioned in Section 87(1) and not otherwise and these circumstances are different from those mentioned in Section 86(2): *Pawan Rana Vs. State of M.P., I.L.R. (2009) M.P. 2752: AIR 2010 MP 1: 2009(4) MPLJ 66: 2009(4) MPHT 377: 2009(IV) MPJR 153: 2009(3) JLJ 276.*

– **Section 122** – Election Petition – In absence of notification of election no Election Petition can be filed – Election Petition filed prior to notification under Rule 22– Nirvachan Niyam Not liable to be taken up for consideration as being incompetent: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291: 2001(2) MPLJ 419: 2001(2) MPHT 242: 2001(II) MPJR 174.*

### **Panchayat Service (Discipline and Appeal) Rules, M.P., 1999**

– **Rule 7** – Suspension – Opportunity of hearing – Criminal Case – Suspension of the Gram Panchayat Secretary – No prior notice or opportunity of hearing before suspension of the Gram Panchayat Secretary or for that matter withdrawal (de-notified) of such charge given to the Panchayat Karmi, is required to be given by the Competent Authority to the Concerned employee much less who is facing serious criminal case: *Chandrapal Yadav Vs. State of M.P., I.L.R. (2016) M.P. 2425: 2016(1) MPLJ 685: 2016(III) MPJR 22: 2016(II) MPJR 180: 2016(1) JLJ 158.*

### **Partition**

– **Joint family property** – *Karta* – Power of, to effect partition: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur, I.L.R. (1971) M.P. 1: AIR 1970 MP 33: 1969 MPLJ 808: 1969 JLJ 933: 1969 RN 528. (Special Bench)*

### **Partnership**

– **Legal Connotation of:** *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196: AIR 1978 MP 116: 1978 MPLJ 351: 1978 JLJ 302.*

### **Payment of Bonus (XXI of 1965)**

– **Section 21** – Mode for recovery under this provision – Available only if Bonus is claimable under a settlement or an Award or agreement: *Junior Labour Inspector*

*(Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21** – Mode for recovery under this provision – Available only if Bonus is claimable under a settlement or an award or agreement – Section 22 – Bonus covered under this provision if two tests are fulfilled: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21 & 22** – Claim would be determinable by normal procedure: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21 & 22** – Complicated questions in proceedings before the authority – Authority has no jurisdiction to decide the question: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21 & 22** – Dispute covered under Section 22 – Remedy would not be under Payment of Wages Act – Question to be referred for adjudication under Industrial Disputes Act – Complicated questions in Proceedings before the authority – Authority has no jurisdiction to decide the question – Claim would be determinable by normal procedure – Does not provide any mode for recovery of amount payable under the Act: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21 & 22** – Does not provide any mode for recovery of amount payable under the Act: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 21 & 22** – Question to be referred for adjudication under Industrial Disputes Act: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

– **Section 22** – Bonus covered under this provision if two tests are fulfilled: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages*

*Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842: 1976 MPLJ 23: 1976 JLJ 21.*

### **Penal Code Indian (XLV of 1860)**

– **Section 153-A** – Order of forfeiture passed under Section 99-A, Criminal Procedure Code – Cannot be maintained on grounds not mentioned in the order: *Ram Lal Puri Vs. State of M.P., I.L.R. (1973) M.P. 1: AIR 1971 MP 152: 1971 JLJ 247: 1971 MPLJ 388.*

– **Section 295-A** – Ingredients of Section 295-A – Test to be applied to determine whether matter is provocative – Test is not of an abnormal or hypersensitive man but of ordinary man of ordinary common-sense: *Ram Lal Puri Vs. State of M.P., I.L.R. (1973)M.P. 1: AIR 1971 MP 152: 1971 JLJ 247: 1971 MPLJ 388.*

– **Section 295-A** – Motive even though proselytisation cannot be considered as objectionable – To determine intention of author – Couplets not to be read in isolation but in the context of the entire story: *Ram Lal Puri Vs. State of M.P., I.L.R. (1973)M.P. 1: AIR 1971 MP 152: 1971 JLJ 247: 1971 MPLJ 388.*

– **Section 295-A** – Requirement of – Criminal Procedure Code – Section 99-A– High Court, Power of, to review action of Government in the matter of forfeiture of book – Book giving objective picture of happenings in remote past without comment and based on historical fact – Book cannot come within mischief of section 295-A, Indian Penal Code – Cannot be forfeited under section 99-A, Criminal Procedure Code – Conditions necessary for exercise of power of forfeiture – Ingredients of section 295-A – Test to be applied to determine whether matter is provocative – Test is not of an abnormal or hypersensitive man but of ordinary man of ordinary common-sense – Motive even though proselytisation cannot be considered as objectionable – To determine intention of author – Couplets not to be read in isolation but in the context of the entire story – Indian Penal Code – Section 153-A – Order of forfeiture passed under section 99-A, Criminal Procedure Code – Cannot be maintained on grounds not mentioned in the order – Constitution of India – Article 25 – Guarantee under , does not take away power of State to legislate and act for maintenance of peace: *Ram Lal Puri Vs. State of M.P., I.L.R. (1973) M.P. 1: AIR 1971 MP 152: 1971 JLJ 247: 1971 MPLJ 388.*

– **Section 300, Exceptions & 302** – Intention & Motive– Held, although the attack on deceased was not pre-meditated and the incident occurred on the spur of moment but there is nothing to infer that accused acted under any grave and sudden provocation or the case fell under any exceptions to Section 300 IPC – Repeated stabbing

by accused (4 blows on chest), the nature of weapon used (Gupti) and the gravity of injuries caused by him shows that he intended to and did cause death of deceased – Further, there are not so major discrepancies in evidence regarding weapon used and place of occurrence – Action is squarely covered under the definition of murder u/s 300 and punishable u/s 302 IPC: *Magan Vs. State of M.P., 1999 CrLR (MP) 95.*

– **Section 302** – Related Witness – Held, some prosecution witnesses are relative witnesses and there are some embroideries and embellishment in their testimony, but merely because they are close relatives of deceased, they cannot be branded as interested or partisan witnesses nor it is ground to discard their whole evidence as unreliable – No previous enmity of these related witnesses with the accused: *Magan Vs. State of M.P., 1999 CrLR (MP) 95.*

– **Sections 302, 397 & 404** – Offences committed in the course of same transaction – Accused found guilty of offences under Section 302 and 404 – Passing of separate sentences for each offence is necessary – Gwalior State Protection of Children Act – Constitution, Article 254 (1) – Section 10 of Protection of Children Act of Gwalior repugnant to provisions of Indian Penal Code made applicable to Gwalior by Act 3 of 1951 – Section 10 void under Article 25(1) of Constitution: *Lalla Vs. The State, I.L.R.(1959) M.P. 125.*

### **Police Regulations, Central Province & Berar, 1961**

– **Regulation No. 241** – Enquiry officer cannot act as appellate authority over criminal Court: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738: 1975 MPLJ 429: 1975 JLJ 569.*

– **Regulation No. 241** – Police officer acquitted because case has not been proved – Departmental enquiry can be held on a different charge though arising out of same set of facts: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738: 1975 MPLJ 429: 1975 JLJ 569.*

– **Regulation No. 241** – Police Officer acquitted by criminal Court on technical ground or by giving benefit of doubt or facts in the case showing that the officer is undesirable in Government service – Departmental enquiry can be held on those very charges – Police Officer acquitted because case has not been proved – Departmental enquiry can be held on a different charge though arising out of same set of facts – Enquiry officer cannot act as appellate authority over criminal Court: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738: 1975 MPLJ 429: 1975 JLJ 569.*



### **Police Regulations, Madhya Bharat**

– **Regulation 246 & 247** – Ingredients & Scope – Distinction – Held, Rule 246 would apply in case where a Police Officer is sentenced to rigorous imprisonment, where the competent authority has no option but to dismiss him whereas according to Rule 247, in case of simple imprisonment, the departmental authority has discretion to dismiss him or not to dismiss him according to facts and circumstances of each case: *Dinkarrao Gangaram Vs. State of M.P.*, AIR 1977 MP 13: 1976 MPLJ 848: 1976 JLJ 891.

### **Policy Matters**

– **Policy Matters** – Judicial review – Law discussed: *Chingalal Yadav Vs. State of M.P.*, I.L.R. (2010) M.P. 788: 2010(IV) MPJR 297: 2010(2) MPLJ 443: 2010(3) JLJ 360: 2010(2) MPHT 251.

### **Practice**

– **Division Bench while making an order for reference observed that case to be heard by Full Bench of Five or more Judges** – Not appropriate to the Bench to indicate that what should be the strength of the Full Bench which the Chief Justice may be called upon to constitute – Division Bench should have indicated that judgment requires reconsideration by Larger Bench or Full Bench leaving it to Chief Justice to decide the strength of Bench: *S.P. Anand Joara Compound, Indore Vs. Hon'ble Mr. S.K. Jha, C.J. High Court of M.P.*, JBP, I.L.R. (1994) M.P. 7: AIR 1994 MP 195: 1994 MPLJ 531: 1994 JLJ 459: 1994(5) Serv LR 320.

### **Practice & Procedure**

– **Conflicting Judgments** – Held – Even if there is conflict between the two judgments of the Supreme Court by the equal strength, even then the earlier view would be binding precedent and will prevail if the earlier judgment was not brought to the notice of the Court in a later judgment: *Ashutosh Pawar Vs. High Court of M.P.*, I.L.R. (2018) M.P. 627: 2018(2) MPLJ 419: 2018(1) JLJ 169: 2018(II) MPJR 178.

### **Practice and Rule**

– **Rule 3-A** of M.P. Govt. Servants (Temporary and quasi-Permanent Service) Rules, 1960 – Validity of an order has to be Judges by reasons so mentioned and not by fresh reasons in the shape of affidavits or otherwise: *Samaru Das Banjare Vs. State of M.P.*, I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.

### **Precedent**

– **Conflict between the decisions** – No conflict between the decisions rendered in the case of Vishwanath Prasad vs. Board of Revenue [1964 MPLJ SN 38] and Mangilal vs. State of M.P. & Ors. [1995 RN 67] as the factual matrix on the basis of which the two judgments were rendered was totally different and that the Division Bench in the Case of Mangilal on that count has rightly distinguished the case of Vishwanath Prasad: *Kala Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 575: 2011(1) MPLJ 547: 2011(1) MPHT 408.*

– **One Division Bench** – No power to ignore decision of another Division Bench– Proper remedy to refer case to Full Bench: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President., Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JLJ 93.*

### **Presumption**

– **Central and State Legislatures** – Presumed to act in harmony: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax. M.P., I.L.R. (1976) M.P. 577: 1975 MPLJ 254: 1975 RN 483: 1975 JLJ 836.*

### **Prevention of Food Adulteration Act (XXXVII of 1954)**

– **Sections 7, 16 & 13 (2)** and Prevention of Food Adulteration Rules, 1955, Rule 20 – Inadequate Addition of Preservative – Effect – Held, if evidence shows that even though technically the prescribed quantity of preservative is not added but substantial compliance of the Rule is made by adding sufficient quantity of preservative to sample of food meant for analysis and the sample of food is found in a fit condition for analysis by the public Analyst at the request of the Food Inspector and by the Director of Central Food Laboratory at the request of the accused at the time of analysis, then a slight deviation in addition of preservative cannot be fatal for prosecution under the Act: *A.N. Apte Vs. Mohammad Amir Khajarana, 1974 MPLJ 241: 1977 JLJ 478.*

**Sections 7, 16 & 13 (2)** and Prevention of Food Adulteration Rules, 1955, Rule 20 – Inadequate Addition of Preservative & Delay in Prosecution – Effect–Held, delay alone in prosecuting the accused/vendor, cannot be fatal for prosecution unless it is established that because of delay attributable to prosecution agency only, any right of accused to get the sample analysed is denied to him – In normal circumstances, accused vendor should be informed about his prosecution either within 3 or 4 months of taking of the sample or within such period which would enable him to exercise his right u/s 13(2)

of the Act to get the sample food analysed at the earliest possible opportunity: *A.N. Apte Vs. Mohammad Amir Khajarana*, 1974 MPLJ 241: 1977 JLJ 478.

– **Sections 7, 16 & 13 (2)** and Prevention of Food Adulteration Rules, 1955, Rule 20 – Deviation in Quantity of Preservative & Delay in Prosecution – Effect–Held, a slight deviation from the observance of the Rules about the quantity of formalin to be added will not have any effect on the delay in launching the prosecution unless it is established that the delay and/or the inadequate addition of formalin has resulted in the denial or frustration of the statutory right under section 13(2) of the Act given to the accused to have the sample of food analysed: *A.N. Apte Vs. Mohammad Amir Khajarana*, 1974 MPLJ 241: 1977 JLJ 478.

– **Section 13(2)** and Prevention of Food Adulteration Rules, 1955, Rule 9 - A – Provisions of Section 13(2) and Rule 9-A – Are not mandatory but are directory: *Food Inspector, Nagari Palika, Mandsaur Vs. Devilal*, I.L.R. (1985) M.P. 127: 1985 JLJ 195.

– **Section 13(5)** – Value to be attached to report of Public Analyst – Dependent upon circumstances of the case – Does not indicate that report would be admissible only if it is obtained in the manner prescribed by the Rules – Evidence Act – Section 114– Illustration (e) –Applies to the report of the Public analyst – Presumption is rebuttable– Prevention of Food Adulteration Rules, 1955 – Rules 7 and 18 – Report not inadmissible because of lack of proof of compliance of Rules 7 and 18: *The State of M.P. Vs. Chhotekhan*, I.L.R. (1971) M.P. 197: AIR 1970 MP 29: 1969 MPLJ 732: 1969 JLJ 876: 1970 CriLJ 238.

### **Prevention of Food Adulteration Rules, 1955**

– **Rule 7 & 18** – Report not inadmissible because of lack of proof of compliance of rules 7 and 18: *The State of Madhya Pradesh Vs. Chhotekhan*, I.L.R. (1971) M.P. 197: AIR 1970 MP 29: 1969 MPLJ 732: 1969 JLJ 876: 1970 CriLJ 238.

### **Price Fixation**

– **Price fixation** – Is in nature of legislative measure: *State of Madhya Pradesh Vs. Ramcharan*, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.

### **Provincial Small Cause Courts Act (IX of 1887)**

– **Section 16** – Suit of small cause nature – Suit tried and decided by ordinary civil Court – Decision is not without jurisdiction – Civil Procedure Code – Order 46, rule 7–High court in control of the case – High Court can pass fresh decree – Even though

original Court having no jurisdiction had passed the decree – Decree passed by High Court – Is effective by its own force: *Tikaram Vs. Bhaiyalal*, I.L.R. (1972) M.P. 630: AIR 1970 MP 237: 1970 MPLJ 622: 1970 JLJ 858.

### **Public Interest Litigation**

– **Can PIL be entertained on the basis of information in the newspapers**– Normally, a PIL cannot be entertained solely on the basis of information published in the newspapers but if the Chief Justice or a Judge designate finds that a particular information published in the newspapers reveals gross violation of a fundamental right guaranteed under Part-III of the Constitution of a person who does not have ready access to the court for some incapacity or the other, particularly the right to life and liberty granted under Article 21 of the Constitution, and the Chief Justice or a Judge designate has reason to believe the information to be true, a PIL can be entertained only on the basis of such information published in the newspapers for the same reasons as have been given by the Supreme Court in *Bandhua Mukti Morcha* (AIR 1984 SC 802) for entertaining a letter petition: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur*, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105.

– **Payment of Court Fees** – Held – Court fees are payable on a PIL filed as a writ petition under Article 226 of the Constitution, except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that it is a fit case for registering a case under Article 226 of the Constitution even though no court fee is paid on such letter or document: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur*, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105.

## **(R)**

### **Railways Act, Indian (IX of 1890)**

– **Section 72** and Indian Contract Act, 1872, Section 73 – Delay in Delivery of Goods – Liability for Compensation– Held, it is difficult to make the Railway responsible for such a loss which appears to have been caused by the action of the Central Government – Section 73 of Contract Act refers to the damages which occur in the usual course of things from the breach complained of – Loss due to fixation of price of *Gur* by Government cannot be said to have occurred in the usual course of things from the breach – Plaintiff cannot claim damages as the loss is not due to the act of defendant/ Railway

but due to the action of Government during the material period – Claimant not entitled for compensation: *Kishanlal Shrilal Patwa Vs. Union of India 1961 JIJ 640.*

– **Section 72** and Indian Contract Act, 1872, Section 73 – Delay in Delivery of Goods – Depreciation – Held, the goods had suffered depreciation – It is one of the forms of deterioration, for the purposes of Sections 72 of the Indian Railways Act and 161 of the Indian Contract Act: *Kishanlal Shrilal Patwa Vs. Union of India 1961 JIJ 640.*

### **Ravishanker University Act (XIII of 1963)**

– **Statute 22(3)(iii)** – Authorises university for prescribing or service conditions– Service conditions have force of law: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JIJ 93.*

– **Statute 22(3)(iii)** – framed thereunder– Governing body not authorised to terminate services of Principal without obtaining approval of University: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JIJ 93.*

– **Section 23 & 35** – Ordinance No. 20 – Has force of law: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JIJ 93.*

– **Section 23 & 35** – Ordinance No. 20 – Relation of servant governed by statute – Servant can invoke writ jurisdiction for enforcing right – In case of contractual relationship – Remedy is suit – Writ jurisdiction can be invoke even if power conferred is discretionary: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JIJ 93.*

– **Section 23 & 35** – Ordinance No. 20 – Teacher can enforce right granted by the provision – Provides safeguard to Principal against termination of service: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298: 1975 MPLJ 290: 1975 JIJ 93.*

### **Recovery of Debts Due to Banks and Financial Institutions Act (LI of 1993)**

– **Collection of evidence on affidavit and production of witness** – If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has

sworn an affidavit – Regulation 31, 32 are *intra vires* – Do not transgress the limits stipulated under Section 22 – Rule 12(6) – Bar of jurisdiction – There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to – Availability of alternative remedy – No inflexible rules for exercise of discretion by High Court – Depends upon on facts of each case: *M/s. P.C.C. Construction Company Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172: 2003(1) MPJR 260.*

– **Sections 17, 17-A, 18, 20 & 22** Debts Recovery Tribunals Regulation of Practice Rules 1998, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants – Rejection – Writ petition – Appeal – Word “an” and ‘any’ – There is no difference between the two terms – Expressions used in Sections 17 and 20 are not repugnant to each other: *M/s. P.C.C. Construction Company Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172: 2003(1) MPJR 260.*

– **Section 17(2) & 20(1)** – Appeal against interim orders – Held, Section 17(2) uses the word “any order made” and Section 20(1) uses the word “an order made” – There is no difference between the two terms namely “any” and “an” – Expressions used in Section 17 and Section 20 are not repugnant to each other – Thus, appeal lies against interim orders which substantially affects the rights of parties and those words are not confined to an order which finally disposes the application before the Tribunal.: *Kowa Spinning Ltd. & Ors Vs. Debt Recovery Tribunal & Ors., 2003(1) JLJ 410: 2003(2) MPLJ 161: 2003(2) MPHT 114: AIR 2004 MP 1: 2004 AIHC 122.*

– **Section 17(2) & 20(1)** and Constitution, Article 226/227 – Jurisdiction – Recovery Proceedings – Appeal & Alternative Remedy–Held, petitioner filed application seeking grant of privilege to cross-examine deponent which was declined – Grievance pertains to refusal of permission of cross examination – Appeal lies before the Appellate Tribunal – If rights or liabilities of petitioners have been substantially affected, they may approach the Appellate Tribunal– Further, there is no bar for entertaining a writ petition under Article 226/227 wherean alternative remedy has not been taken resort to: *Kowa Spinning Ltd. & Ors Vs. Debt Recovery Tribunal & Ors., 2003(1) JLJ 410: 2003(2) MPLJ 161: 2003(2) MPHT 114: AIR 2004 MP 1: 2004 AIHC 122.*

### **Reference made by Division Bench to Full Bench**

– **Full Bench declined to answer the reference on the ground that when the question under reference was not involved before the referring Bench, it need not be answered:** *Director General, Indian Council of Medical Research, New Delhi Vs. Dr. S.C. Dixit, I.L.R. (2007) M.P. 1293: 2007(4) MPHT 525: 2008(1) MPLJ 211.*

### **Reformatory Schools Act (VIII of 1897)**

– **Section 4(a)** – Persons punished for an offence for which highest punishment provided is transportation or imprisonment for life – Persons does not fall within the definition of “youthful offender”: *Sibbu Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 709: AIR 1968 MP 97: 1968 MPLJ 33: 1968 JLJ 40: 1968 CriLJ 631.*

– **Section 4(a)** – Word “transportation” in – Means “imprisonment for life” in view of the provision of Section 53 and 53A of Penal Code – Persons punished for an offence for which highest punishment provided is transportation or imprisonment for life – Person does not fall within the definition of “youthful offender”: *Sibbu Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 709: AIR 1968 MP 97: 1968 MPLJ 33: 1968 JLJ 40: 1968 CriLJ 631.*

### **Registration Act, Indian (XVI of 1908)**

– **Does not bar registration of deed insufficiently stamped** – Officer examining the deed to see whether it is duly stamped or not – Officer does not do functions under the Act: *Komalchand Vs. The State of MP, I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

– **Section 17(1)(d)** – Leases under Section 107, Para 1, Transfer of Property Act Leases compulsorily registrable – Other type of leases if reduced to writing – Such leases require registration as per para 2 of Section 107, Transfer of Property Act read with Section 4 para 2 which makes Section 54(2) and (3), 59, 107 and 123, Transfer of Property Act – Supplemental to Registration Act – Registration Act – Section 49 – Unregistered lease-deed – Admissible to prove collateral transaction or collateral purpose – Nature and character of possession or relationship of landlord and tenant or by the side of or distinct from main purpose of lease – Unregistered lease – Admissible to prove nature and character of possession and status of a person as tenant – Cannot be used to prove period of lease of the rent – Evidence Act – Section 91 – Excludes oral evidence regarding terms of document, but not evidence regarding relationship of landlord and tenant: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809: AIR 1975 MP 230: 1975 MPLJ 633: 1975 JLJ 667.*

– **Section 49** – Nature and character of possession or relationship of landlord and tenant are by the side of or distinct from main purpose of lease: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809: AIR 1975 MP 230: 1975 MPLJ 633: 1975 JLJ 667.*

– **Section 49** – Unregistered lease – Admissible to prove nature and character of possession and status of a person as tenant – Cannot be used to prove period of lease or the rent: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809: AIR 1975 MP 230: 1975 MPLJ 633: 1975 JLJ 667.*

– **Section 49** – Unregistered lease-deed – Admissible to prove collateral transaction or collateral purpose: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809: AIR 1975 MP 230: 1975 MPLJ 633: 1975 JLJ 667.*

### **Registration Manual**

– **Paragraph 231** – Does not empower authority to make report to Collector: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

– **Paragraph 232** – Words “after registering the document” in – Refer to the entry of deed in the register maintained of document presented for registration: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

### **Regulation of Letting of Accommodation Act, Central Provinces and Berar, 1948**

– **Section 2** – Rent Control Order – Clause 13(8) – Sub-clause (8) does not go beyond provision of Section 2 of Parent Act – Rent Controller – Power of, to make order regarding portion of house: *Nathulal Vs. Ratansi, I.L.R. (1957) M.P. 494: AIR 1958 MP 218: 1957 MPLJ 805: 1957 JLJ 1157.*

### **Release of Prisoners on Probation Act, M.P. (XVI of 1954)**

– **Section 2** – Formation of Opinion – Relevant Consideration – “Antecedents” – Held, the word “antecedents” relates to the period prior to the commission of the crime, the circumstances under which the crime was committed and the period subsequent to the commission of the crime. Conduct in prison being antecedent to the conviction, would be relevant – The expression “his antecedents” by itself is capable of comprehending within its ambit “his conduct in prison” also since “antecedents” would mean “antecedent to the consideration by the State Government of the prisoner’s request for release” – Legislature evidently desired to give due importance to “conduct in Prison”: *Gangacharan Vs. State of M.P., 1994 MPLJ 792: 1994 JLJ 795: 1994(II) MPJR 1.*

– **Section 2** & Constitution, Article 226 – Interim Release–Held, in a writ petition challenging the rejection of application for release on licence, orders cannot be



passed for interim release because it would be against the scheme and purport of the Act, particularly in cases where the prisoners have been convicted for serious crimes or crimes affecting public well-being. Release can follow only after due consideration of all aspects referred to earlier and having regard to materials and opinions furnished by the reporting officers and the Board. It would be wholly inappropriate for the Court to pass an interim order of release, at any rate, without regard to such materials: *Gangacharan Vs. State of M.P.*, 1994 MPLJ 792: 1994 JLJ 795: 1994(II) MPJR 1.

– **Section 2 & 9**, Prisoners Release on Probation, Rules, Madhya Pradesh, 1964, Rule 4 – Question whether amendment in Rule 4 is *ultra vires* the rule making power of the State Government under section 9 of the Act – Held – The long title of the Act clearly indicates that the intention of the Act is to extend the benefit of release on probation for good conduct in prison only to 'certain prisoners' and not to all – Under rule making power conferred under section 9, particularly sub-section (4), the State Government can frame rules defining the classes of offenders who may be conditionally released and the periods of imprisonment after which they may be so released – The amended Proviso to Rule 4 cannot be held as beyond the rule making power of the State Government and is *ultra vires*: *Anni @ Ramesh Vs. State of M.P.*, I.L.R. (2010) M.P. 1687: 2010(4) MPHT 302.

– **Section 2 & 9** – M.P. Prisoners Release on Probation Rule (1964) – Rule 4 – For the purpose of deciding eligibility under Rule 4 – Besides the period of sentence actually undergone after the date of conviction, the period of under trial detention has also been reckoned – Decision in *Ramsewak's case* does not lay down the correct law: *Rajendra Kumar Vs. State Govt. of M.P.*, I.L.R. (1995) M.P. 460: 1995 MPLJ 9: 1995 JLJ 16.

– **Section 2 & 9(4)** and Prisoners Release on Probation Rules M.P., 1954, Rules 6, 3 – Explanation – State Government or Probation Board not acting arbitrarily, capriciously or with *mala fides* – Order cannot be challenged in writ under Article 226 of Constitution – Prisoner debarred from making second application for release – However State Government can give direction: *Lalji Vs. State of M.P.*, I.L.R. (1989) M.P. 567: AIR 1988 MP 82: 1988 MPLJ 127: 1988 JLJ 407.

### **Release of Prisoners on Probation Rules, M.P., 1964**

– **Rule 3** – Prisoner debarred from making second application for release – However, State Government can give direction: *Lalji Vs. State*, I.L.R. (1989) M.P.567: AIR 1988 MP 82: 1988 MPLJ 127: 1988 JLJ 407.

– **Rule 3(a) & 4** – Release of prisoners on license – Prisoners convicted for certain offences ineligible for release on license – Petitioner convicted under Section 302 and 394 read with Section 397 of I.P.C. – Application for release on license rejected on the ground that petitioner is ineligible for release under Rules 3(a) – Held – Sentence imposed on Petitioner was to run concurrently – Petitioner already undergone the sentence imposed for offence under Sections 394 and 397 of I.P.C. – Petitioner eligible for release on license under Rule 4 as they cannot be regarded as undergoing sentence thereunder though were undergoing sentence under Section 302 of I.P.C. – Respondents directed to consider their application for release on probation treating them eligible for purposes of Rule 4: *Bhagwat Sharma Vs. State of M.P., I.L.R. (1994) M.P. 302: 1995 MPLJ 538: 1995 JLJ 335: 1995(I) MPJR 89.*

– **Rule 3(c)** – Powers of State Government – Suo Motu Directions – Held, Rule 3(c) lay down a clear embargo on the release of those prisoners whose applications for release on licence were already considered and rejected by the Government of a previous occasion – As per Explanation to Rule 3(c), a prisoner whose applications for his release on licence were considered and rejected by the Government on a previous occasion, is precluded from making a second application for his release on licence – But the rule contained in clause (c) does not preclude the Government itself from exercising its discretion and issuing a *suo motu* direction to the Inspector General of Prisons to place the case of any such prisoner before the Probation Board for reconsideration whose applications have been previously rejected: *Ramjiya @ Ramjilal Vs. State of M.P., 1989 MPJR HC 616.*

– **Rule 3(c)** and Constitution, Article 226 – Second Application – Maintainability & Scope – Held, as per Rule 3(c) read with the explanation, the prisoner is precluded from making a second application with a simpliciter prayer for reconsideration of his case without anything else – But where the order itself rejecting his application for release on licence, is attacked or challenged in a petition under Article 226 of the Constitution, the High Court has jurisdiction to go into the question and if it finds, the order to be bad on any grounds, it may quash the same and issue necessary writ or direction to State Government and its officers concerned to decide the case afresh – Even in such cases there is no question of applying the second time, as after the order itself is quashed, it is the same application which is revived and which has to be decided afresh according to writ or direction given by the High Court – The bar is attracted only in applying the second time and reconsideration of the case on such second application, but not in reconsideration of the very same application which is revived after the order rejecting it is quashed with a direction to decide afresh: *Ramjiya @ Ramjilal Vs. State of M.P., 1989 MPJR HC 616.*

– **Rule 4** – See – Prisoners' Release on Probation Act, Madhya Pradesh, 1956, Sections 2, 9: *Anni @ Ramesh Vs. State of M.P.*, I.L.R. (2010) M.P. 1687: 2010(4) MPHT 302.

– **Rule 4** and Constitution, Article 226 – Scope & Jurisdiction – Held, where it is found that while deciding the application of any prisoner for his release on licence under the Act and the rules made thereunder, the State Government, its concerned officer, authorities or the Probation Board, have acted arbitrarily, capriciously and *mala fide* ignoring the aforementioned principles then in all such cases as well as in any other fit and proper case, a High Court can certainly intervene by exercising its jurisdiction under Article 226 of the Constitution and issue a suitable writ or direction to the Government, its officers or public authority concerned, to compel the performance in a proper and lawful manner: *Ramjiya @ Ramjilal Vs. State of M.P.*, 1989 MPJR HC 616.

### **Relief of Indebtedness Act, Central Provinces and Berar (XIV of 1939)**

– **Section 13(3)** – Deputy Commissioner mentioned in – A Revenue officer and not a *Persona designata*: *Ram Milan Vs. Bansilal*, I.L.R. (1958) M.P. 131: AIR 1958 MP 203: 1958 MPLJ 446: 1958 JLJ 481.

### **Rent Control Order**

– **Clause 13(8)** – Sub-clause (8) does not go beyond provision of Section 2 of Parent Act: *Nathulal vs Ratansi*, I.L.R. (1957) M.P. 494: AIR 1958 MP 218: 1957 MPLJ 805: 1957 JLJ 1157.

### **Rent Controller**

– **Power of, to make order regarding portion of house** – *Nathulal vs Ratansi*, I.L.R. (1957) M.P. 494: AIR 1958 MP 218: 1957 MPLJ 805: 1957 JLJ 1157.

### **Representation of the People Act (XLIII of 1951)**

– **Section 90(5)** – Petitioner, when can be allowed to give particulars or instances of corrupt practice: *Shri Babulal Sharma Vs. Shri Brijnarayan Brijesh*, I.L.R., (1958) M.P. 22: AIR 1958 MP 175: 1958 JLJ 98: 1959 MPLJ 906.

### **Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)**

– **Section 11** – Appeal against order determining compensation payable in respect of property requisitioned – *Ad valorem* Court fees under Section 8 of Court fees Act read

with Article 1-A is payable and not the fixed Court fee under Article 11 of Schedule 2: *Union of India Vs. Smt Kanti Sharma, I.L.R. (1998) M.P. 801: 1998(2) JLJ 310: 1998(2) MPLJ 658.*

### **Review**

– **Review Proceedings** – Scope – Held, review proceedings are separate substantive proceedings where the correctness of the judgment or order, or decision given in original or appellate proceedings is questioned – These proceedings are quite independent of the original or appellate proceedings in which the decision sought to be reviewed was given: *Thakur Himmatsingh Vs. Board of Revenue, M.P. & Anr. 1966 MPLJ 170: AIR 1966 MP 43: 1966 JLJ 119.*

– **Review Proceedings** – Exercise of Power – Held, power to entertain a review petition and allow it must be conferred by Statute and can be exercised only within the limitation prescribed by the Statute for the exercise of that power: *Thakur Himmatsingh Vs. Board of Revenue, M.P. & Anr. 1966 MPLJ 170: AIR 1966 MP 43: 1966 JLJ 119.*

### **Revision of Pay Rules, M.P., 1983**

– **Rule 3 and Annexure II, Part B** – Held, the observations in Laxminarayan’s case M.P. No. 2074/83 decided on 24.04.85 (M.P.) that higher scale of pay will be operative for those incumbents who have joined their services with effect from 05.03.83 and who are Higher Secondary with Patwari Training Certificate pass, was not a matter in issue in that petition nor it was required to be decided and is therefore an *obiter* and not binding on the Division Bench which is now required to decide this question: *Om Prakash Vs. State of M.P., 1988 MPLJ 473: 1988 JLJ 405.*

### **Revision of Pay Rules, M.P., 1990**

– **Rule 7(1)** – Govt. servant gets benefits of two advance increments when pay is fixed in revised scale above pre-fixation emoluments – Once pay is fixed in accordance with Sub-Rule (1) of Rule 7, Government Servant cannot claim any further benefit in the event of his promotion or payment of higher scale of pay: *State of Madhya Pradesh Vs. R.K. Chaturvedi, I.L.R. (2006) M.P. 655: 2006(2) MPLJ 374: 2006(2) MPHT 281: 2007(1) MPJR 139: 2006(2) JLJ 143.*

### **Revocation of Land Revenue Exemption Act, C.P. & Berar (XXXVII of 1948)**

– **Section 5(3)** – Word “may” in – Has no compulsory force – Gives discretion to State Government to determine nature of grant and not a discretion to make a grant at all:

*Sardar Govindrao Vs. The State of M.P. I.L.R. (1959) M.P. 172: AIR 1959 MP 339: 1959 MPLJ 639: 1959 JLJ 407.*

### **Road Transport Corporation Act (LXIV of 1950)**

– **Section 45(2)(c)** Road Transport Corporation Employees Service Regulations, MP Regulation 59 and Constitution, Article 254(2) & Union List Entries 43 & 44 – Whether the employees of the MPSRTC are governed by the Regulations made under the Act of 1950 or Rules made under the Act of 1961 – Held:-

- (1) (a). The essential subject matter of the Act of 1950 falls within the purview of Entries 43 and 44 of the Union list – It is valid being within the Parliament’s legislative competence;
- (b). Regulations made by MPSRTC (after obtaining State Government’s sanction) in exercise of the delegated powers u/S 45 of the Act of 1950 are valid – They have the same effect as if part and parcel of the Act itself;
- (c). However, Regulations made by the MPSRTC with sanction of State Government cannot be said to be “made by parliament” within the meaning of Article 254(2).
- (2) (a). Subject matter of M.P. Industrial Employment (Standing Orders) Act, 1961 falls within purview of Entry 24 of Concurrent list and is valid, being within State Legislature’s competence and it was validly applied to MPSRTC on July 6, 1963.
- (b). The Standing Order Rules, 1963 made by State Government in exercise of delegated powers u/S 21 of the Act of 1961 are valid and are validly applied in MPSRTC.
- (3) (a). Such provisions of the Corporation Act and Regulations made under them and also of Standing Orders Act and the Standing Order Rules, must be given effect to simultaneously, as can stand together – In case of any apparent conflict, it is duty of Court to so interpret them that they harmonise.
- (b). If any provision contained in Corporation Act or the Regulations made under it, the subject matter of which falls within the Union List is repugnant to provisions contained in Standing Orders Act, or the Rules made under it, the former will prevail in every case.

- (c). If any provision contained in Corporation Act or the Regulations made under it, the subject matter of which falls within the Concurrent List (e.g. conditions of service of employees) is repugnant to provisions contained in the Standing Orders Act or the Rules made under it, the latter will prevail, in as much as the Standing Orders Act has received the assent of President and Corporation Act is an earlier law made by Parliament.
- (4). There is no repugnancy between the Regulation 59 and Rule 11 of the Standing Order Rules – Rule 11 lays down the conditions and procedure for terminating the employment of the employees – Regulation 59 prescribes the age of superannuation – Both can stand together, there is no repugnancy.
- (5). The Regulations u/S 45 of Corporation Act must be said to have been made on June 1, 1970.
- (6). No election or option can be given to employees of MPSRTC in absence of any such provision in law.

: *M.P. State Road Transport Corporation, Bhopal Vs. Ramchandra, 1977 MPLJ 341: AIR 1977 MP 243: 1977 J LJ 292.*

– **Section 45(2)(c)** Road Transport Corporation Employees Service Regulations, MP Regulation 59, Industrial Employment (Standing Orders) Act 1946, Section 13-B and MP Industrial Employment (Standing Order) Act 1961, Section 2(2) and Standard Standing Orders 14-A – Scope of: *MP State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 J LJ 16.* (*M.P. State Road Transport Corporation, Bhopal Vs. Ramchandra 1977 MPLJ 341: AIR 1977 MP 243: 1977 J LJ 292 partly overruled*)

### **Road Transport Corporation Employee's Service Regulations, M.P.**

– **Regulation apply to Industrial workmen in respect of matters not covered by Standing order:** *M.P. State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 J LJ 16.*

– **Regulation cannot prevail over matters regulated by Standing Order:** *MP State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 J LJ 16.*

– **Regulation 1** – Not effective before 1st June 1970: *MP State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669: 1980 MPLJ 8: 1980 JLJ 16.*

### Rules

– **Statutory rules as regards conduct of driver of vehicle** – Explanation of: *Narayan Lal Vs. Rukmanibai, I.L.R. (1980) M.P. 807: AIR 1979 MP 74: 1979 MPLJ 405: 1979 JLJ 461: 1979 ACJ 261.*

– **Validity of rules** – How to be determined: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579: 1962 MPLJ 703: AIR 1962 MP 262: 1962 JLJ 997.*

## (S)

### Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1965

– **Rule 18** – One month's pay in lieu of notice – Payment, not a condition precedent– Order not rendered illegal for non payment: *Central Co-Operative Bank Ltd., Raisen Vs. Shibbulal, I.L.R. (1988) M.P. 1: AIR 1988 MP 3: 1987 MPLJ 766: 1988 JLJ 20: 1988(1) Serv LR: 1988(4) Serv LJ 31.*

### Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1977

– **Rule 47** – Dismissal by approving authority of the punishing authority is not without jurisdiction: *The Central Co-operative Bank Ltd., Raisen Vs. The Board of Revenue, I.L.R. (1988) M.P. 251: AIR 1988 MP 1: 1987 MPLJ 768: 1988 JLJ 17.*

### Sales Tax (Central) Act (LXXIV of 1956)

– **Section 14(iv)(d)(iv)** and General Sales-tax Act. M.P. 1958 (II of 1959), Entry No.5 of part I of schedule II–Iron hoops are declared goods falling under Section 14(iv)(d)(iv) and taxable at 3 per cent under Entry 5, part I, schedule II, M.P. General Sales-tax Act, 1958: *M/s. Govindji Jamunadas, Gwalior Vs. The Commissioner of Sales Tax, I.L.R. (1983) M.P. 417: 1983 MPLJ 339: 1983 JLJ 376.*

– **Section 14(iv)(d)(iv)** and General Sales-tax Act. M.P. 1958 (II of 1959), Entry No.5 of part I of Schedule II– Steel strips fall within “Rolled Steel Sections”– Steel strips riveted and painted continue to be the same commercial commodity – Iron hoops are declare goods falling under Section 14(iv)(d)(iv) and taxable at 3 per cent under entry 5, Part I, Schedule II, M.P. General Sales Tax Act, 1958 – Construction of Statute –

Amendment in a statute made to clarify the ambiguity – Useful in construing the earlier provision: *M/s. Govindji Jamunadas, Gwalior Vs. The Commissioner of Sales Tax, I.L.R. (1983) M.P. 417: 1983 MPLJ 339: 1983 JLJ 376.*

### **Sales Tax Act, C.P. and Berar (XXI of 1947)**

– **And Rules made thereunder** – Rule 22 and forms VI and IV – Words “such period or periods” – Refer to quarter or quarters as specified in notice: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **And Rules made thereunder** – Rules 22, 32 & 34 – Cannot that quarter is period prescribed for the definition of turnover in the Act: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 2** – Contract for pressing cotton and for delivery of compressed cotton in a certain kind of packing contract amounts to sale of packing material – Sales Tax payable on sale price of packing material: *The Nimar Cotton Press Vs. The Sales Tax–Officer, Nimar Circle Khandwa, I.L.R. (1960) M.P. 748: AIR 1961 MP 88: 1960 JLJ 1090: 1961 MPLJ 84.*

– **Section 2(G)**, Explanation (ii) – Constitution of India – Article 286 – Tax on sale of goods outside the State prior and subsequent to 26-1-50 – Validity: *M/s. Mullaji Jamaluddin And Co. Vs. The State of M.P., I.L.R. (1957) M.P. 631: AIR 1958 MP 220: 1958 MPLJ 353: 1958 JLJ 410.*

– **Section 2(j)** – “Prescribed period” and “Such period” in – Mean a quarter: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 2(j)** – Words “such period” in definition of taxable turnover – Refers to “prescribed period” in the definition of turnover: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 11(5)** – Calendar year in – Day from which it is to be calculated – Calendar month has two meanings but calendar year has not: *Kanhayyalal Vs. Deputy Commissioner of Sales Tax, M.P., Nagpur, I.L.R. (1958) M.P. 1: AIR 1958 MP 211: 1958 MPLJ 313: 1958 JLJ 344: (1958) 9 STC 503.*

– **Section 11(5)** – Limitation of 3 years to be computed for each quarter separately and for the entire period within which he is liable to pay tax taken as a whole:



*Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 11(5)** – Word “period” – Refers to quarter or quarters which is limit of assessment – Covers the case of dealer who does not apply for registration and does not file return: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975)M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 11(5)** – Words “within three calendar years from the expiry of such period” in – Mean three calendar years from expiry of such quarter for which dealer is liable to pay tax: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975)M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

– **Section 11-C** – To be construed consistent with the right of Successor State to recover arrears of taxes conferred by Section 78 of States Re-organisation Act: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 MPLJ 601: 1974 JLJ 548: 1974 RN 308.*

**Samaj Ke Kamjor Wargon Ke Krishi Bhumi Dharkon Ka Udhar Dene  
Walon Ke Bhumi Hadapne Sambandhi Kuchakron Se Paritran Tatha  
Mukti Adhinyam, M.P. (III of 1977)**

– **Section 2(b), (c) & (f)** – Term “Lender of Money” –Held, the term “lender of money” in Section 2(b) of the Adhinyam embraces within its ambit such persons also who are not by profession or vocation money lenders and are not engaged in the business of money lending – They would not be exempted from the provisions of the Adhinyam if they had advanced loan to the “holder of agricultural land” defined in Section 2(c) of Adhinyam in a single and solitary transaction, if that transaction comes within the mischief of Section 2(f) of the Adhinyam: *Imrat Vs. Lanjua, AIR 1991 MP 135: 1991 MPLJ 164: 1991(I) MPJR 6: 1991 JLJ 23.*

**Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act  
(XXXIII of 1989)**

– **Section 14 & 2(d)** & Criminal Procedure Code, 1974, Sections 6, 193 and 190 –Special Courts – Not functions as Sessions Court – But Court of original jurisdiction – Special Courts can take cognizance as per provisions of Section 190 of code and on private complaints – For taking cognizance committal orders not required– Provisions of section 193 of the code not apply to proceeding under the Act –Though where cognizance has already been taken on the basis of committal orders in police challan and in private

complaints cases – Not necessary for the Special Courts to retrace their steps: *Anand Swaroop Tiwari Vs. Ram Ratan Jatav*, I.L.R. (1995) M.P.478: 1996 MPLJ 141: 1996 JLJ 8: 1995(II) MPJR 137.[Impliedly overruled by Supreme Court in 2000(2) SRJ 287]

### **Selection for Post-Graduate Courses in Medical College of M.P., Rules, 1984**

– **Rule 3-A** – Admission in Post Graduation Course – Foreign Nationals – Eligibility –Held, the consideration in Rule 3A is only of merit and not of other eligibility conditions prescribed for admission to MBBS Course – There is no prohibition to a foreign national who secured admission in MBBS Course and came in merit, to get admission in Post graduation Courses: *Dr. Kirti Deshmankar Vs. Union of India*, AIR 1990 MP 357: 1990 MPLJ 494: 1990 MPJR 786.

– **Rule 3-A** – Admission in Post Graduation Course – Foreign Nationals – “No Objection/Clearance Certificate” –Held, the condition of producing “No Objection” or “Clearance” Certificate with application form for selection or for admission of a foreign student to post graduation courses cannot be considered to be a condition precedent nor it is a mandatory condition, it is neither a qualification nor a condition, but is a formality which has to be complied with before admission: *Dr. Kirti Deshmankar Vs. Union of India*, AIR 1990 MP 357: 1990 MPLJ 494: 1990 MPJR 786.

– **Rule 8.2**, Constitution of India, Article 14 – Admission in Post Graduate Courses – Out of 3 seats in M.S. Ophthalmology Course, one was reserved for Asstt. Surgeon and two were to be filled from Institutional Candidates – One seat was surrendered for All India Post Graduate Quota however the same was released as candidate to whom it was allotted did not accept it – 100% reservation for Institutional Candidates violative of Article 14 of Constitution – Second seat required to be filled in by selecting most meritorious among all eligible candidates – However, Petitioner’s claim that he was meritorious then 4th respondent cannot be accepted – Marks obtained in Qualifying Examinations cannot be basis of assessment – Court would not allow admission to candidate belatedly and disturb others who have already been admitted – Petition dismissed: *Anand Upadhyay Vs. State of Madhya Pradesh*, I.L.R. (1994)M.P. 1: AIR 1994 MP 133: 1994 MPLJ 536: 1994 JLJ 424: 1994(I) MPJR 212.

### **Selection Process**

– **Practice** –Principle of Natural Justice – Member of Selection Committee – Relative of Candidate – Held, whenever there arises an occasion that any member of the Council is a close relative of any candidate appearing for selection, such member should not only not participate in selection of candidate related to him, but he must also

withdraw altogether from the entire selection process and ask the Council to nominate another person in his place in the Council so as to ensure purity of selection and its process – But, in present case, the selected candidate was more meritorious (secured more marks than petitioner) – Such selection is not vitiated: *Dr. Kirti Deshmankar Vs. Union of India*, AIR 1990 MP 357: 1990 MPLJ 494: 1990 MPJR 786.

### **Service Law**

– **Absorption of Employees** – Held, the terms and conditions of an absorbed employee is governed by the terms and conditions of absorption under a statute/ rules/ regulations/ circular – As per the terms and conditions of absorption, the pension/gratuity was payable to the employees absorbed in the Board as per rules/regulations of the society concerned and not of the Board – Therefore, they shall not be entitled to the benefit of pension at par with the employees of the Board: *Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd Vs. Sita Ram Patel*, 2019(4) MPLJ 367.

– **Appointments** – Irregular & Illegal – Difference – Where the persons employed possess the prescribed qualification and working against sanctioned posts, but selected without due process, the appointment is irregular – But where the persons appointed do not possess the prescribed minimum qualification and not working against the sanctioned posts, the appointment is illegal: *Geeta Rani Gupta (Dr.) Vs. State of M.P.*, I.L.R. (2016) M.P. 2148: 2015(4) MPLJ 476: 2018(2) JLJ 268.

– **Authority** – Superintending Engineer is the Disciplinary Authority to take action against the Assistant Engineer who has been promoted under the Time Bound Promotion Scheme in view of the order dated 07.05.1999: *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey*, I.L.R. (2014) M.P. 1698: 2014(1) MPLJ 348: 2014(1) JLJ 92: 2013(5) MPHT 294.

– **Compassionate Appointment** – It would be the obligation of the employer to deal with the application with immediacy and promptitude so that the grievance of a family in distress gets a fair treatment in accordance with law: *Bank of Maharashtra Vs. Manoj Kumar Deharia*, I.L.R. (2010) M.P. 1876: 2011(I) MPJR 19: 2010(3) MPLJ 213: 2010(3) JLJ 300: 2010(4) MPHT 18.

– **Compassionate Appointment** – Policy – When the employer or the Government is at liberty to evolve a scheme for granting such appointment from time to time, then the consideration for appointment has to be made in accordance with the Scheme or Policy that is in existence: *Bank of Maharashtra Vs. Manoj Kumar Deharia*, I.L.R. (2010) M.P. 1876: 2011(I) MPJR 19: 2010(3) MPLJ 213: 2010(3) JLJ 300: 2010(4) MPHT 18.

– **Compassionate Appointment** – Policy – Held, compassionate appointment cannot be claimed as a matter of right as it is not a vested right and the policy prevailing at the time of consideration of the application for compassionate appointment would be applicable: *State of M.P. Vs. Laxman Prasad Raikwar*, 2018(4) MPLJ 657: 2018(3) JLJ 654.

– **Compassionate Appointment** – The grant of compassionate appointment is not a vested legal right – It is only benefit granted in certain circumstances *de hors* the normal rule of appointment and when the employer has a right to evolve an appropriate policy after considering various factors for granting such a benefit, the considerations have to be made in accordance with the policy that is prevailing at that time: *Bank of Maharashtra Vs. Manoj Kumar Deharia*, I.L.R. (2010) M.P. 1876: 2011(I) MPJR 19: 2010(3) MPLJ 213: 2010(3) JLJ 300: 2010(4) MPHT 18.

– **Compassionate Appointment** – State Government Policy, Clause 2.2 – Right of Equality – Entitlement of Married Daughters – Held – Clause 2.2 gives option to living spouse of deceased government servant to nominate son or unmarried daughter – No condition imposed while considering a son relating to marital status, but condition of “unmarried” is affixed for the daughter without any justification – It violates equality clause and cannot be countenanced: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 647: 2020 (1) MPLJ 657: AIR 2020 MP 60.

– **Compassionate Appointment** – State Government Policy, Clause 2.2 – Validity – Entitlement of Married Daughters – Held – Clause 2.2 to the extent it deprives the married daughter from right of consideration for compassionate appointment, is arbitrary and discriminatory in nature and is thus violative of Article 14, 15, 16 & 39(a) of Constitution – Reference answered accordingly: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 647: 2020 (1) MPLJ 657: AIR 2020 MP 60.

– **Compassionate Appointment** – State Government Policy, Clause 2.4 – Validity – Entitlement of Married Daughters – Held – In clause 2.4. government partially recognized the right of married daughter but it was confined to such daughters who have no brothers – Thus, no reason to declare Clause 2.4 as *ultra vires*: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.*, I.L.R (2020) M.P. 647: 2020 (1) MPLJ 657: AIR 2020 MP 60.

– **Daily Rated Employee** – A daily rated employee can be transferred in exceptional cases – Where appointment is made to a project or a scheme and the project or a scheme is itself transferred or shifted the daily rated employee moves alongwith the

project or the scheme to the new place: *Ashok Tiwari Vs. M.P. Text Book Corporation, I.L.R. (2010) M.P. 1032: 2010(III) MPJR 97: 2010(IV) MPJR 335: 2010(2) MPLJ 662: 2010(3) JLJ 227: 2010(2) MPHT 469.*

– **Daily Rated Employee** – A daily rated employee is appointed in a Establishment, Department or the Office – The entire Establishment, Department or the Office is shifted, the 'daily rated employee' moves with Establishment, Department or the Office – Otherwise, a daily rated employee cannot be transferred from one place to another: *Ashok Tiwari Vs. M.P. Text Book Corporation, I.L.R. (2010) M.P. 1032: 2010(III) MPJR 97: 2010(IV) MPJR 335: 2010(2) MPLJ 662: 2010(3) JLJ 227: 2010(2) MPHT 469.*

– **Daily Rated Employee** – Transfer – A daily rated employee is not appointed to a post – His services are not governed by any service rules, cannot be transferred from one place to another – As he does not hold a transferable service: *Ashok Tiwari Vs. M.P. Text Book Corporation, I.L.R. (2010) M.P. 1032: 2010(III) MPJR 97: 2010(IV) MPJR 335: 2010(2) MPLJ 662: 2010(3) JLJ 227: 2010(2) MPHT 469.*

– **Increment** – Held – (A) An employee appointed in accordance with the Recruitment Rules which makes passing of the Hindi Typing Test essential, would be entitled to increment only after passing such test – (B) If the Recruitment Rules are silent with regard to entitlement to the grant of increment on passing the Hindi Typing Test, then in such a case if the requirement of passing Hindi Typing Test is incorporated in the letter of appointment, the employee would be entitled to increment only after passing the Hindi Typing Test – (C) Where the Recruitment Rules provide that preference would be given to the candidate who has passed Hindi Typing Test, in such a case also the employee would not be entitled to grant of increment, if the order of appointment contains such a stipulation. He would be entitled to grant of increment from the date of passing Hindi Typing Test – (D) Where under the policy as well as letter of appointment provide for passing of Hindi Typing Test, in such a case the employee would be entitled to increment only after passing Hindi Typing Test – (E) If an employee has been appointed under the policy either of compassionate appointment or regularization and if policy provides for requirement of passing Hindi Typing Test essential, the concerned employee would be entitled to benefit of increment only after having passed Hindi Typing Test, even in the absence of such a stipulation in the letter of appointment – (F) The decision rendered in the case of State of M.P. Vs. Onkarlal, 2011(3) MPLJ 404 and State of M.P. & Ors. Vs. Ku. Ramani Bai Bhagat, 2013(1) MPHT 96 does not lay down correct proposition of law: *Manoj Kumar Purohit Vs. State of M.P., I.L.R. (2016) M.P. 1861: 2016(1) MPLJ 449: 2018(2) JLJ 509.*

– **Mere ad-hoc appointment for few months** – Does not entitle petitioner to seek reinstatement after 16 years – Petition dismissed: *Jagdish Prasad Tripathi Vs. State of Madhya Pradesh Through Secretary School Education Department Bhopal*, I.L.R. (2003) M.P. 1119: 2004(4) MPLJ 564: 2004(4) MPHT 355: 2005(1) JLJ 420: 2005(I) MPJR 47.

– **Pension** – Explanation – Pension is a payment for the past services rendered by an employee: *Mamta Shukla (Smt.) Vs. State of M.P.*, I.L.R. (2011) M.P. 1807: 2011(3) MPLJ 210: 2011(3) MPHT 81: 2011(2) JLJ 94.

– **Regularization** – Irregular appointment can be regularized – But illegal appointment cannot be: *Geeta Rani Gupta (Dr.) Vs. State of M.P.*, I.L.R. (2016) M.P. 2148: 2015(4) MPLJ 476: 2018(2) JLJ 268.

– **State Government Circulars** – Circulars of State Govt. issued prior to judgment passed in *Uma Devi's* case – Question whether circulars issued in the matter of grant of pay-scale and regularization prior to the delivery of judgment in *Uma Devi's* case referred to Full Bench – Entitlement of pay scale already decided in favor of petitioner in previous writ petition – Questions referred in writ petition are not involving in the proceeding pending before Single Judge – Questions need not to be answered only for academic purposes: *Nanadram Kushwah Vs. State of M.P.*, I.L.R. (2012) M.P. 685: 2012(2) MPLJ 529: 2012(2) JLJ 20: 2012(2) MPHT 169: 2012(II) MPJR 319.

– **Stoppage of Pension** – Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Opportunity of Hearing – Natural Justice – Conviction u/S 7 of Prevention of Corruption Act, 1988 against which, appeal is pending – Stoppage of pension of petitioner without issuing any show cause notice and without giving any opportunity of hearing – Held – After retirement, pensioner is entitled to pension in view of his past service under the State – An employee earns his pension by serving the State for many years – Pension is not a bounty – Deprivation of pension affects civil rights of pensioner, the means of his survival – Show cause notice is required to be given to the retired government servant convicted by the Criminal Court – Natural justice warrants that opportunity of hearing is required to be provided before an order of stoppage of pension is passed u/R 8(2) of the Rules of 1976 – Reference answered accordingly by majority: *Ram Sewak Mishra Vs. State of M.P.*, I.L.R. (2017) M.P. 2076: 2017(4) MPLJ 428: 2017(3) JLJ 177. [Overruled in *Lal Sahab Bairagi Vs. State of M.P.* 2019(IV) MPJR 172 (Special Bench)]

– **Teacher** – Age of Superannuation– *Shaskiya Sevak (Adhivarshiki-Ayu) Adhinyam*, M.P. (29 of 1967) and *Shaskiya Sevak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhinyam*, M.P. (28 of 1998), Section 2 – Educational Institutions – Amendment regarding extension of age of superannuation from 60 years to 62 years for

teachers – Petitioner, a Junior Weaving Instructor claiming benefit of amendment filed writ petition and the same was allowed – State filed appeal whereby the matter was referred to larger bench – Held – Classification in the recruitment Rules is not determinative of the fact that whether a Government servant is a teacher or not, as the meaning assigned to Teacher in the State Act has to be preferred over the classification of teacher in the Recruitment Rules – Amending Act has given wide meaning to the expression “Teacher” which includes the “Teachers irrespective of the designation and appointed in a Government Technical and Medical Institutions” – As per the amending Act, “Teachers” as per the explanation is not restricted to Teacher in Government Schools or Colleges or different ranks and status but all teachers from the lowest to highest ranks – Training Centres and Vocational Training Centres of State Government are Educational Institutions for extending the benefit of age of superannuation to a person imparting training as Instructor – Hence, “Instructors” engaged for imparting training to women in the Tailoring Centre working under the Department of Women and Child Development are entitled to extension in age upto the age of 62 years being teachers as mentioned in the amending Act – Question of Law referred, answered accordingly: *State of M.P. Vs. Yugal Kishore Sharma, I.L.R. (2018) M.P. 844: 2018(2) MPLJ 450: 2018(2) JLJ 27: 2018(1) MPJR 298.*

– **Teacher of Aided Private Institution** – Age of Superannuation – Jurisdiction of Coordination Committee – Held – Fixation of age of superannuation in a private aided institution/college is within the jurisdiction of the Coordination Committee: *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299: 2017(4) MPLJ 404: 2017(3) JLJ 138.*

– **Time Bound Promotion** – Effect – Junior Engineer promoted to the post of Assistant Engineer under the Time Bound Promotion Scheme cannot be treated at par with the Assistant Engineer Promoted on regular basis: *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey, I.L.R. (2014) M.P. 1698: 2014(1) MPLJ 348: 2014(1) JLJ 92: 2013(5) MPHT 294.*

**Shaskiya Sevak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam,  
M.P. (XXVIII of 1998)**

– **Section 2** – See – Service Law: *State of M.P. Vs. Yugal Kishore Sharma, I.L.R. (2018) M.P. 844: 2018(2) MPLJ 450: 2018(2) JLJ 27: 2018(1) MPJR 298.*

**Societies Registrarian Adhiniyam, M.P. (XLIV of 1973)**

– **Section 3(f) & 33** – Govt. aided Society – Question whether State aided Society would mean society which receives or received aid, grant or loan in the current year or would also mean society which has received aid, grant or loan in previous year

referred to Full Bench – Respondent Society not being paid any grant-in-aid since 2001 – Govt. superseded governing body of Society and appointed administrator – Writ Petition allowed holding that the society was not a State aided society – Held – State aided society mean which not only receives aid, grant or loan for the present but also has received aid, grant or loan in past and financial interest of Central Govt., State Govt. or statutory body in society subsists – Would not cover Society which has received aid, grant or loan in past but in which Central Govt. or State Govt. or any Statutory Body which had granted aid, grant or loan does not continue to have any financial interest – Reference answered accordingly: *State of Madhya Pradesh Vs. Chandra Shekhar Azad Shiksha Prasad Samiti, Bhand, I.L.R. (2007) M.P. 1545: AIR 2008 MP 128: 2008(1) MPLJ 127: 2008(1) JIJ 192: 2008(1) MPJR 219: 2008(1) MPHT 123.*

### **Sovereign Ruler**

– **Powers of:** *Col. Lal Ram Pal Singh, Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934: AIR 1961 MPLJ 154.*

### **Special Marriage Act (XLIII of 1954)**

– **Sections 15, 18 & 28** – Joint petition for mutual divorce – Sections 15, 18 of the Act –Registration of Marriage and effect – Since the marriage has not been registered– Section 28 – Does not come into play – Decree granted by the Trial Court is without application of mind – Decree set aside – Reference rejected: *Smt. Susmita Joseph Vs. Limson, I.L.R. (1999) M.P. 722.*

### **Stamp Act, Indian (II of 1899)**

– **As amended by Second Amendment Act M.P. 1975** – Section 47-A – Held, Section 47-A of the Act applies only when the question involved is about the correctness of the market value of the property dealt with by the instrument: *Vimalchand Vs. State of M.P. 1979 MPLJ 734: 1979 JIJ 712: 1979 RN 544.*

– **As amended by Second Amendment Act M.P. 1975** – Section 59 (2) – Powers of High Court under – Section 57 – Reference to the High Court – When can be made – Section 47-A – Course open to the aggrieved party against the order passed by the Sub-Divisional Officer – Section 56 – Revision – Powers of the Board of Revenue under: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659: AIR 1982 MP 177: 1982 MPLJ 463: 1982 JIJ 495.*

– **As amended by Second Amendment Act M.P. 1975** – Section 59 (2) – Section 47-A – Course open to the aggrieved party against the order passed by the Sub–



Divisional Officer: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982)M.P. 659: AIR 1982 MP 177: 1982 MPLJ 463: 1982 JLJ 495.*

– **Chapter IV** –Inspector of Stamps and Registration during the course of inspection of office of Municipal Committee notices under stamped bonds – Is entitled to impound and make a report to Collector of Stamps for further action under chapter IV – Further action under Chapter IV cannot be dropped on the ground that the bonds have become infructuous on account of payments made: *State of M.P. Vs. Jiwan Mathura Prasad, I.L.R. (1984) M.P. 1: AIR 1983 MP 122: 1983 MPLJ 333: 1983 JLJ 497. (Special Bench)*

– **Fiscal Enactment** – Stamp Act is a fiscal enactment intended to secure revenue for the State: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

– **Principles which govern its application** – Section 36 – Document admitted in evidence and exhibited – Admission cannot be subsequently challenge on ground of insufficiency of Stamp – Provision comes in when the document is admitted and exhibited– Section 38 (2) – Not applicable where document admitted in evidence – Section 29 – Stamp duty on partition deed – All parties jointly and severally liable in the absence of agreement – Parties between themselves have right to contribution – Collector not bound to recover *pro rata* – Section 40 – Powers of Collector under – are discretionary in respect of imposition of penalty – No provision in the Act to guide discretion – Deed– Nature of document to be determined from the language used and also its purpose and also by the substance of the transaction disclosed by the whole of the document: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 JLJ 941: 1969 RN 538.*

– **State Succession** – Pre-existing Laws in component States continue till changed by new sovereign authority: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934: AIR 1961 MP 154: 1961 MPLJ 1: 1961 JLJ 32.*

– **Section 2(5)** – Essentials of Bond– Distinguishing features between Bondand promissory note – Peculiar features of Bond – Instrument falling within both categories – Instrument chargeable with higher duty: *Santsingh Vs. Madandas, I.L.R.(1977) M.P. 1059: AIR 1976 MP 144: 1976 MPLJ 238: 1976 JLJ 235.*

– **Section 2(15)** – Instrument of Partition –Held, document is executed in 1972 in which the fact that a partition of Joint Hindu Property took place earlier, has been recited – By this document, property has not been divided but a reference has been made to a

partition previously effected – Vide amendment of 1975, a deed signed by co-owners recording terms of previous partition has also been included within the meaning of “Instrument of Partition” – Amended definition is not attracted as the document was executed in 1972 and was not intended to divide the property – Document not liable to be stamped as an instrument of partition: *Rao Mahendra Singh Vs. Sub-Registrar, Indore AIR 1983 MP 144: 1983 J LJ 348.[Special Bench]*

– **Section 2(15) & 2(24)(b)** – Whether deed by which property is divided falls under Sections 2(15) and 2(24)(b) – Section 2(24)(b) – Settlement deed – Contemplates that the property belongs to settler – Joint Family property – Karta, power of, to effect partition: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur, I.L.R. (1971) M.P. 1: AIR 1970 MP 33: 1969 MPLJ 808: 1969 J LJ 933: 1969 RN 528. (Special Bench)*

– **Section 2(24)(b)** – Settlement deed – Contemplates that the property belongs to settler: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur, I.L.R. (1971) M.P. 1: AIR 1970 MP 33: 1969 MPLJ 808: 1969 J LJ 933: 1969 RN 528. (Special Bench)*

– **Section 24**, Explanation – Scope & Applicability– Held, if a property is subject to mortgage and the mortgager transfer its right in such property it is a transfer of the mortgager’s equity of redemption and such sale of mortgager’s right is nothing but sale of the property subject to the existing mortgage thereon –Explanation to Section 24 is attracted to such a case: *Chaturbhuj Das Vs. State of M.P., AIR 1984 MP 114: 1984 MPLJ 466 (Special Bench)*

– **Section 24**, Explanation – Applicability –Transfer of Mortgager’s Equity of Redemption by Deed of Sale – Held, amount of mortgage and cost of improvement has not been paid off before the conveyance – Explanation to Section 24 fully applies – The unpaid mortgage money with interest if any thereon and cost of improvements and interest thereon have to be added as consideration for the instrument of sale in addition to the amount for which the equity of redemption has been transferred by the vendors to the vendees – Instrument of sale is chargeable to stamp duty accordingly – From the duty so payable, the amount of duty already paid on deed of mortgage executed by the vendors in favour of vendees/mortgagees has to be deducted: *Chaturbhuj Das Vs. State of M.P., AIR 1984 MP 114: 1984 MPLJ 466 (Special Bench)*

– **Section 29** – Stamp duty on partition deed – All parties jointly and severally liable in the absence of agreement – Parties between themselves have right to contribution– Collector not bound to recover *prorate: Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 J LJ 941: 1969 RN 538.*

– **Section 29 & 48** – Recovery of Stamp Duty/or Penalty – Society purchased the property from its owners by sale deed and subsequently sold it to the appellants – State has no authority to recover the shortage of stamp duty on the sale deed executed in favour of the Society or penalty therefore, from the subsequent purchasers/appellants: *Hemlata (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2672: 2012(1) MPLJ 642: 2012(1) MPHT 320.*

– **Section 33(1)** – Authorities mentioned in, Power of, to impound deeds not coming before them in the performance of their function – Expression “any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions” in – Implies exercise of powers only so long as function is not performed or completed and not afterwards – Registering officer, duty of, see if instrument duty stamped before it is registered – After registration of deed, Registering Officer becomes *functus officio* – Registration Manual – Paragraph 231 – Does not empower authority to make report to Collector – Paragraph 232 – Words “after registering the document” in – Refer to the entry of deed in the register maintained of documents presented for registration – Words and Phrases – “*Functus officio*” – Meaning of –Registration Act– Does not bar registration of deed insufficiently stamped – Officer examining the deed to see whether it is duly stamped or not – Officer does not do functions under the Act: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

– **Section 33(1)** – Expression “any instrument, chargeable, in his opinion of his functions” in – Implies exercise of powers only so long as function is not performed or completed and not after wards: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 JLJ 636: 1965 RN 374.*

– **Sections 33(1), 35 & 38(2)** – Impounding of Instrument – Registered Document – Power & Jurisdiction –Held, Act does not empower the Sub-Registrar to impound the document after the same is registered by him even if it is not duly stamped – After registering an instrument, Sub-Registrar becomes *functus officio* and has no power to impound the same – No such provision in the Stamp Act or in Registration Act giving powers to Sub-Registrar to examine whether an instrument already registered was or was not duly stamped and to impound it: *Vimalchand Vs. State of M.P., 1979 MPLJ 734: 1979 JLJ 712: 1979 RN 544.*

– **Sections 33(1), 35 & 38(2)** – Impounding of Instrument – Registered Document – Power & Jurisdiction –Held, the Sub-Registrar before whom the document was produced for registration was a person in charge of a public office and thus had the

power to impound the document if in his opinion it was not duly stamped and to send the same in original to Collector of Stamps u/S 38(2) of the Act before registering the same because section 35 provides that no document shall be registered by any public officer unless the same is not duly stamped – Act does not empower the Sub-Registrar to impound the document after the same is registered by him even if it is not duly stamped – After registering an instrument, Sub-Registrar becomes *functus officio* and has no power to impound the same – He cannot send the document after registration to Collector of Stamps and latter has no jurisdiction to hold that document was not duly stamped and to call upon the executants to make good the deficiency and impose fine: *Jaina Bai Vs. State of M.P.*, 1981 J LJ 40: 1980 MPLJ 795.

– **Sections 33(1), 38(2) & 40** – The expression “comes in the performance of his function” – Connotation of – Inspector of Stamps and Registration during the Course of inspection of office of Municipal Committee notices under stamped bonds – Is entitled to impounds and make a report to Collector of Stamps for further action under chapter IV – Further action under Chapter IV cannot be dropped on the ground that the bonds have become infructuous on account of payments made: *State of M.P. Vs. Jiwan Mathura Prasad, I.L.R. (1984) M.P. 1: AIR 1983 MP 122: 1983 MPLJ 333: 1983 J LJ 497. (Special Bench)*

– **Section 35** – After registration of deed, Registering Officer becomes *functus officio*: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 J LJ 636: 1965 RN 374.*

– **Section 35** – Registering Officer, duty of, to see if instrument duly stamped before it is registered: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174: 1965 MPLJ 606: 1965 J LJ 636: 1965 RN 374.*

– **Section 36** – Document admitted in evidence and exhibited – Admission cannot be subsequently challenged on ground of insufficiency of Stamp – Provision comes in when the document is admitted and exhibited: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 J LJ 941: 1969 RN 538.*

– **Section 37 & 3-A** – Scope & Applicability – Held, there is nothing in the language of S. 3-A or of S. 37 of the Act, to exclude the operation of S. 37 of the Act to a case where stamps of sufficient amount, but not of that description as was required by S. 3-A of the Act, were affixed – In present case also, it was an instrument bearing stamp of sufficient amount but of improper description – Collector of Stamps, was right in holding that the provisions of S. 37 of the Act were attracted and he had jurisdiction to certify the

said instrument as duly stamped, in accordance with the provisions of S. 37 of the Act: *Hasan Khan Vs. Ishwardas AIR 1982 MP 74. (Special Bench)*

– **Section 38(2)** – Not applicable where document admitted in evidence: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 JLJ 941: 1969 RN 538.*

– **Section 40** – Powers of Collector under – Are discretionary in respect of imposition of penalty – Not provision in the Act to guide discretion: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597: AIR 1970 MP 74: 1969 MPLJ 827: 1969 JLJ 941: 1969 RN 538.*

– **Section 47-A**, as amended by Indian Stamps (Madhya Pradesh Second Amendment) Act (VIII of 1975)– Operation thereof – Not retrospective – Principal Governing the operation of a Statute on a particular new section – Section 47-A, as amended – Whether Sub-Registrar empowered to make a reference to the Collector of Stamp in regard to under valuation once such instrument has been registered before coming into force of the amendment in 1975: *Sitaram Vs. State of M.P., I.L.R. (1982)M.P. 855: AIR 1980 MP 4: 1979 MPLJ 817: 1979 JLJ 696. (Special Bench)*

– **Section 47-A**, as amended by Indian Stamps (Madhya Pradesh Second Amendment) Act – Whether Sub-Registrar empowered to make a reference to the Collector of Stamp in regard to under valuation once such instrument has been registered before coming into force of the amendment in 1975: *Sitaram Vs. State of M.P.,I.L.R.(1982) M.P. 855: AIR 1980 MP 4: 1979 MPLJ 817: 1979 JLJ 696. (Special Bench)*

– **Section 54** – Execution of document – If there is any irregularity in the use of stamp then on this ground the document could not be termed as invalid or could not be classified as inadmissible in evidence: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

– **Section 56** – Revision – Power of the Board of Revenue under: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659: AIR 1982 MP 177: 1982 MPLJ 463: 1982 JLJ 495.*

– **Section 57** – Reference to the High Court –When can be made: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659: AIR 1982 MP 177: 1982 MPLJ 463: 1982 JLJ 495.*

– **Section 57(1)** and Article 45, Schedule 1-A– Reference – When can be made to the High Court for decision: *State of M.P. Vs. Maharaja Martand Singh Joo Deo, I.L.R. (1984) M.P. 191: AIR 1984 MP 92: 1984 MPLJ 274: 1984 JLJ 328. (Special Bench)*

– **Section 57(1)** – Reference to High Court – Exercise of Jurisdiction – Held, existence of “doubt” or the requirement of any specific “question” is not crucial for the High Court to exercise its jurisdiction u/S 57(1) of the Stamp Act: *Sardar Deorao Jadhav Vs. State of M.P., AIR 1991 MP 247: 1991 MPLJ 562.*

– **Section 57(1)** – Contemplates reference of some precise question – General or vague reference not permissible – Chief Controlling Revenue Authority adjudicating on the controversy and reaching a definite conclusion – Reference income – Patent and need not be answered: *Manohar Kunwarbai Vs. State of M.P., I.L.R. (1984)M.P. 67: AIR 1984 MP 53: 1984 MPLJ 95: 1984 JLJ 64. (Special Bench)*

– **Schedule I-A** – Article 58 & 64 – Held, by the instrument, the executant purported to make proper provision in respect of discharge of duties of his office of Shebait of his family deities and he had declared a trust in respect of properties described in the Schedule of the document making himself and other co-trustees in respect thereof – Such instrument is liable to be stamped in accordance with provisions of Article 64, Schedule I of Indian Stamp Act and not under Article 58: *Sardar Deorao Jadhav Vs. State of M.P., AIR 1991 MP 247: 1991 MPLJ 562.*

### **Stamp Rules, M.P., 1942**

– **Rule 3** – Special adhesive stamp be treated as in addition to adhesive stamp not opposed or in contradistinction to adhesive stamp as required for promissory note: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

– **Rule 17** – Inscription of word Revenue – Special adhesive stamp of Rs. 1/- inscribing the word revenue was never available for use – If it is held that a pronote without affixture of special adhesive stamp inscribing the word revenue is inadmissible in evidence, it would mean an impossibility to be performed because no such adhesive stamp was printed by Security Press: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

– **Rule 17** – Inscription of word Revenue – Use of revenue has been mentioned with the word and such stamps may be inscribed and the meaning of the aforesaid would

not mean that if the word for revenue has not been mentioned with the word stamp which has to be affixed on a promissory note, then the promissory note is inadmissible in evidence, because purpose of Stamp Act and Rules, is to secure revenue for State: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

– **Rule 17** – Use of word may is an enabling word and implies a discretion – Decision in Ismail Khan and Khamir Singh are not good law: *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637: AIR 2011 MP 115: 2011(2) MPLJ 101: 2011(2) JLJ 138: 2011(II) MPJR 183: 2011(2) MPHT 443.*

### **States Reorganization Act (XXXVII of 1956)**

– **Enactment to be interpreted liberally:** *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51** – Notification issued by Chief Justice directing certain types of cases which could be heard at Indore or Gwalior to be heard at Principal Seat at Jabalpur – Held – President empowered to provide for establishment of permanent Benches and for any matter connected therewith – Section 51 confers power on President to authorize Chief Justice to pass appropriate orders in relation to such matters – Chief Justice has authority to issue notifications directing that particular class of cases to be heard at Jabalpur – Judgment passed in Abdul Taiyab A. Malik lays down correct law and does not require reconsideration: *S.P. Anand Joara Compound, Indore Vs. Hon'ble Mr. S.K. Jha, C. J., High Court of M.P. JBP, I.L.R. (1994) M.P. 7: AIR 1994 MP 195: 1994 MPLJ 531: 1994 JLJ 459: 1994(5) Serv LR 320.*

– **Section 51(2)** – Confers no authority to prescribe limitation regarding jurisdiction of the Judge of the Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Expression “in respect of cases arising in the revenue District of” in the notification dated 28-11-68 issued thereunder – Indicates compendious description of cases to which notification applies prospectively: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Notification dated 28-11-68 issued thereunder – Does not affect order transferring a case from jurisdiction of one Bench to jurisdiction of another Bench passed before its date: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Notification dated 28-11-68 issued thereunder – Effect of – Word “Bench” in – meaning of – Power of president to limit territorial jurisdiction of Judges to hear cases – Phrase “matter connected with the Bench” – Cannot refer to the limitation of the area – Section 51(2) – Confers no authority to prescribe limitation regarding jurisdiction of the judge of the Bench – Notification restricting jurisdiction of Judge to hear cases from territories other than mentioned in the notification – Notification is bad – Enactment to be interpreted liberally – Interpretation of Statute – Aid from subsequent statute can be taken to determine meaning of particular term – Phrase “Permanent Bench” in – Used in special sense – Phrase used in the context of jurisdiction– Words “any matter connected therewith” in – Include power of president to prescribe jurisdiction of permanent Bench – Notification not prohibiting Judges of permanent Bench from hearing cases from areas other than those mentioned therein – Prescribes the ordinary jurisdiction of the Judges of the permanent Bench – Interpretation of Statute– Cardinal rule – Statute is prospective unless specially made retrospective – Expression “in respect of cases arising in the Revenue District of ” in the notification – Indicates compendious description of cases to which notification applies prospectively – Order passed under the proviso – Order would be prospective – Notification does not affect order transferring a case from jurisdiction of one Bench to Jurisdiction of another Bench passed before its date: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Notification dated 28-11-68 issued thereunder – Notification not prohibiting Judges of permanent Bench from hearing cases from areas other than those mentioned there in – Prescribes the ordinary jurisdiction of the Judges of the permanent Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Notification restricting jurisdiction of Judge to hear cases from territories other than those mentioned in the notification – Notification is bad: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Order passed under the proviso to the notification dated 28-11-68 issued thereunder the Section – Order would be prospective: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Phrase “matter connected with the Bench” – Cannot refer to the limitation of the area: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*



– **Section 51(2)** – Phrase “Permanent Bench” in – Used in special sense –Phrase used in the context of jurisdiction: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Power of president to limit territorial jurisdiction of Judges to hear cases: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Word “Bench” in – Meaning of: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)** – Words “any matter connected therewith” in – Include power of president to prescribe jurisdiction of permanent Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799: AIR 1971 MP 40: 1970 MPLJ 794: 1970 JLJ 821.*

– **Section 51(2)**, Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976 –Duties of Additional Registrar of Indore and Gwalior in respect of writ petitions: *Balkishandas Vs. Harnarayan., I.L.R. (1982) M.P.1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.*

– **Section 51(2)**, Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976 – Order of Chief Justice applies to pending Cases also: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P.1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.*

– **Section 51(2)**, Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976 –The word ‘hearing’ includes motion hearing also – Hence even for motion hearing and for interim orders case has to be listed at Jabalpur only: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.*

– **Section 51(2)**, Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976 –Writ Petitions under Articles 226 and 227, Constitution of India raising questions of *Vires* of any enactment, rule, order or notification etc. – Hearing of – Can be done only at Jabalpur – Duties of Additional Registrar at Indore and Gwalior in respect of writ petitions – Order of Chief Justice applies to pending cases also – The word ‘hearing’ includes motion hearing also – Hence even for motion hearing an for interim orders case has to be listed at Jabalpur only – High Court Rules and Orders – Chapter I, Rule 12 – Reference to a larger Bench – When can be made – Existence of two conflicting decisions not a condition precedent – Order dismissing a petition in motion hearing – Has a binding force – Interpretation of Statute – Has to be construed according

to ordinary grammatical meaning – The words ‘cases arising’ – Meaning of: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.*

– **Section 51(2)**, Notification of President of India, dated 28.11.1968 –Held, if cause of action arises wholly or in part at a place or places within the specified revenue districts as per Presidential Notification dated 28.11.1968, the Gwalior Bench will have the jurisdiction – Order of appointment was accepted by joining the post at Gwalior would form part of a cause of action and it would arise at the place where the order is implemented by joining the post – Thus, as a part of cause of action having arisen at Gwalior, the Gwalior Bench will have jurisdiction to entertain petition. – *K. P. Govil Vs. Jawaharlal Nehru Krishi Vishwavidyalaya Jabalpur & Anr., 1987 MPLJ 396: AIR 1987 MP 228: 1987 JLJ 341.*

– **Section 54 & 68** – See – Constitution, Articles 216, 225, 226: *S.P. Anand Vs. The Registrar General, M.P. High Court, Jabalpur, I.L.R. (2008) M.P. 2172: AIR 2009 MP 1: 2008(3) MPLJ 596: 2008(4) MPHT 279: 2008(3) JLJ 361: 2008(IV) MPJR 105.*

– **Section 78** – Place of assessment for tax due before November 1956 – Is place when tax could have been assessed before that date – Successor State in whose dominion that place is situated – Has a right to recover that tax – Burden on petitioner to prove that order or assessment was without jurisdiction: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 JLJ 548: 1974 MPLJ 601: 1974 RN 308.*

– **Section 78** – Scope of: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 JLJ 548: 1974 MPLJ 601: 1974 RN 308.*

– **Section 120** – Object behind the Section – Power or adaptation – Does not confer power to make law inconsistent with specific provision made in this Act: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945: 1974 JLJ 548: 1974 MPLJ 601: 1974 RN 308.*

### Statute

– **No. 25** – Words “every teacher” – Who is: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736.*

– **No. 28** – Clauses 16 and 18 – Appointment of teachers – How to be made: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736.*

**Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam M.P.**  
**(LII of 1976)**

– **Section 3(1) Proviso (iv)** – Levy of entry tax – Liability to pay entry tax – From another local area, assessee, a registered dealer, purchased goods other than local goods from selling registered dealer – Taxable event occurred in the hands of selling dealer – Therefore, he would have incurred liability to pay entry tax – Assessee, when he moved the same goods from local area to another – Is not liable to pay entry tax: *Mohan Singh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995)M.P. 506: I.L.R. (1996) M.P. 286: 1996 MPLJ 422: 1996(I) MPJR 417.*

– **Section 3(1) Proviso (iv)** – Entry Tax – Taxable event is entry of goods into local area – Proviso as stood prior to amendment Act No. 24 of 1982 – Entry Tax is single point tax – Goods when brought from another local area into this area, giving rise to taxable event with liability to pay entry tax vesting in selling registered dealer – Where goods are not local goods, it protect the purchasing registered dealer i.e. assessee from payment of entry tax: *Mohan Singh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995) M.P. 506: I.L.R. (1996) M.P. 286: 1996 MPLJ 422: 1996(I) MPJR 417.*

– **Section 3 & 6(c)** and General Sales Tax, Act, M.P. 1958( II of 1959)–Section 7(1) – Entry tax and purchase tax – Building contract undertaking – Contract with Central Public Works Department – Iron, Steel and Cement to be supplied by C.P.W.D. and costs thereof to be deducted from final bill – Liability of contractor for payment of Entry tax and Purchase tax on the costs of such building material – Section 6 – Presumption under: *M/s. N.M. Goyal, Rajnandgaon Vs. Sales-Tax Officer, Rajnandgaon, I.L.R. (1986) M.P. 685: 1987 MPLJ 201.*

– **Sections 3, 7 & 11** – Entry Tax–Non affixture of rubber stamp endorsement on bill by selling dealer – Burden of proof – Goods moved from one local area to another, entry tax liable to be paid by registered dealer who causes the entry – Non-affixing of rubber stamp endorsement – Taxable event had already occurred – In case of non-affixture of rubber stamp endorsement on bill, burden would be on revenue to proof that goods are local goods of which assessee caused entry to be made into another local area: *Mohan Singh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995)M.P. 506: I.L.R. (1996) M.P. 286: 1996 MPLJ 422: 1996(I) MPJR 417.*

– **Section 6(c)** – Presumption under: *M/s. N.M. Goyal, Rajnandgaon Vs. Sales-Tax Officer, Rajnandgaon, I.L.R. (1986) M.P. 685: 1987 MPLJ 201.*

– **Sections 7, 3 & 11** – Legal consequence of not affixing rubber stamp endorsement on bill as required u/S. 7 by selling registered dealer – Bill of goods

purchased by assessee from a registered dealer not containing any rubber stamp endorsement to the effect that goods were local goods and no entry tax had been paid— Burden of proof – Burden would lie on Revenue to prove that goods are local goods entered by assessee into another local area: *Mohan Singh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995) M.P. 506: I.L.R. (1996) M.P. 286.*

### **Succession Act Indian (XXXIX of 1925)**

– **Section 273** – Probate or Letter of Administration – Jurisdiction of a District Judge in the State of M.P. if the value of property or estate of deceased lying beyond the State of M.P. is more than Rs. 10,000/- – The claim cannot be segregated so as to cover property or estate located within the limits of State of M.P. by a District Judge within whose jurisdiction, the deceased at the time of his death had a fixed place of abode – The remedy is to approach the High Court under clause(a) of Section 273: *Naval Vs. Jagdish Prasad, I.L.R. (1998) M.P. 267: I.L.R. (1998) M.P. 441.*

– **Section 276 & 273** – Whether the District Judge loses its jurisdiction to grant probate of the value of the property and estate situate beyond the limits of State exceeds Rs. 10,000/- – Yes – Sections 276 and 273 – Whether probate granted by the District Judge would be valid for the property situated within its jurisdiction despite the presence of property and worth more than Rs. 10,000/- beyond that State – No: *Naval Vs. Jagdish Prasad, I.L.R. (1998) M.P. 267: I.L.R. (1998) M.P. 441.*

### **Suit**

– **Suit by revisionary to set aside alienation made by a widow before coming into force of the Act** – Widow does not get absolute interest in the property already transferred – Suit maintainable: *Mst. Lukai Vs. Niranjan, I.L.R. (1958) M.P. 9: AIR 1958 MP 160: 1958 MPLJ 244: 1958 J LJ 279.*

### **Supersession of Municipal Committee by Government**

– **Government to give reasons therefore** – High Court, power of, to examine the reasons to determine reasonableness and sufficiency: *Municipal Committee, Kareli Vs. The State of Madhya Pradesh, I.L.R. (1958) M.P. 13: AIR 1958 MP 323: 1958 MPLJ 531: 1958 J LJ 589.*

### **Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P., 1972**

– **Rule 3(6)** – Held, a freedom fighter (Swatantrata Sangram Sainik) as contemplated under the Rules of 1972 is entitled to “Samman Nidhi” from the date of the issue of the order by State Government and the rule brought in force with effect from 08.03.1999 has to be given a retrospective effect but not so as to defeat a vested or

accrued right: *Jagannath Prasad Vs. State of M.P.*, 2001(2) MPLJ 542: 2001(3) MPHT 81: 2001(1) MPJR 345: 2001(1) JLJ 327.

– **Rule 3(6) & 9** – Amendment – Retrospective Operation – Held, nature of provisions under Rules of 1972 are both substantive and procedural – Rights given under it to the freedom fighter are substantive in nature while the procedure laid down for getting an order granting “Samman Nidhi” is procedural – Relevant amendment is procedural in nature and hence it could be made retrospective, either by implication or by express provision: *Jagannath Prasad Vs. State of M.P.*, 2001(2) MPLJ 542: 2001(3) MPHT 81: 2001(1) MPJR 345: 2001(1) JLJ 327.

– **Rule 3(6) [Amended]** – Amendment made in Rule 3(6) of Niyam, 1972 is not *ultra vires*: *Sheel Chand Jain Vs. State of M.P.*, I.L.R. (2010) M.P. 771: AIR 2010 MP 130: 2011(1) JLJ 160: 2010(2) MPLJ 689: 2010(2) MPHT 233.

– **Rule 3(6) [Amended]** – Benefit of “Samman Nidhi” from the date of sanction order: *Sheel Chand Jain Vs. State of M.P.*, I.L.R. (2010) M.P. 771: AIR 2010 MP 130: 2011(1) JLJ 160: 2010(2) MPLJ 689: 2010(2) MPHT 233.

– **Rule 3(6) [Amended]** – Disposal of application – State is bound to decide complete application in future with promptitude, to say, within one year from the date an application is filed: *Sheel Chand Jain Vs. State of M.P.*, I.L.R. (2010) M.P. 771: AIR 2010 MP 130: 2011(1) JLJ 160: 2010(2) MPLJ 689: 2010(2) MPHT 233.

## (T)

### Tax

– **Tax is never imposed by auction:** *M/s. N.K. Doongaji & Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.

### Tax and Fee

– **Distinction** – Excise Act, Central Provinces, 1915 – Fee realised in respect of Excise contract – Cannot be justified as a fee – Tax on Luxuries – Must be co-related to the value, quality and quantity of luxuries – Not imposed for enjoying the privilege of carrying on trade in articles of luxury – Tax is never imposed by auction – Constitution of India – Article 19(1)(g) – Right to deal in liquor – Is not such and inherent right of a citizen which cannot be controlled or regulated by state – Right to do business in intoxicating liquor – Is inherent right of citizen – State has right to impose reasonable restriction – Excise Act, C.P., 1915 – Section 17 – Right to carry on trade in intoxicating liquor – Is subject to a licence granted under section 17 – Grant of licence – Is only to

control and regulate the exercise of the right – Licence does not transfer right to carry on trade – Section 18 – Right to regulate trade – Does not imply that that right vested in controlling authority – Words and phrases – Word “Privilege” – Meaning of Excise Act, C.P., 1915 – Section 18 – Right to trade – Is a kind of right enjoyed by a person – State has no exclusive right or privilege to carry on trade itself though it has power to regulate it – Grant of privilege – Does not involve transfer of right to trade – Excise (Amendment and Validation) Act, M.P. 1964 – Excise Act became applicable to foreign liquor after amendment – Grant of licence regarding foreign liquor – Does not involve any transfer of a right of sale from Government to licensee – State Government can only charge fee: *Per Singh J.* – Constitution of India – Article 19 – Citizen has fundamental right to carry on liquor business – State can engage in liquor business – Right of citizen to deal in liquor – Right can be restricted or prohibited – Excise Act, C.P. 1915 – Section 8 to 17 – Confer power on State alone to deal in intoxicants – Grant of licence – Is a grant of privilege exclusively belonging to the State – Sections 18 and 27 – Section 18 to be read along with Section 27 – Section 18 – Grant of lease under – Person acquires a sort of limited monopoly – Sections 18 and 27 – Payment receivable under – Is different from duty and fees – Consideration received is for grant of lease of trading rights – Provisions valid under first part of Art. 19(6) of the Constitution – Excise Act, C.P. – Section 5, as amended and Sections 18 and 21 – Enable grant of license in F.L.1. – *Per Tare C.J.* – Constitution of India Article 19(1)(g) – Recognises a fundamental right of liquor contractor to deal a foreign liquor Can be regulate by imposing reasonable restrictions – Excise Act, C.P. – Confers regulatory power on State Government in respect of manufacture and sale of foreign liquor – Constitution of India – Article 47 – Contemplates total prohibition – Total prohibition on sale of liquor placed by State Government – Restriction cannot be said to be unconstitutional – Excise Act, C.P. 1915 – Section 18, as amended – Applicable to foreign liquor – Power of State Government to charge consideration for transfer of privilege or right to sale foreign liquor – Section 27 – Authorises State Government to accept payment in consideration of grant of lease under Section 18 – Payment of consideration need not be equated with fees but can be charged in addition to fee – Sections 25, 26 and 27 – Contemplate three kind of levies – These three cannot be conferred: *M/s. N.K. Doongaji & Company, Katni Vs. State of M.P., I.L.R. (1976)M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

### **Telegraph Wires (Unlawful Possession) Act (LXXIV of 1950)**

– **Section 7 (1)** – Notification issued by Central Government under – Is legislative in nature: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601: AIR 1977 MP 68: 1977 MPLJ 176: 1977 JLJ 124: 1977 CriLJ 597.*

**Tenancy Act, Central Provinces (I of 1920)**

– **Section 13** – Term “transfer” in – Covers all cases of physical transfers of possession and not restricted to transfers valid under Transfer of Property Act or any other law – Transfer not in accordance with Revenue law – Remedy to set aside is under Section 13 of the Act: *Mahabir Prasad Vs. Samaroo, I.L.R. (1959) M.P. 481: AIR 1960 MP 165: 1960 MPLJ 230: 1960 JLJ 280.*

**Tendu Patta (Vyapar Viniyaman) Adhiniyam, Madhya Pradesh  
(XXIX of 1964)**

– **And Tendu Patta Niyamavali, Madhya Pradesh, 1965-66** – Not applicable to auction and disposal of leaves from Government land – Clause 25 of Tendu Notice and clause 2 of Purchaser agreement – Confer right of renewal on purchaser on fulfillment of conditions – Tendu Patta ke Nirvartan Hetu Nyuntam Dar Nishchayan Adhyadesh, Madhya Pradesh, 1972 – Supersedes the condition regarding rates mentioned in purchaser’s agreement – Purchaser entitled to renewal on the rates mentioned in ordinance where rates mentioned in purchaser’s agreement are low – Constitution of India – Article 226 – Circumstances in which writ of Mandamus can be issued even though alternative remedy is available – Prerogative power – Not exercisable for enforcing contractual rights and obligation – Exercisable for enforcing fundamental right or statutory rights – Phrase – “This year” – Relates to initial year of agreement viz. Year 1970 – General Sales Tax Act, Madhya Pradesh – Section 2(d) – Government of Forest Department – Not dealer in respect of forest produce – Right and obligations pertaining to agreement – Come into being by operation of contract – In cases where appeal provided for administrative order partakers and nature of *quasi Judicial* order – Fixing of rates of Tendu leaves – Regard must be had to prevailing rate – Interpretation of Statute – Rules regarding construction – *non-obstante* clause in the provision – Effect of: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R.(1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.*

– **In cases where appeal provided for** – Administrative order partakes the nature of *quasi-judicial* order – Fixing of rates of Tendu leaves – Regard must be had to prevailing rate: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.*

**Tendu Patton Ke Nirvartan Hetu Nyuntam Dar Nishchayan**  
**Adhyadesh, Madhya Pradesh (II of 1972)**

– **Supersedes the condition regarding rates mentioned in purchaser's agreement** – Purchaser entitled to renewal on the rates mentioned in ordinance where rates mentioned in purchaser's agreement are low– Non-obstante (clause in the provision)  
 – Effect of: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.

**Tort**

– **Custodial Death** – Medical Negligence – Liability of State – Held, direct nexus between death of a person and the negligent act has to be established – Burden of proving negligence rests upon a person who asserts it – It is not enough to saddle respondents with liability on supposition that some medical man of far greater experience might have used greater degree of skill and care – Real test is whether there has been a want of competent care and skill to such an extent as to lead to a bad result: *Sudha Gupta Vs. State of M.P.*, 1999(2) MPLJ 259: 1999(1) JLJ 14.

– **Vicarious liability** – When master is liable for the act of his servant – Words 'prohibition' – Definition of – Statutory rules as regards conduct of driver Vehicle – Explanation of Negligence – Driver while acting in the course of his employment giving lift to a person in disregard of statutory rule or prohibition – Accident occurring – Owner is vicariously liable: *Narayan Lal Vs. Rukmani Bai*, I.L.R. (1980) M.P. 807: AIR 1979 MP 74: 1979 MPLJ 405: 1979 JLJ 461: 1979 ACJ 261.

– **Vicarious Liability** – Where a tortuous act is committed by a public servant in discharge of his statutory functions, which are referable to, and ultimately based on the delegation of the sovereign powers of State to such public servant, an action for damages for loss caused by such tortuous act will not lie but is a tortuous act has been committed by public servant in discharge of duties assigned to him, not by virtue of delegation of any sovereign power, an action for damages will lie – Thus, in view of the above, when in exercise of statutory function, the cut wood seized under order of competent authority is entrusted to Supratdar, State will not be liable for any misappropriation of such wood by Supratdar: *State of M.P. Vs. Devilal* 1970 MPLJ 145: 1970 JLJ 112: AIR 1970 MP 179.

– **Vicarious Liability** – If due to negligent driving of a vehicle owned by the State, a claim for damages is made, the State is not immune because the use of the vehicle is not in exercise of any sovereign function but if State has engaged itself in



activities like industry, public transport or State trading and exercise powers as employers in public sector, State is not immune from the consequences of tortuous act of its employees committed in the course of their employment a such: *State of M.P. Vs. Devial*, 1970 MPLJ 145: 1970 JLJ 112: AIR 1970 MP 179.

– **Vicarious Liability** – Where the relationship of bailor and bailee between plaintiff and State comes into being and question of tortuous liability does not arise, State will be liable if its liability under ordinary law of bailment is made out – Relationship of bailor and bailee may come into existence even when there is no express contract between plaintiff on the one hand and the State or its servant in the discharge of his official function, on the other: *State of M.P. Vs. Devial*, 1970 MPLJ 145: 1970 JLJ 112: AIR 1970 MP 179.

### **Town Improvement Trust Act, M.P. (XIV of 1961)**

– **Section 78(3) & 147** and Court Fees Act, 1870, Section 8 & Schedule II, Article 11 – Appeal – Court Fees – Held, on appeal u/S 147 of the Act of 1961, from a decision given u/S 78 of the said Act, *ad valorem* court fees on the difference between the amount claimed and amount awarded is not required to be paid – Court fees payable on such appeal will be under Article 11 in Schedule II of the Court Fees Act: *Shantilal Vs. Town Improvement Trust*, AIR 1978 MP 8: 1977 JLJ 827: 1977 MPLJ 690.

### **Transfer of Property Act (IV of 1882)**

– **Section 37** – Transfer of a fractional share in the leased property – Does not effect severance of tenancy – Governed by this Section and not by Section 109: *Sardarilal Vs. Narayanlal*, I.L.R. (1980) M.P. 1109: AIR 1980 MP 8: 1980 JLJ 110: 1981 MPLJ 76.

– **Section 37** – Transferee becomes a co-owner with the co-lessor – All co-owner must join in termination of tenancy: *Sardarilal Vs. Narayanlal*, I.L.R. (1980) M.P. 1109: AIR 1980 MP 8: 1980 JLJ 110: 1981 MPLJ 76.

– **Section 100** – Charge – Liability to pay itself does not create a "charge" over the property – A charge can be created only in two ways, namely (i) by act of parties i.e. by contract or (ii) by operation of law: *Hemlata (Dr.) Vs. State of M.P.*, I.L.R. (2011) M.P. 2672: 2012(1) MPLJ 642: 2012(1) MPHT 320.

– **Section 109** – Applicable where transfer of a part of property leased or any part of transferor's interest therein: *Sardarilal Vs. Narayanlal*, I.L.R. (1980) M.P.1109: AIR 1980 MP 8: 1980 JLJ 110: 1981 MPLJ 76.

– **Section 109** – Brings about severance of tenancy – Termination of tenancy by the transferee in respect of part transferred is valid: *Sardarilal Vs. Narayanlal, I.L.R. (1980) M.P. 1109: AIR 1980 MP 8: 1980 J.L.J 110: 1981 MPLJ 76.*

– **Section 109 & 37** – Effect of – Section 109 – Applicable where transfer of a part of property leased or any part of transfer's interest therein – Brings about severance of tenancy – Termination of tenancy by the transferee in respect of part transferred is valid – Section 37 – Transfer of fractional share in the leased property – Does not effect severance tenancy – Governed by this section and not by Section 109 – Transferee becomes a co-owner with the co-lessor – All co-owners must join in termination of tenancy – Interpretation of Statute – Two view possible – The view more in consonance with justice and convenience should be preferred: *Sardarilal Vs. Narayanlal, I.L.R. (1980) M.P. 1109: AIR 1980 MP 8: 1980 J.L.J 110: 1981 MPLJ 76.*

## (U)

### **Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P., 2005 (XIV of 2006)**

– **Section 2 & 4(2)**, M.P. Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhinyam, 1981, Section 2 – Whether application for restoration/revival of Letters Patent Appeal against Judgment and Decree passed in exercise of appellate jurisdiction under Section 96 of Civil Procedure Code is maintainable – First Appeal filed by appellants dismissed by Learned Single Judge – Letters Patent Appeal dismissed because of Adhinyam, 1981 – Held – Section 2 of Adhinyam, 2005 provides for appeal from an order passed in exercise of jurisdiction under Article 226 of Constitution of India – In absence of any express or implied provision in Adhinyam 2005 Letters Patent Appeals from judgment and decree passed in exercise of jurisdiction under Section 96 of C.P.C. are not revived – Reference answered accordingly: *Smt. Shashibai Vs. Smt. Revabai Agrawal, I.L.R. (2007) M.P. 1296: AIR 2008 MP 64: 2007(4) MPHT 467: 2008(1) MPLJ 92: 2008(1) J.L.J 8: 2008(III) MPJR 82.*

– **Section 2(1)** – Appeal – Maintainability – Held, an order of the Labour Court or an Industrial Tribunal is amenable to writ of certiorari under Article 226 of Constitution – In exercise of writ of certiorari, High Court demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal – But issuance of directions after setting aside an order passed in exercise of powers conferred under Article 226, is only under Article 227 of Constitution – Therefore, Court exercises composite jurisdiction which will make intra-Court appeal

maintainable: *Shailendra Kumar Vs. Divisional Forest Officer, AIR 2018 MP 120: 2017(3) JLJ 282: 2017(4) MPLJ 109.*

– **Section 2(1)** – Appeal – Maintainability – Held, a writ of certiorari is maintainable against any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or *quasi-judicially* is amenable to the certiorari jurisdiction of the High Court – Instances where writ of certiorari can be said to be exercised enumerated: *Shailendra Kumar Vs. Divisional Forest Officer, AIR 2018 MP 120: 2017(3) JLJ 282: 2017(4) MPLJ 109.*

– **Section 2(1)** – Bar of appeal against order passed under Article 227 – Held – Pleadings in writ petition, nature, character and contour of order, directions issued, nomenclature given and jurisdictional prospective are to be perceived – Merely because order under challenge emerges from inferior tribunal or subordinate courts cannot be treated for all purposes to be under Article 227 – Phraseology used in exercise of original jurisdiction under Article 226 cannot be given restricted meaning – Division Bench while entertaining appeal under Section 2 shall satisfy that Single Judge exercised original jurisdiction under Article 226 by looking into pleadings, relief prayed and order or judgment passed by Single Judge – Judgment passed in M/s Ram and Co. does not lay correct law and is overruled: *Dr. Jaidev Siddha Vs. Jaiprakash Siddha, I.L.R. (2007) M.P. 1030: AIR 2007 MP 269: 2007(3) MPHT 388: 2007(3) JLJ 151: 2007(3) MPLJ 595: 2007(II) MPJR 361.*

– **Section 2(1)** – Bar of appeal against order passed under Article 227 – Pleadings in writ petition, nature, character and contour of order, directions issued, nomenclature given and jurisdictional prospective are to be perceived – Merely because order under challenge emerges from inferior tribunal or subordinate courts cannot be treated for all purposes to be under Article 227. (Majority View): *Manoj Kumar Vs. Board of Revenue, I.L.R. (2007) M.P. 1504: 2008(1) MPLJ 152: 2007(4) MPHT 545: 2008(1) JLJ 76: 2007(III) MPJR 328: AIR 2008 MP 22. (Special Bench)*

– **Section 2(1)** – Interlocutory Order/Judgment – Question whether Section 2(1) bars an appeal to Division Bench or order can be assailed regard being had to nature, tenor, effect and impact of order referred to larger Bench in view of contrary views – Held – Interlocutory orders which decide matter of moment or affect vital and valuable rights of parties and which cause serious injustice to party has character of finality and must be treated as judgment – Section 2(1) of Adhinyam does not create absolute bar to prefer an appeal – Appeal can be preferred against an order regard being had to nature,

tenor, effect and impact of order passed by Single Judge – Decisions rendered in Nav Nirman Milan Deria and Tejpal Singh enunciate correct law – Decision rendered in Arvind Kumar Jain overruled – Reference answered accordingly: *Arvind Kumar Jain Vs. State of M.P., I.L.R. (2007) M.P. 1017: AIR 2007 MP 276: 2007(3) MPLJ 565: 2007(3) MPHT 376: 2007(III) MPJR 4: 2007(3) JLJ 187.*

– **Section 2(1)**, proviso – Held, the orders passed by the Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before the High Courts are only under Article 227 of the Constitution of India – Thus, no intra-Court appeal would be maintainable against an order passed by the learned Single Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings: *Shailendra Kumar Vs. Divisional Forest Officer, AIR 2018 MP 120: 2017(3) JLJ 282: 2017(4) MPLJ 109.*

– **Section 2(1)** Proviso and Constitution, Article 226 & 227 – Held, Supreme Court concluded that maintainability of Letters Patent Appeal would depend upon pleadings in writ petition nature and character of the order passed by Single Judge, type of directions issued regard being had to the jurisdictional perspectives in constitutional context – The only exclusive bar was in respect of an order passed by the Judicial Court which could be challenged only under Article 227 of Constitution – Therefore, it is a question of fact in each case as to whether intra Court appeal would be maintainable in respect of the order passed by judicial or *quasi* judicial Tribunals constituted under any Act could be challenged under Article 226 and/or under Article 227 or both: *Shailendra Kumar Vs. Divisional Forest Officer, AIR 2018 MP 120: 2017(3) JLJ 282: 2017(4) MPLJ 109.*

– **Section 4** – Reference – Question of revival of third appeal referred by D.B. to F.B. – Third appeal against the judgment and decree passed by the Single Judge is barred under Section 100A of C.P.C. – Does not stand revived under Section 4 of the Adhinyam: *Ratanlal Vs. Purushottam, I.L.R. (2006) M.P. 1374: 2006(4) MPLJ 620: 2006(4) MPHT 437: 2007(1) JLJ 437: 2006(III) MPJR 293.*

### **Uchha Nyayalaya (Letters Patent Appeal Samapti) Adhinyam, M.P.** **(XXIX of 1981)**

– **Section 1 & 2** and Constitution of India, Seventh Schedule, List III, Entry 11-A, List I Entry 78 and Letters Patent (Nag.), Clause 10 – M.P. Uchha Nyayalaya (Letters Patent Appeals Samapti) Adhinyam, 1981 is *ultra-vires* the powers of State Legislature – Appeal under clause 10 of Letters Patent maintainable: *Balkrishana Das Vs. Perfect*

*Pottery Co. Ltd., Jabalpur, I.L.R. (1984) M.P. 670: AIR 1985 MP 42: 1986 MPLJ 32: 1985 J LJ 140.*

**University Grants Commission Minimum Qualifications for  
Appointment of Teachers and other Academic Staff in University and  
Colleges and Measures for Maintenance of Standards of Higher  
Education, Regulation 2010**

– See – Vishwavidyalaya Adhinyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j); *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299: 2017(4) MPLJ 404: 2017(3) J LJ 138.*

**Upkar Adhinyam, M.P., 1981 (I of 1982)**

– As amended by Upkar (Sanshodhan) Adhinyam, M.P. (XXI of 1987), Sections 11, 12 & 25, Mines and minerals (regulation and Development) Act, (LXVII of 1957) Section 18 and Constitution of India, Schedule VII, List I and II – Cess imposed is tax and not fee – Levy should have some relation to the services rendered in order to be fee – Rule cannot impose tax unless statute specifically authorities imposition – Levy imposed by the Act is tax on minerals produced and not tax on land itself – Not covered by Entry 49 or 50 of State List II – Section 11 of the Act as amended is *ultra vires*: *M.P. Lime Manufacturers Association, Katni Vs. State of M.P., I.L.R. (1991) M.P. 1: AIR 1989 MP 264: 1989 MPLJ 561: 1989 MPJR HC 781: 1989 J LJ 605. (Approved by Apex Court in 1991 (Supp) 1 SCC 430)*

**(V)**

**Veterinary (Gazetted) Recruitment Rules, Madhya Pradesh, 1966**

– **Rule 6 & 8** – Constitution of India – Articles 14 and 16 – Infringement of – Principles of “equality of opportunity” – Applicable to members of same class of employee only – Do not prohibit prescription of reasonable rules for selection – Relevant connection between test prescribed and interest of public service – No violation of Article 16 of the Constitution – Rules not *ultra-Vires* – Burden upon person alleging violation of equal protection or equal opportunity – Recruitment to certain post from direct recruitment and also by promotion – Selection on merit-cum-suitability – Government entitled to decide ratio between two sources of recruitment – Persons outside prescribed upper age limit – Not fulfilling conditions of eligibility – Not entitled to raise grievance that they should also be considered for selection: *Dwaraka Dhish Bhargava Vs. State of M.P., I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 J LJ 295.*

– **Rule 6 & 8** – Persons outside prescribed upper age limit – Not fulfilling conditions of eligibility – Not entitled to raise grievance that they should also be considered for selection: *Dwaraka Dhish Bhargava Vs. State of M.P., I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.*

– **Rule 6 & 8** – Recruitment to certain post from direct – Recruitment and also by promotion – Selection on merit-cum suitability – Government entitled to decide ratio between two sources of recruitment: *Dwaraka Dhish Bhargava Vs. State of M.P., I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.*

– **Rule 6 & 8** – Rules not *ultra vires*: *Dwaraka Dhish Bhargava Vs. State of M.P., I.L.R. (1979) M.P. 486: AIR 1978 MP 119: 1978 MPLJ 378: 1978 JLJ 295.*

### **Vidyut Shulk Adhinyam, M.P. (XVII of 2012)**

– **Section 3(1), Part A, Entry 6** – See – Electricity Duty Act, M.P., 1949, Section 3(1), Part B, Entry 3: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R.(2020) M.P. 608:2020(1) MPLJ 615:2020 (2) JLJ 5.*

### **Vindhya Pradesh Application of Laws Ordinance (IV of 1948)**

– **Section 2** – Words “other laws” in – Is wide enough to give continuity even to a private Act enacted by Ruler of the State: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934: AIR 1961 MP 154: 1961 MPLJ 1: 1961 JLJ 32.*

– **Section 2** – Words “other laws” in – Is wide enough to give continuity even to a private Act enacted by Ruler of the State – State succession – Pre-existing laws in component States continue till changed by New sovereign authority – Sovereign Ruler – Powers of – Constitution, Article 226 – Existence of alternative remedy – Not absolute bar to exercise of direction under this Article: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934: AIR 1961 MP 154: 1961 MPLJ 1: 1961 JLJ 32.*

### **Vishwavidyalaya Adhinyam, M.P. (XXII of 1973)**

– **Ad-hoc lecturers** – Position: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736.*

– **Statute No. 25** – Words “every teacher” – Who is – Statute no. 28, clause 16 and 18 – Appointment of teachers – How to be made – Ashaskiya Sikshan Sansthan Adhinyam, M.P. (XX of 1978) – Rules framed thereunder – Rule 14 (1) – Requires selection of teachers by committee under chairmanship of Kulpati – Their appointment not made according to it – They are not entitled to be included in teachers electoral roll – Ad-hoc lecturers – Position of – Interpretation of Statute – Language Capable of two

meanings – Absurdity should be avoided – Constitution of India – Article 226 – Futile cannot be issued: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736.*

– **Section 4(xvii) & 2(ii)**, Ordinance 6, Clause 1 and Constitution of India, Article 226 – Establishment of University of Saugor under the University of Saugor Act, 1946 (First Schedule) – Statutory fiction – Deemed to be University under Vishwavidyalaya Adhiniyam, Madhya Pradesh, 1973 – Natural Justice – Rule of, not codified conditions in which a candidate can be refused permission to appear in examination or cancel his examination – Petitioner unsuccessful examinee at LLB Examination of Saugor University – Awadhesh Pratap Singh University permitting petitioner to appear in LL.B. Examination as Ex-student – Admission card issued – Subsequently University cancelling it and withholding result without notice to showcause – Rules of natural justice violated – Certiorari can issue – Evidence Act – Section 115 – Promissory Estoppel – Principles of Petitioner neither guilty of fraud nor mis-statement or super-session of facts not patently ineligible – Promissory estoppel operative against the University respondent: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa, I.L.R. (1979) M.P. 289: 1978 J.L.J. 182: 1978 M.P.L.J. 172: AIR 1978 MP 86.*

– **Sections 4(xxiv), 34 & 35(j)**, College Code, Statute 28, University Grants Commission Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, Regulation 2010 – Teachers/Petitioner working in aided private institutions, on the ground of amended Statute 28 of College Code seeking entitlement for benefit of having their age of superannuation at 65 years as is applicable for government teachers – Held – Statute 28 of College Code has not been amended, language of the resolution dated 07.01.2014 is not to enhance the age of superannuation, but it was only a recommendation which has not been accepted either by Executive Council of respective Universities or by the State Government – Resolution dated 07.01.2014 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the member of teaching faculty of private aided institutions – Further held – UGC Regulations, 2010 are not applicable to the State Government per se but could be adopted by the State Government – Further held – Any financial liability on State Government cannot be created impliedly, but has to be specifically accepted by State Government – Hence, teachers working in the aided private institutions are not entitled to claim that their age of superannuation shall be 65 years as is applicable in case of Government teachers – Questions of Law referred to Larger Bench answered

accordingly: *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299: 2017(4) MPLJ 404: 2017(3) JLJ 138.*

– **Section 34 & 36** and Vikram Vishwavidyalaya Statutes, Statute No. 27, Clause 4, Proviso – Affiliation Fees – Held, the admission fee referred in Clause 4 actually refers to affiliation fees to be charged by University – Though the proviso confers power to revise the fees from time to time, the same cannot be read and understood in isolation and has to be read in consonance with Section 36 of Adhinyam – Revising the fees from time to time would be an act of amending the statute itself and that power u/S 36(2) of Adhinyam is vested with the Co-ordination Committee, which may from time to time make, amend or repeal any statute – The authority of the Executive Council as provided under Clause 4 of Statute 27 is limited to preparing a proposal for enhancement of affiliation fees which has to be placed before Co-ordination Committee for consideration and it is only the Co-ordination Committee which can amend the statute to enhance the affiliation fees – Enhancement of fees by Executive Council without any reference of Co-ordination Committee, is bad in law: *Om Shanti Shiksha Samiti Vs. State of M.P., 2019(1) MPLJ 378: 2019(1) JLJ 10.*

## (W)

### Wealth Tax Act (XXVII of 1957)

– **Section 5(1)**, Clause (viii), as amended by Finance (No.2) Act of 1971 with retrospective effect from 1-4-1963 and Explanation 1 to clause (viii) added by Finance (No.2) Act of 1971 with effect from 1<sup>st</sup> April, 1972 – The term “Jewellery” used therein – Meaning of – Dictionary meaning of a word in a statute – Basic rule of its use to understand the meaning of – The term “Jewellery” as used in clause (viii) is not wide so as to cover all ornaments – Gold ornaments not studded with precious or semi-precious stones not included in the term “Jewellery” prior to 1<sup>st</sup> April 1972: *The Commissioner of Wealth-Tax, M.P.-I., Bhopal Vs. Smt. Tarabai Kanakmal, I.L.R. (1983) M.P. 67: 1982 MPLJ 640: 1983 JLJ 10.*

– **Section 27(3)** and Limitation Act Indian (XXXVI of 1963), Section 5 & 29 – Section 5 of Limitation Act applies to application under Section 27 (3) Wealth Tax Act: *Nihalkaran Vs. Commissioner of Wealth-Tax, Bhopal, I.L.R. (1987) M.P. 725: 1987 MPLJ 562: 1988 JLJ 355.*

### Wild Life (Protection) Act (LIII of 1972)

– **Sections 39(1)(d), 50(1)(c) & 50(4)** and Code of Criminal Procedure, 1973, Section 451 – Seized Property – Confiscation & Release of – Held, any property including



vehicle seized on accusation or suspicion of commission of an offence under the Act can on relevant grounds and circumstances, be released by the Magistrate pending trial in accordance with Section 50(4) r/w Section 451 CrPC – Further, mere seizure of any property including vehicle on the charge of commission of an offence would not make the property to be of the State Government u/S 39(1)(d) of the Act unless there is a trial and a finding reached by Competent authority that property was used for committing an offence under the Act: *Madhukar Rao Vs. State of M.P. & Ors.*, 2000(1) MPLJ 289: 2000(1) J LJ 304: 2000(2) MPHT 445. (Approved by Supreme Court in State of M.P. Vs. *Madhukar Rao* ILR 2008 MP 640: 2008(1) MPJR 189: 2008(1) J LJ 427)

### **Words and Phrases**

– **“Academic Issue”** – Court should refrain and restrain itself from answering academic issues: *State of Madhya Pradesh Vs. M/s Shekhar Constructions*: ILR 2008 MP 20: ILR 2007 MP 1495: AIR 2008 MP 59: 2007(4) MPLJ 531: 2007(4) MPHT 503: 2007(III) MPJR 454: 2008(1) J LJ 23. (Special Bench)

– **“Advance Tax”** is a tax paid by assessee before regular assessment and on assessment the amount loses its character of advance tax: *Commissioner of Income Tax, Jabalpur Vs. M/s. Udhoji Shri Kishandas Satna*, I.L.R. (2004) M.P. 440: 2004(1) MPLJ 589: 2004(1) MPHT 438: 2004(1) MPJR 462.

– **“Agriculturist”** – Meaning of: *Narsingh Vs. Kamandas*, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 J LJ 27.

– **“Appearance of a party”** – Meaning of: *Rama Rao Vs. Shantibai*, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 J LJ 147.

– **“Any other sufficient ground”** mean reasons sufficient on ground at least analogous to those specified immediately previously: *Ratanlal Vs. Bardibai*, I.L.R. (2003) M.P. 1072: AIR 2003 MP 248: 2003(2) MPLJ 499: 2003(2) J LJ 86: 2003(2) MPHT 295: 2003(1) MPJR 534.

– **“Any person” and “Covered by such Scheme”** – Means and includes: *Arun Kumar Lath Vs. R.T.A., Bilaspur*, I.L.R. (1991) M.P. 323: 1992 MPLJ 1.

– **“Cultivation”** – Connotation: *Rao Shankar Pratapsingh, Vs. The State of Madhya Pradesh*, I.L.R. (1959) M.P. 639: 1960 J LJ 1: AIR 1960 MP 86: 1959 MPLJ 1100.

– **“Calendar Year”** in Section 11(5) – Day from which it is to be calculated – Calendar month has two meanings but Calendar year has not: *Kanhayyalal Vs. Deputy*

*Commissioner of Sales Tax, Nagpur, I.L.R. (1958) M.P. 1: AIR 1958 MP 211: 1958 MPLJ 313: 1958 JLJ 344: (1958) 9 STC 503.*

– **“Cases arising”**– Meaning of: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P. 1: AIR 1980 MP 43: 1979 MPLJ 644: 1979 JLJ 745.*

– **“Complaint”** in Section 417 (3) of the Criminal Procedure Code – Not to be understood in the sense given by Section 4 (h) of the Code: *Drugs Inspector, Madhya Pradesh, Indore, Vs. Messrs Chimanlal and Co., I.L.R. (1968) M.P. 173: AIR 1968 MP 238: 1968 MPLJ 489: 1968 CriLJ 156: 1968 JLJ 448.*

– **“Contract”** in Section 15 (1) of Municipalities Act, C.P. and Berar – Should have wider meaning: *Shri Ballabh, Vs. The State of M.P., I.L.R. (1961) M.P. 1: AIR 1961 MP 274: 1961 MPLJ 629: 1961 JLJ 733.*

– **“Dispose of”** – Mean different from “decide”: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509: AIR 1977 MP 222: 1977 MPLJ 364: 1977 JLJ 147.*

– **“Definite share”** in Section 7(v) of the Court-fees Act – Meaning of: *Balu Vs. Amichahd, Nagpur, I.L.R. (1972) M.P. 1.*

– **“Dispute”** in Section 13(2) of Accommodation Control Act, 1961 – Meaning of: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676: 1978 MPLJ 143: 1978 JLJ 6: AIR 1978 MP 54.*

– **“Execution”** – In Section 15 of the Limitation Act, 1908 – Meaning of: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789: AIR 1970 MP 110: 1970 MPLJ 90: 1970 JLJ 125.*

– **“Final orders”** in Article 182 (5) – Means and includes appellate order when appeal filed against order of executing Court: *The C.P. Syndicate Ltd. Vs. Firm Hasan Ali, I.L.R. (1959) M.P. 1: AIR 1959 MP 288: 1959 MPLJ 458: 1959 JLJ 383.*

– **“Implements of husbandry”** In – Meaning of: *Narsingh Vs. Kamandas, I.L.R. (1981) M.P. 534: AIR 1980 MP 37: 1980 MPLJ 1: 1980 JLJ 27.*

– **“Inconsistency”** – The word “inconsistency” implies antagonism, opposition, repugnance – It is a word of broad signification, implying contradiction, quality which cannot co-exist, not merely a lack of uniformity in details and judicially defined as meaning contradictory, inharmonious, logically incompatible, contrary, the one to the other, so that both cannot stand, mutually repugnant or contradictory – The one which infers the negation, destruction or falsity of the other: *Premchand Jain Vs. Regional Transport Authority, Gwalior & Ors., 1977 MPLJ 94: 1976 JLJ 885.*

– **“Irreparable Loss”** – What should be – It should be considered on the facts and circumstances of each case as no definite yardstick in that regard can be drawn: *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1: AIR 2011 MP 27: 2010(III) MPJR 347: 2010(4) MPLJ 178: 2010(3) JLJ 77: 2010(5) MPHT137.*

– **“Interpretation of Statutes”** – Harmonious Construction – Court should attempt to interpret the provisions of an Act harmoniously and avoid as far as possible conflict between two provisions of same Act: *Municipal Corporation, Bhopal Vs. Arvind Jain, I.L.R. (2007) M.P. 1132: 2007(4) MPHT 173: 2007(4) MPLJ 402: 2007(3) JLJ 414.*

– **“Interpretation of Statutes”** – Object – To discover intention of Legislature from language used therein and if the language is plain and admits only one meaning – Occasion of interpretation hardly arises: *State of M.P. Vs. M/s. Chahal & Company, New Delhi, I.L.R. (1995) M.P. 142: 1995 MPLJ 885.*

– **“Liability”** – Liability is normally grounded on some finding of fault or wrong in addition to a finding of responsibility for some occurrence – Liability may be imposed as a legal consequences of a person’s act or omission if he is under a legal duty to act: *Sudha Gupta Vs. State of M.P., 1999(2) MPLJ 259: 1999(1) JLJ 14.*

– **“May”** – Held, the use of expression “may” in an enabling provision leaving a choice of action, which is not to be understood as a command: *State of M.P. Vs. Balveer Singh, AIR 2001 MP 268: 2001(2) MPLJ 644: 2001(1) MPJR 546: 2001(3) MPHT 255.*

– **“Negligence”** – Meaning of: *Mangilal Vs. Parasram, I.L.R. (1971) M.P.986: AIR 1971 MP 5: 1970 MPLJ 1: 1970 JLJ 142: 1970 ACJ 86.*

– **“Onus of Proof”** – Held, when a negative fact is to be proved, the party can be expected to do nothing more than to substantiate his allegations *prima facie* – Onus thereafter shifts on other side to prove positively his assertion – Rule that burden rests on the persons who makes an affirmative allegation is always not a true test – Burden also rest on a person who has a negative assertion to make – There are many exceptions to this proposition – Amount of evidence required to shift the burden depends upon circumstances of each case: *Sudha Gupta Vs. State of M.P., 1999(2) MPLJ 259: 1999(1) JLJ 14.*

– **“Prohibition”** – Definition of: *Narayan Lal Vs. Rukmanibai, I.L.R. (1980) M.P. 807: AIR 1979 MP 74: 1979 MPLJ 405: 1979 JLJ 461: 1979 ACJ 261.*

– **“Portion of land”** in Section 2(1)(i) of the Land Revenue Code, Madhya Pradesh, 1959 – Meaning of: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727: AIR 1974 MP 90: 1972 MPLJ 405: 1972 JLJ 275.*

– **“Privilege”** – Meaning of: *M/s. N.K. Doongaji & Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207: AIR 1975 MP 1: 1974 MPLJ 699: 1974 JLJ 515.*

– **“Returned Candidate”** – Means a candidate whose name has been published under Sections 19, 26 or 33 of the Act: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291: 2001(2) MPLJ 419: 2001(2) MPHT 242: 2001(II) MPJR 174.*

– **“Ratio decidendi and Precedent”** – What constitutes binding is ratio decidendi – Precedent – A decision is a precedent for what it decides and not what is inferable from it: *Smt. Archana Kumar Vs. Purendu Prakash Mukherjee, I.L.R. (2000) M.P. 309: AIR 2000 MP 279: 2000(2) MPLJ 491: 2000(3) MPHT 35: 2000(2) JLJ 84: 2000(II) MPJR 14.*

– **“Retired Government Servant”** – Includes a person retired from defence services: *Kunjulal Yadu Vs. Parasram Sharma, I.L.R. (2000) M.P. 416: 2000(2) JLJ 105: AIR 2000 MP 235: 2000(3) MPHT 355: 2000(II) MPJR 123: 2000(2) MPLJ 514.*

– **“Regular assessment”** – means the first or the original assessment by the Assessing Officer and not the revised assessment pursuant to appellate order: *Commissioner of Income Tax, Jabalpur Vs. M/s. Udhoji Shri Kishandas, Satna, I.L.R. (2004) M.P. 440: 2004(1) MPLJ 589: 2004(1) MPHT 438: 2004(I) MPJR 462.*

– **“Rank”** – Implication of: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., Jabalpur, I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 JLJ 32.*

– **“Reduction in rank”** – in Article 311 of constitution of India – Meaning of: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., Jabalpur, I.L.R. (1977) M.P. 1: AIR 1976 MP 25: 1976 MPLJ 77: 1976 JLJ 32.*

– **“Reason” and “Conclusions”** – Distinction between and import of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450: 1985 MPLJ 361: 1985 JLJ 460.*

– **“Tenant”** in Section 16 and 17 of Accommodation Control Act, 1955 – Used in popular sense – Includes an ex tenant: *Shyamlal Vs. Umacharan, I.L.R. (1960) M.P.377: 1960 MPLJ 1002: 1960 JLJ 892: AIR 1961 MP 49.*

– **“Terminus” & “Co-terminus”** – Held, usually word “terminus” implies the terminal or end point or finishing point and when used with prefix “co” it should mean to imply two things or objects having the same end, same finishing point or same terminating point: *State of M.P. & Anr. Vs. Mahendra Kumar Saraf & Ors., 2005(3) MPLJ 578: 2005(3) JLJ 251: 2005(4) MPHT 185.*

– “**This year**” relates to the initial year of agreement namely, the year 1970: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735: AIR 1973 MP 26: 1972 MPLJ 864: 1972 JLJ 679.*

### **Work Charged and Contingency Paid Employees Pension** **Rules, M.P., 1979**

– **Scope and Application** – Rules would be applicable to the work-charged and contingency paid employee, who comes within the definition of 'service' of the Recruitment Rules of 1977: *Mamta Shukla (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1807: 2011(3) MPLJ 210: 2011(3) MPHT 81: 2011(2) JLJ 94.*

### **Workmen's Compensation Act (VIII of 1923)**

– **Sections 2(1), 4 & 163-A & Schedule I** – Computation – Held, Schedule I relates to injuries u/S 2(1) and 4 of the Act – Part I of the Schedule relates to 100% loss of earning capacity in cases of permanent total disablement – Part II relates to injuries deemed to result in permanent partial disablement – Where there is permanent loss of use of limb, disability will be 100% and the injuries of permanent loss of those limbs which fall in part I of the Schedule – Percentage of loss shall not be higher than what has been mentioned in Part II regarding partial disablement – Court should determine percentage of loss of earning capacity from nature of injuries mentioned in Schedule – Even otherwise, doctor's statement determining loss of disability should be based upon scientific test – If no scientific test are conducted, then Court may safely record percentage of disability from Schedule I of the Act and amount of compensation can be calculated by applying multiplier mentioned in Schedule u/S 163-A of the Act: *Kamal Kumar Jain Vs. Tazuddin & Ors., AIR 2003 MP 212: 2004(2) MPLJ 472: 2004(1) JLJ 298: 2004(1) MPJR 426: 2004(2) ACJ 1191: 2004(2) MPHT 386.*

– **Section 30** – No independent right of appeal given to insurer – Avails the right of appeal given to employer – Third proviso to Section 30(1) equally applicable to an appeal filed by insurer – Appeal by insurer without certificate of deposit – Not maintainable: *New India Assurance Co. Ltd. Vs. Smt. Savita Sen, I.L.R. (2004) M.P.423: 2004(2) MPLJ 445: 2004(2) JLJ 214: 2004(3) MPHT 7.*

– **Section 30** – Appeal – By insurer – Against award – Requirement of Third proviso to Section 30(1) – To accompany certificate of deposit with memorandum of appeal – Beneficial legislation – Has to be interpreted in a manner which helps in achieving the object sought to be achieved – No independent right of appeal given to

insurer – Avails the right of appeal given to employer – Third proviso to Section 30(1) equally applicable to an appeal filed by insurer – Appeal by insurer without certificate of deposit – Not maintainable: *New India Assurance Co. Ltd. Vs. Smt. Savita Sen, I.L.R. (2004) M.P. 423: 2004(2) MPLJ 445: 2004(2)JLJ 214: 2004(3) MPHT 7.*

### **Writ of Certiorari**

– **When can be issued:** *Sardar Govindrao Vs. The State of Madhya Pradesh, 1961 JLJ SN 59. (From Sardar Govindrao Vs. The State of M.P. I.L.R. (1959) M.P. 172: AIR 1959 MP 339: 1959 MPLJ 639: 1959 JLJ 407)*

## (Z)

### **Zamindari Abolition Act, Madhya Bharat (XIII of 1951)**

– **Section 3 & 4** – Nature of Scheme – Schemes under the provisions of the Act contemplates only a change of master in case of tenants and was not aimed to divest the tenants of their tenancy rights: *Deorao Jadhav Vs. Ramchandra, 1982 MPLJ 414: 1982 JLJ 375.*

– **Sections 3, 4(2), 38 & 41** – Possession – Held, possession includes constructive possession and cultivation by trespasser is deemed to be personal cultivation of the proprietor – Possession of a trespasser is that of a person having right to possess – In section 4, the word used is “possession” and not “actual Possession” and a tenant in possession of any holding will be deemed to be a tenant of the State – Even if the tenant is ousted by trespasser, his possession continues: *Deorao Jadhav Vs. Ramchandra, 1982 MPLJ 414: 1982 JLJ 375.*

– **Section 3 & 38** – Explanation – Trespasser – Occupation on or before 02.10.51 – Held, tenant is entitled to evict the trespasser even after 02.10.51 by taking action within period of limitation – The trespasser having not perfected his title by adverse possession, *pucca* tenancy rights would accrue to the tenant: *Deorao Jadhav Vs. Ramchandra, 1982 MPLJ 414: 1982 JLJ 375.*

– **Section 38 & 41** – Pucca Tenant & Trespasser – Possession – Held, a trespasser is not entitled to become a *pucca* tenant – Section 38 confers higher status to actual tiller of land either as tenant, sub-tenant or tenant of sub-tenant but not to a trespasser – For purpose of Section 38, the expression “actual possession” cannot include possession through a trespasser: *Deorao Jadhav Vs. Ramchandra, 1982 MPLJ 414: 1982 JLJ 375.*

**Zamindari Abolition Act, Madhya Bharat (XVI of 1959)**

– **Section 38** – Whether confers powers on the Revenue Officer to determine dispute between person seeking to deposit on basis of alleged status and another person questioning his right – Land Revenue and Tenancy Act, Madhya Bharat – Section 15 and Notification dated 7.5.56, under Section 16 – Power of, Government to appoint Naib-Tehsildar and Additional Naib-Tehsildar – Power of Tehsildar – Can be exercised by Additional Naib-Tehsildar after appointment – Interpretation of Statute – Principle of interpretation – Court, Power of, to travel outside the words used to find out secret intention – Provision conferring jurisdiction on special bodies, persons or Courts – To be strictly construed: *Ayyub Khan Vs. Fundilal, I.L.R. (1969) M.P. 343: AIR 1968 MP 57: 1967 MPLJ 904: 1967 JLJ 822.*

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**PERSONAL NOTES**

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