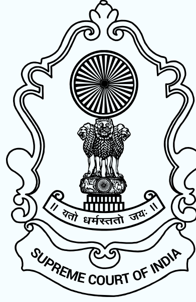

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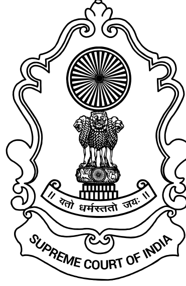

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Jaipur Vidyut Vitran Nigam Ltd. & Ors.
v.
MB Power (Madhya Pradesh) Limited & Ors.

(Civil Appeal No. 6503 of 2022)

08 January 2024

[B. R. Gavai* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

State Commission held that the tariffs offered by the L-4 and L-5 bidders were not aligned to the prevailing market prices. In appeal by L-5, APTEL held that the State Commission had to necessarily adopt the tariff and had no power to consider whether the tariff was aligned to market prices. Impugned judgment of the High Court relying on the said judgment of the APTEL and the earlier orders of this Court concluded that applying the test of "filling the bucket", the procurers were bound to take supply from the respondent No.1 at the rates quoted by it and it had a right to supply power since there was a gap of 300 MW between the power procured by the procurers and the ceiling of 906 MW determined by this Court. High Court whether justified in issuing mandamus directing the appellants to take supply of 200 MW power from the respondent No.1 at the rates quoted by it. Power of the State Commission to go into the question as to whether the prices quoted are market aligned or not and to take into consideration the aspect of consumers' interest.

Headnotes

Electricity Act, 2003 – ss.63, 86 – Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN) filed Petition before the State Commission seeking approval for procurement of 1000 MW of power by a competitive bidding process – RFP was issued – Eventually, in consonance with the LoI, PPAs were signed with the L-1, L-2 and L-3 bidders – State Commission held that the quantum of only 500 MW power was liable to be approved considering the demand in the State as recommended by the EAC and it approved the tariff quoted by the L-1 to L-3 bidders – Appeals filed by L-2 and L-3 bidders before APTEL, allowed – Challenged by the appellants – Subsequently, Civil Appeals were filed by L-5 bidder also– Disposing of the appeals, State Commission was directed to go into the issue of approval for adoption of tariff with regard to L-4 and L-5 bidders– Further,

* Author

vide order dtd.19.11.18, State Commission was directed to go into the issue of adoption of tariff – State Commission held that the tariffs offered by the L-4 and L-5 bidders were not aligned to the prevailing market prices – Appeal filed by L-5 bidder, allowed by APTEL – Writ petition was filed by the respondent No.1 – Allowed by impugned judgment:

Held: Unlike s.62 r/w ss.61 and 64, under the provisions of s.63, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined u/s.63 – Such "adoption" is only if such tariff has been determined through a transparent process of bidding, and this transparent process of bidding must be in accordance with the guidelines issued by the Central Governments – s.86(1)(b) gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensees – It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc. – Further, orders relied upon by the APTEL, specifically the order dtd. 19.11.2018, clarified that the State Commission was to decide the tariff u/s.63 having regard to the law laid down both statutorily and by this Court – As such, the State Commission was bound to take into consideration the Bidding Guidelines notified by the Central Government, and specifically clause 5.15 thereof – State Commission justified in considering the Clause 5.15 of the Bidding Guidelines which specifically permits to reject all price bids if the rates quoted are not aligned to the prevailing market prices – APTEL grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest – It cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled – No such direction can be issued by this Court de hors the provisions of ss.63 and 86(1)(b) and the Bidding Guidelines – Since the decision-making process adopted by the Bid Evaluation Committee approved by the State Commission, was in accordance with the law laid down by this Court, the same ought not to have been interfered with by the APTEL – High Court could not have issued a mandamus to the instrumentalities of the State to enter into a contract harmful to the public interest inasmuch as, if the power was to be procured by the procurers at the rates quoted by the respondent No.1, which was even higher than the rates quoted by the L-5 bidder, then the

State would have to bear financial burden in thousands of crore rupees, which in turn would have passed on to the consumers – Impugned judgment quashed and set aside – Cost imposed. [Paras 67, 71, 73-75, 78, 83, 104, 105]

Electricity – Competitive Bidding Guidelines notified by the Government of India u/s.63 – Respondent No.1 contended that the procurer is bound to accept all the bids emerged in a competitive bidding process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines:

Held: If the contention is to be accepted it will do complete violence to clause 5.15 of the Bidding Guidelines itself – If that view is accepted, the DISCOMS will be compelled to purchase electricity at a much higher rate as compared with other suppliers – The said higher rate will be passed on to the consumers – As such, accepting the contention of the respondent No.1 would result in adversely affecting the interests of the consumers and, in turn, would be against the larger public interest. [Para 77]

Electricity Act, 2003 – s.63 – General Clauses Act – s.13(2) – "all", "any" – Principle of literal interpretation – Principle of purposive construction – "all" used in clause 5.15 of the Bidding Guidelines r/ws.86(1)(b) – Competitive Bidding Guidelines notified by the Government of India u/s.63 – It was contended that the power under clause 5.15 of the Bidding Guidelines can be exercised only when the bidding process is found to be not in compliance with the Bidding Guidelines and is not transparent in respect of all the bidders and not in respect of some of the bidders is concerned:

Held: The contention is without substance – Words "all" or "any" will have to be construed in their context taking into consideration the scheme and purpose of the enactment – What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a consideration of the context in which the word(s) appear(s) and in particular, the scheme and object of the legislation – The word "all" used in clause 5.15 of the Bidding Guidelines, read with the legislative policy for which the Electricity Act was enacted and r/ws.86(1)(b), will have to be construed to be the one including "any" – Applying the principle of literal interpretation, the evaluation committee/BEC would be entitled to reject only such of the price bids if it finds that the rates quoted

by the bidders are not aligned to the prevailing market prices – It does not stipulate rejection of all the bids in the bidding process – If the contention that clause 5.15 of the Bidding Guidelines will come into play, which permits the Evaluation Committee to reject "all" price bids and not "any" one of them is accepted, it will lead to absurdity – The Court, while interpreting a particular provision, will have to apply the principles of purposive construction – Such an interpretation would result in defeating one of the main objects of the enactment, i.e., protection of the consumer. [Paras 84, 87, 88 and 91]

Interpretation of Statutes – Principle of purposive construction – Discussed.

Electricity Act, 2003 – ss.62, 63, 79(1)(b):

Held: The non-obstante clause advisedly restricts itself to s.62, there is no reason to put s.79 out of the way altogether – Either u/s.62, or 63, the general regulatory power of the Commission u/s.79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff – ss.62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff – In a situation where the guidelines issued by the Central Government u/s.63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit u/s.79(1)(b), only in accordance with those guidelines. [Para 68]

Alternate remedy – Electricity Act, 2003 – Constitution of India – Article 226 – Judicial review – Scope:

Held: The Electricity Act is an exhaustive code on all matters concerning electricity – Under the Electricity Act, all issues dealing with electricity have to be considered by the authorities constituted under the said Act – The State Electricity Commission and the APTEL have ample powers to adjudicate in the matters with regard to electricity – These Tribunals are tribunals consisting of experts having vast experience in the field of electricity – In the present case, the High Court erred in directly entertaining the writ petition when the respondent No.1-the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission – Although, availability of an alternate remedy is not a complete bar in the exercise of the power of judicial review by the High Courts but, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out – While exercising its power of judicial review, the

Court can step in where a case of manifest unreasonableness or arbitrariness is made out – There was not even an allegation with regard to that effect – In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute which is a complete code in itself was not justified. [Paras 93-95]

Contract – Award of contract, a commercial transaction – Judicial Scrutiny – Scope:

Held: The award of a contract, whether by a private party or by a public body or the State is essentially a commercial transaction – In arriving at a commercial decision, considerations which are paramount are commercial considerations – State can choose its own method to arrive at a decision – It can fix its own terms of invitation to tender and that is not open to judicial scrutiny – State can enter into negotiations before finally deciding to accept one of the offers made to it – Price need not always be the sole criterion for awarding a contract – State may not accept the offer even though it happens to be the highest or the lowest – However, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily – Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness – Only when the Court comes to a conclusion that overwhelming public interest requires interference, the court should intervene. [Para 102]

Case Law Cited

PTC India Limited v. Central Electricity Regulatory Commission, Through Secretary [2010] 3 SCR 609 **: (2010) 4 SCC 603;** *Vivek Narayan Sharma and others v. Union of India and others* [2023] 1 SCR 1 **: (2023) 3 SCC 1 – followed.**

Energy Watchdog v. Central Electricity Regulatory Commission and others [2017] 3 SCR 153 **: (2017) 14 SCC 80;** *GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) & Ors.* [2023] 8 SCR 183 **: 2023 SCC Online SC 464 – relied on.**

R.Viswanathan and others v. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others [1963] 3 SCR 22 **:**

AIR 1963 SC 1; *Deccan Paper Mills Company Limited v. Regency Mahavir Properties & Ors.* [2020] 13 SCR 427 **: (2021) 4 SCC 786;** *Tata Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission & Ors.* [2022] 19 S.C.R. 620 **: 2022 SCC Online 1615;** *Tata Cellular v. Union of India* [1994] 2 Suppl. SCR 122 **: (1994) 6 SCC 651;** *Rajasthan Housing Board and another v. G.S. Investments and another* [2006] 7 Suppl. SCR 868 **: (2007) 1 SCC 477;** *Laxmikant and others v. Satyawan and others* [1996] 3 SCR 532 **: (1996) 4 SCC 208;** *Reliance Infrastructure Limited v. State of Maharashtra and others* [2019] 1 SCR 886 **: (2019) 3 SCC 352;** *Radha Krishan Industries v. State of Himachal Pradesh and others* [2021] 3 SCR 406 **: (2021) 6 SCC 771;** *South Indian Bank Ltd. and others v. Naveen Mathew Philip and another* [2023] 4 SCR 18 **: 2023 SCC OnLine SC 435;** *Air India Ltd. v. Cochin International Airport Ltd. and others* [2000] 1 SCR 505 **: (2000) 2 SCC 617 – referred to.**

List of Acts

Electricity Act; RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations 2004; Constitution of India; General Clauses Act.

List Keywords

Electricity; State Electricity Regulatory Commission; Appellate Tribunal for Electricity; Bid Evaluation Committee; Request for Proposal; Power Purchase Agreement; Reduction of quantum of power; Test of filling the bucket; Tariffs not aligned to the prevailing market prices; Consumers' interest; Competitive Bidding Guidelines/Process; Approval for adoption of tariff; Determination of tariff by bidding process; Functions of State Commission; Functions of Central Electricity Regulatory Commission; Bid Evaluation Committee; Mandamus; Contract harmful to the public interest; Interpretation of Statutes; Principle of literal interpretation; Principle of purposive construction; Determination of tariff, Regulating tariff; Alternate remedy; Judicial review; Unreasonableness or arbitrariness; Award of contract; Commercial transaction; Commercial considerations; Judicial Scrutiny.

Jaipur Vidyut Vitran Nigam Ltd. & Ors. v.
MB Power (Madhya Pradesh) Limited & Ors.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6503 of 2022.

From the Judgment and Order dated 20.09.2021 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Civil Writ Petition No.14815 of 2020.

With

Civil Appeal Nos. 6502 of 2022 And 4612 of 2023.

Appearances for Parties

P. Chidambaram, Sr. Adv., Anand K Ganesan, Amal Nair, Ms. Shivani Verma, Nitin Saluja, Nikunj Dayal, Ms. Kritika Khanna, Advs. for the Appellants.

Vikramjit Banerjee, A.S.G., Dr. A.M. Singhvi, Prag Tripathi, C.S. Vaidhyanathan, Sr. Advs., Atul Shanker Mathur, Mahesh Agarwal, Rishi Agrawala, Vaibhav Mishra, Dr. Rajeshwar Singh, Avishkar Singhvi, Ms. Priya Singh, Prabal Mehrotra, Shubhankar, Ankur Saigal, Karan Verma, Apoorv Agarwal, E. C. Agrawala, Atul Shankar Mathur, Buddy Rangnathan, Umang Katariya, Ms. Mishika Bajpai, Ms. Apoorva Agrawal, Sidharth Seem, M/s. Khaitan & Co., Jayant Mohan, Zoheb Hossain, P.V. Yogeshwaran, Siddhartha Sinha, Ms. Megha Saxena, Aditya Kashyap, Ms. Vanshja Shukla, Nring C. Zeliang, Gurmeet Singh Makker, Saurabh Mishra, Ms. Prerna Singh, Guntur Prabhakar, Ravi Kishore, Guntur Pramod Kumar, Umesh Kumar Khaitan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B. R. Gavai, J.

CIVIL APPEAL NO. 6503 OF 2022 AND CIVIL APPEAL NO. 6502 OF 2022

1. These appeals challenge the judgment and order dated 20th September 2021, passed by the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur, in D.B. Civil Writ Petition No. 14815 of 2020, thereby allowing the said writ petition filed by MB Power (Madhya Pradesh) Limited (hereinafter referred to as "MB Power"), respondent No.1 herein. By the impugned judgment and order, the

High Court held that the respondent Nos. 1 to 5 therein (appellants herein and the State of Rajasthan) are bound to purchase a total of 906 MW electricity from the successful bidders. It, therefore, directed the writ petitioner- MB Power (respondent No.1 herein) and respondent No.7 - PTC India Ltd. (hereinafter referred to as "PTC India") in the said writ petition (respondent No.2 in the present appeals) to supply 200 MW electricity to the respondents therein (appellants herein) within the limit of 906 MW. It also directed the writ petitioner-MB Power and PTC India, respondent No.7 in the said writ petition, to file an appropriate application before the respondent Nos. 1 to 5 in the said writ petition, within two weeks from the date of the order, complying with the necessary requisite conditions, including bank guarantee etc., as required in terms of the Request for Proposal (hereinafter referred to as "the RFP"). It further directed the respondent Nos. 1 to 5 in the said writ petition, for issuance of Letter of Intent ("LoI" for short) in respect of bid filed through PTC India for supplying 200 MW power from the power generating station of the writ petitioner i.e. MB Power at levelized tariff of Rs.5.517/Kwh, being in terms of their bid qualified by the Bid Evaluation Committee ("BEC" for short) and ranked L-7. It further directed the respondents No.1 to 5 in the said writ petition, to immediately within two weeks thereafter, execute the Power Purchase Agreement ("PPA" for short) with PTC India for procuring 200 MW power from the power generating station of MB Power, and then to start procuring power in accordance with law. As an interim measure, it directed that the tariff to be actually paid by the procurer-respondents before it, shall be the interim tariff i.e. Rs.2.88 per unit, as specified by this Court in its interim order dated 28th September 2020, passed in I.A. No.83693 of 2020 in Civil Appeal No.2721 of 2020. It further held that the final adoption of tariff to be paid to PTC India (respondent No.7 before it) under the PPA shall be subject to the final outcome of the said Civil Appeal No. 2721 of 2020, pending before this Court.

BRIEF FACTS:

2. The facts leading to the filing of these two appeals, as mentioned in Civil Appeal No. 6503 of 2022, are as under:

2.1 The Government of India vide Notification dated 19th January 2005, notified the Competitive Bidding Guidelines (hereinafter referred to as "the Bidding Guidelines") under Section 63 of the

Electricity Act, 2003 (hereinafter referred to as "the Electricity Act"). The objective of the said Bidding Guidelines is for introduction of competition and protection of consumer interest.

2.2 On 21st September 2009, Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred to as "RVPN") filed Petition No.205 of 2009 before the Rajasthan Electricity Regulatory Commission (hereinafter referred to as "the State Commission") seeking approval for procurement of 1000 MW of power by a competitive bidding process.

2.3 On 28th May 2012, RVPN issued an RFP, inviting sellers to participate in the competitive bidding for procurement of 1000 MW under the Bidding Guidelines.

2.4 In the month of February 2013, bids were received from the bidders.

2.5 On 4th April 2013, based on the preliminary evaluation of the non-financial bids by the BEC, 7 bidders were declared as qualified for opening of the financial bids. The respondent No.1-MB Power herein was not a bidder in the above process. Respondent No.2-PTC India herein had submitted a bid for 1041 MW, which it was to procure from five different generators. PTC India is a power-trading licensee company, which had procured the bid document after depositing a Bid Bond.

2.6 In the various meetings held between 17th April 2013 and 22nd April 2013, the BEC had placed the bids received in ascending order, from lowest to the highest tariff as follows:

Rank	*Qualified Bidder Name*	*Levelized Tariff (Rs/kWh)*	*Capacity Offered*	*Cumulative Capacity Offered*	*Average Cumulative Tariff (Rs/ kWh)*
L-1	PTC – Maruti Clean Coal and Power Limited	4.517	195	195	4.517
L-2	PTC – DB Power Limited	4.811	311	506	4.698

L-3	LPL – Lanco Babandh Power Limited	4.943	100	606	4.738
L-4	PTC – Athena Chhattisgarh Power Ltd	5.143	200	806	4.839
L-5	SKS Power Generation (Chhattisgarh) Limited	5.300	100	906	4.890
L-6	LPL – Lanco Vidarbha Thermal Power Limited	5.490	100	1006	4.949
L-7	PTC – MB Power (Madhya Pradesh) Ltd.	5.517	200	1206	5.043
L-8	KSK Mahanadi Power Company Limited	5.572	475	1681	5.193
L-9	Jindal Power Limited	6.038	300	1981	5.321
L-10	LPL – Lanco Amarkantak Power Ltd	7.110	100	2081	5.407

2.7 In the 216th Meeting of the Board of Directors of RVPN, it was decided to take an opinion from the BEC as to whether negotiations should be held to reduce tariff keeping in view of the long-term impact and quantum of the amounts involved.

2.8 On 4th June 2013, the BEC gave its opinion that since the rates quoted vary considerably, negotiations could be held with the bidders.

2.9 Vide Resolution dated 4th June 2013, the Board of the RVPN decided to hold negotiations with the qualified bidders.

2.10 In the negotiations, the following offers were received:

"

- L-1/Maruti Clean Coal & Power Ltd. offered an additional capacity of 55 MW, aggregating to a total of 250 MW.
- L-2/DB Power Limited, *inter-alia*, agreed to provide additional quantum of power to the tune of 99 MW, aggregating to a total of 410 MW.
- Similarly, L-3/Lanco Power Ltd. offered an additional capacity of 250 MW, aggregating to a total of 350 MW."

2.11 The Board of Directors of the RVPN, in its meeting held on 27th September 2013, directed that, LoI be issued in favour of the L-1, L-2 and L-3 bidders as under, subject to the approval of the State Commission while adopting the tariff.

"S. No.	*Bidder*	*Quoted Tariff (Rs. / kWh)*	*Capacity offered in Bid (MW)*	*Additional Capacity Offered (MW)*
1	M/s PTC India Ltd (through developer M/s Maruti Clean Coal and Power Limited)	4.517	195	55
2	M/s PTC India Ltd (through their developer M/s DB Power Limited)4.811	4.811	311	99
3	M/s Lanco Power Limited (Generation Source – M/s Lanco Babandh Power Limited)	4.892	100	250
	Total		**606**	**404**
G. Total (A+B)			**1010 MW"**	

2.12 In consonance with the LoI, on 1st November 2013, PPAs were signed with the L-1, L-2 and L-3 bidders. Thereafter, RVPN filed Petition No.431 of 2013 before the State Commission under Section 63 of the Electricity Act read with clause 5.16

of the Bidding Guidelines for adoption of tariff for purchase of long-term base load power of 1000 MW (±10%) as quoted by the successful bidders (being L-1, L-2 and L-3) under the Case-I bidding process.

2.13 The Energy Assessment Committee ("EAC" for short), constituted by the Government of Rajasthan pursuant to Regulation 3 of the Power Procurement Regulations, in its 4th meeting held on 29th January 2014, recommended that there was no requirement for long term procurement of 1000 MW (±10%) power under Case-I for which PPAs had been executed and tariff adoption petition had been filed before the State Commission.

2.14 In the meantime, the L-4 and L-5 bidders filed Writ Petitions being CWP No. 19437 of 2013 and CWP No.18699 of 2013 respectively, before the High Court, seeking to strike down the negotiations process and the higher quantum awarded to L-1, L-2 and L-3 bidders.

2.15 The High Court vide judgment dated 7th February 2014, refused to entertain the writ petitions and relegated the parties to the State Commission. The said order dated 7th February 2014 came to be challenged by the L-4 and L-5 bidders by way of writ appeals being DB Special Appeals (Writ) Nos. 538 of 2014 and 604 of 2014. The said appeals also came to be dismissed by the High Court vide judgment and order dated 18th April 2014.

2.16 Subsequently, in its 5th meeting held on 21st May 2014, the EAC recommended that as against the quantum of 1000 MW power, for which PPAs had been executed and tariff adoption petition had been filed, a demand of 600 MW power ought to be considered, on account of availability of power from various sources and to meet future contingencies.

2.17 The Government of Rajasthan, therefore, vide its letter dated 25th July 2014, issued to the RVPN, approved the purchase of a quantum of 500 MW power on long term basis as against the quantum of 1000 MW for which PPAs had already been executed.

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2.18 On the basis of the decision/recommendation of the EAC and the direction issued by the Government of Rajasthan, RVPN filed an application under Regulation 7 of the RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations 2004 (hereinafter referred to as "RERC Regulations 2004") in Petition No.431 of 2013, to bring on record the EAC decision/recommendation and the Government of Rajasthan approval. In the said application, *inter alia*, it was prayed for adoption of tariff and approval of the reduced quantum of 500 MW of power to be purchased as against the original 1000 MW of power for which PPAs had already been executed with the successful bidders.

2.19 Vide order dated 22nd July 2015 in Petition No.431 of 2013, the State Commission held that the quantum of only 500 MW power was liable to be approved considering the demand in the State as recommended by the EAC. The State Commission also approved the tariff quoted by the L-1 to L-3 bidders.

2.20 Aggrieved by the reduction of quantum by the State Commission, the L-2 and L-3 bidders preferred appeals before the learned Appellate Tribunal for Electricity (hereinafter referred to as "the learned APTEL") being Appeal Nos. 235 of 2015 and 191 of 2015 respectively.

2.21 Two separate appeals were also preferred by the L-4 and L-5 bidders, being Appeal No. 264 of 2015 and Appeal No. 202 of 2015 respectively, wherein apart from challenging the reduction of quantum by the State Commission from 1000 MW to 500 MW, the increase in quantum granted to the L-1, L-2 and L-3 bidders was also challenged.

2.22 Vide order dated 2nd February 2018, the learned APTEL allowed the Appeal Nos. 191 of 2015 and 235 of 2015, filed by the L-3 and L-2 bidders, holding that the reduction of quantum by the State Commission from 1000 MW to 500 MW was incorrect. It, therefore, directed the State Commission to pass consequential orders for approving the PPAs for the L-2 and L-3 bidders for the higher quantum which was negotiated.

2.23 The order of the learned APTEL dated 2nd February 2018, was challenged by the present appellants before this Court by

way of Civil Appeal Nos. 3481-3482 of 2018, on the ground that the RFP quantum cannot be restored from 500 MW to 1000 MW. Subsequently, Civil Appeal Nos. 2502-2503 of 2018 also came to be filed by L-5 bidder- SKS Power Generation (Chhattisgarh) Limited (hereinafter referred to as "SKS Power"), on the ground that the State Commission could not have permitted the procurement of higher quantum by the L-2 and L-3 bidders.

2.24 Vide order dated 25th April 2018, the said Civil Appeals were disposed of by this Court, upholding the decision of the learned APTEL, setting aside the reduction of quantum of procurement from 1000 MW to 500 MW after the bidding process was over. However, this Court held that the decision of the learned APTEL on the quantum to be procured from individual bidders was liable to be reversed and that the quantum originally offered by the bidders in the bidding process has to be taken into consideration and increase in quantum by means of negotiation was not permissible. Insofar as L-4 and L-5 bidders are concerned, since the tariff quoted was not considered at any stage by either the procurer, or by RVPN or by the State Commission, this Court directed the State Commission to go into the issue of approval for adoption of tariff with regard to L-4 and L-5 bidders.

2.25 Subsequent to the judgment and order dated 25th April 2018, passed by this Court, the BEC came to a finding that the tariffs quoted by the L-4 and L-5 bidders were not aligned to the prevailing market prices.

2.26 In the meantime, vide order dated 19th November 2018, this Court, on an application filed by RVPN, directed the State Commission to go into the issue of adoption of tariff in terms of Section 63 of the Electricity Act and the law laid down by this Court under the said provision.

2.27 Vide order dated 26th February 2019, the State Commission held that the tariffs offered by the L-4 and L-5 bidders were not aligned to the prevailing market prices.

2.28 Being aggrieved by the same, SKS Power (L-5 bidder) challenged the above order dated 26th February 2019 before the learned APTEL by way of Appeal No.224 of 2019.

2.29 Vide the judgment and order dated 3rd February 2020, the learned APTEL allowed the appeal of the L-5 bidder – SKS Power and held that the State Commission had to necessarily adopt the tariff, and had no power to consider whether the tariff was aligned to market prices.

2.30 Aggrieved by the same, the present appellants have filed Civil Appeal No. 1937 of 2020 and Civil Appeal No.2721 of 2020. Initially, the present appeals were tagged along with the said appeals. However, vide order dated 10th October 2023, the same have been de-tagged.

2.31 On an interlocutory application being I.A. No.83693 of 2020 filed by L-5 bidder-SKS Power in Civil Appeal No. 2721 of 2020, an interim order 28th September 2020, came to be passed by this Court, holding that the L-5 bidder was entitled to supply power to the appellants at the tariff of Rs.2.88 per unit.

2.32 It appears that subsequently thereafter on 14th December 2020, a writ petition being Writ Petition No. 14815 of 2020 came to be filed by the respondent No.1-MB Power before the High Court, seeking following relief:

"(a) Issue appropriate Writ or order or direction in the nature of declaration or certiorari or any other writ or direction declaring Rule 69(2)(b) of the RTPP Rules as *ultra vires* Article 14, 19(1)(g) and 21 of the Constitution of India as well as Section 63 of the Electricity Act, 2003;

(b) Issue appropriate Writ or order or direction in the nature of mandamus directing the Respondent Nos. 1-4 to immediately issue a Letter of Intent in favour of the Petitioner, sign the power Purchase Agreement with the Petitioner as per its bid tariff, take steps for adoption of tariff of the Petitioner and immediately commence supply of power;

(c) Pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case in the interest of justice."

2.33 In the appeals filed by the present appellants, i.e., Civil Appeal Nos. 1937 of 2020 and 2721 of 2020, respondent No.1-MB Power filed an application for impleadment, on the ground that the issue of role of the State Commission in adoption of tariff being decided by this Court in the said appeals would have an impact on the writ petition filed by it before the High Court.

2.34 Vide order dated 19th April 2021, this Court directed the said application for impleadment to be considered at the stage of hearing of the said appeals.

2.35 By the impugned judgment and order, the said writ petition filed by MB Power has been allowed by the High Court in terms of the aforesaid directions.

2.36 Hence the present appeals.

CIVIL APPEAL NO. 4612 OF 2023

3. This appeal filed by Rajasthan Urja Vikas Nigam Limited (hereinafter referred to as "RUVNL") challenges the order dated 1st June 2023, passed by the learned APTEL, whereby the learned APTEL has stayed the operation of the order dated 31st March 2023, passed by the State Commission in Petition No.RERC-2097 of 2023.

4. The facts, in brief, leading to the filing of Civil Appeal No.4612 of 2023, are as under:

4.1 In the year 2022, the RUVNL had proposed the procurement of 294 MW of power on long term basis and for that purpose had filed Petition No.2017 of 2022 before the State Commission.

4.2 Vide order dated 2nd November 2022, the State Commission rejected the procurement of power on long term basis.

4.3 Thereafter, considering the assessment and requirement of power, the RUVNL filed Petition No.RERC-2097 of 2023 before the State Commission, seeking approval for procurement of 160 MW of power on medium term basis i.e., for a period of 5 years and not for 25 years on long term basis.

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4.4 Vide order dated 31st March 2023, the State Commission granted approval to the distribution licensees in the State of Rajasthan for procurement of 160 MW round-the-clock fuel agnostic power on medium term basis by way of a competitive bidding process.

4.5 Aggrieved thereby, the respondent No.1 herein, i.e., MB Power (Madhya Pradesh) Limited filed Appeal No. 466 of 2023 before the learned APTEL against the order dated 31st March 2023 passed by the State Commission, along with I.A. No.1004 of 2023 for the stay of the order.

4.6 Vide impugned order dated 1st June 2023, the learned APTEL stayed operation of the order passed by the State Commission and directed that in the bidding process for procurement of 160 MW of power on medium term basis the bid shall neither be finalized nor shall any Letter of Intent be issued pursuant to the opening of the bids.

4.7 Aggrieved thereby, the RUVNL has filed the present appeal.

5. Vide order dated 26th September 2023, this Court had permitted the appellant to proceed further with the tender process for procurement of 160 MW of power for 5 years on the basis of model bidding documents for medium term procurement.

6. Vide order dated 10th October 2023, this Court had been informed that pursuant to the aforesaid order dated 26th September 2023, bids had been opened and the lowest bid was at Rs.5.30 per unit. As a result, this Court had clarified that the pendency of the present appeal would not come in the way of the appellant in finalizing the tender and executing power purchase agreement with the successful bidders and the appellant would be at liberty to do so in order to overcome the difficulty of power shortage.

7. The order of the learned APTEL dated 1st June 2023 basically relies on the judgment of the Division Bench of the High Court of Judicature for Rajasthan, bench at Jaipur, passed in D.B. Civil Writ Petition No. 14815 of 2020, which is a subject matter of challenge in Civil Appeal Nos. 6503 of 2022 and 6502 of 2022. As such, the result of Civil Appeal No.4612 of 2023 would depend upon the outcome of Civil Appeal Nos. 6503 of 2022 and 6502 of 2022.

SUBMISSIONS OF THE APPELLANTS

8. We have heard Shri P. Chidambaram, learned Senior Counsel appearing for the appellants, and Dr. A.M. Singhvi and Shri C.S. Vaidyanathan, learned Senior Counsel appearing for the respondents.

9. Shri Chidambaram, at the outset, submits that the writ petition, filed by the respondent No.1-MB Power, was not maintainable before the High Court in its original jurisdiction under Article 226 of the Constitution of India. It is submitted that, if the respondent No.1-MB Power had any grievance, it could have either approached the State Commission or the learned APTEL.

10. He submits that this Court in the case of ***PTC India Limited v. Central Electricity Regulatory Commission, Through Secretary***[1] has held that the Electricity Act is an exhaustive code on all matters concerning electricity. The Electricity Act provides for the forum for adjudication of all disputes between a generator and the procurer/licensee. As such, the respondent No.1-MB Power, if had any grievance, ought to have filed an application before the State Commission or the learned APTEL and it could not have approached the High Court directly in its writ jurisdiction.

11. Shri Chidambaram further submitted that though L-1 to L-5 bidders have continuously been litigating their grievances from 2013 onwards, the respondent No.1-MB Power, since it was not short-listed, had taken no steps from 2013 onwards. It is submitted that, as a matter of fact, the bid of L-7 bidder was returned and on 6th January 2015, the Bid Bond bank guarantee was also directed to be not extended. Still, it kept silent for about 6 years. He further submits that even after the judgment and order was passed by this Court on 25th April 2018, respondent No.1-MB Power did not take any steps for about two years, and for the first time, on 14th December 2020, it filed a writ petition before the High Court. As such, it is clear that the respondent No.1-MB Power had acquiesced the direction by the appellants dated 6th January 2015 not to renew the Bid Bond bank guarantee. Shri Chidambaram, therefore, submits that the writ petition was liable to be dismissed on the ground of delay and laches itself.

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1 **[2010] 3 SCR 609** : (2010) 4 SCC 603=2010 INSC 146

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12. Shri Chidambaram further submits that the term "successful bidder" has been defined in the RFP. It is submitted that the bidder(s) selected by the procurer/authorized representative, pursuant to the RFP for supply of power by itself or through the project company as per the terms of the RFP, and to whom a LoI has been issued, can only be termed as the "successful bidder". Since no LoI was issued to the respondent No.1-MB Power, it could not be construed as a "successful bidder".

13. Shri Chidambaram submits that the theory of "filling the bucket", as put forth by the respondent No.1-MB Power, has no basis either in the RFP or in the Bidding Guidelines. It is further submitted that the said theory is a dangerous proposition inasmuch as, it is expected that the procurer would be obliged to accept the bids of lower ranked financial bids, irrespective of the exorbitant tariff quoted by them. Shri Chidambaram has given an illustration to that effect that, if in a bid to procure 1000 MW, 2 bidders can be put forward as stalking horses who would bid lower tariffs and are ranked as L-1 and L-2. Thereafter, L-3 onwards can quote exorbitant tariffs which are not aligned to market prices. He submits that this specious theory of "filling the bucket", which would oblige the procurer to go to the last bidder, irrespective of their tariffs being completely exorbitant, is very dangerous. It is submitted that, in any case, clause 3.5.12 of the RFP enables the procurer to reject any bid where the quoted tariff is not aligned to market prices.

14. Shri Chidambaram further submits that the directions issued by this Court vide order dated 25th April 2018, were specifically restricted to L-1 to L-5 bidders, which were litigating. It is submitted that the contention of the respondent No.1-MB Power that the order of this Court dated 25th April 2018 was an order *in rem* is erroneous.

15. Relying on the judgment of this Court in the case of ***R. Viswanathan and others v. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others***[2], Shri Chidambaram submits that the judgment *in rem* settles the destiny of the res itself. Whereas an order *in personam* determines the rights of persons before the Court and binds only

2 **(1963) 3 SCR 22**=AIR 1963 SC 1=1962 INSC 205

the parties to the *lis*. Reliance in this respect is also placed on the judgment of this Court in the case of ***Deccan Paper Mills Company Limited v. Regency Mahavir Properties & Ors***.[3]

16. Shri Chidambaram further submits that the reliance by the respondents on the certificate, which certified the bid evaluation process was carried out in conformity with the provisions of the RFP, and, therefore, it is not permissible to go into the determination of tariff is incorrect. He submits that the certificate is not certifying that L-7 was qualified to be selected as a "successful bidder" or it had earned a right to have his bid accepted irrespective of the quoted tariff. He submits that if the quoted tariff of L-4 bidder of Rs.5.143 and L-5 bidder of Rs.5.300 were misaligned, then, most certainly, the quoted tariff of L-7 bidder of Rs.5.517 was also misaligned.

17. The learned Senior Counsel submits that the jurisdiction under Section 63 of the Electricity Act is not that of a mere post office. The State Commission has a power to reject the adoption of tariff if it is not aligned to market prices. In this respect, he refers to the judgments of this Court in the cases of ***Tata Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission & Ors.***[4] and ***Energy Watchdog v. Central Electricity Regulatory Commission and others***[5].

18. Shri Chidambaram submits that the State Commission while adopting the tariff is bound to take into consideration the protection of consumer interest. Reliance in this respect has been placed on the judgment of this Court in the case of ***GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) & Ors.***[6], wherein this Court has emphasized the need for balancing the interest of the consumers with that of the generators.

19. Shri Chidambaram further submits that in view of clauses 2.15.1 and 3.5.12 of the RFP and clause 5.15 of the Bidding Guidelines, the appellants had the power to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

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3 [2021] 13 SCR 786 : (2021) 4 SCC 786=2020 INSC 497

4 [2022] 19 SCR 620 : 2022 SCC Online 1615=2022 INSC 1220

5 [2017] 3 SCR 153 : (2017) 14 SCC 80=2017 INSC 338

6 [2023] 8 SCR 183 : 2023 SCC Online SC 464=2023 INSC 398

20. Shri Chidambaram lastly submitted that the bidders have no vested right to contract. Article 226 of the Constitution of India cannot be used to award a contract in favour of the bidder. In this respect, he refers to the following judgments of this Court:

i. ***Tata Cellular v. Union of India***[7]

ii. ***Rajasthan Housing Board and another v. G.S. Investments and another***[8]

iii. ***Laxmikant and others v. Satyawan and others***[9]

21. Shri Chidambaram, therefore, submits that the impugned judgment and order is not sustainable and is liable to be set aside.

SUBMISSIONS OF THE RESPONDENTS

22. Dr. A.M. Singhvi, learned Senior Counsel, per contra, submits that unlike Section 62 read with Sections 61 and 64 of the Electricity Act, under Section 63 of the Electricity Act, the appropriate Commission only "adopts" tariff and does not "determine" tariff. However, in cases under Section 63 of the Electricity Act, the Central Commission is bound by the guidelines issued by the Central Government and it is required to exercise its regulatory functions, albeit under Section 79(1)(b) only in accordance with those guidelines. In this respect, he relies on the judgment of this Court in the case of ***Energy Watchdog*** (supra) and ***Tata Power Company Limited Transmission*** (supra).

23. Dr. Singhvi submits that two issues that can be considered in a case under Section 63 of the Electricity Act by the Commission are:

(1) as to whether the bidding process was transparent; and

(2) as to whether the bidding process was held in accordance with the guidelines issued by the Central Government.

24. He submits that once the tariff is an outcome of the bidding process and the bidding process is transparent and held in accordance with the Bidding Guidelines, the appropriate Commission is mandated to adopt such tariff and it does not have a discretion to go into the question as to whether it is market aligned or not.

7 [1994] 2 Supp. SCR 122 : (1994) 6 SCC 651 (para 94)= 1994 INSC 283

8 [2006] 7 Supp. SCR 868 : (2007) 1 SCC 477 (para 8, 9 and 11)= 2006 INSC 766

9 [1996] 3 SCR 532 **:** (1996) 4 SCC 208=1996 INSC 409

25. Dr. Singhvi further submits that while adopting an already determined tariff by the bidding process as per Section 63 of the Electricity Act, the issue of market alignment of respondent No.1's bid does not and cannot arise for consideration in these proceedings.

26. Without prejudice to the aforesaid submissions, Dr. Singhvi submits that it is not permissible for the State Commission to go into the question of market alignment. He submitted that the respondent No.1's quoted tariff was market aligned not only in the year 2013 but also today. Dr. Singhvi submits that in the recent tender for procurement of 160 MW electricity, conducted in pursuance to the permission granted by this Court, the lowest bid for 1st year tariff discovered and approved by the appellants is at Rs.5.30 per unit. It is submitted that there is a vast difference between "1st year tariff" and "levelized tariff". Dr. Singhvi submits that however, if this offer for supply in the first year of the bid is to be levelized for 25 years, it would come to Rs.7.91 per unit, which is around 50% higher than the 1st year tariff of the said bidder itself.

27. Dr. Singhvi submits that M/s Deloitte is a common consultant insofar as the appellants and the Uttar Pradesh Power Corporation Limited ("UPPCL" for short). He submits that, in fact, BEC of UPPCL, in March 2013, accepted tariff up to Rs. 5.849 per unit i.e., a tariff much higher than that of respondent No.1-MB Power. It is submitted that the bidding period in the present case as well as in the case of UPPCL is the same. It is submitted that, however, in 2018, the Rajasthan BEC mischievously and selectively considered tariff only up to 2012 and compared bids of Andhra Pradesh and Kerala, which were, in fact, discovered in 2015 and 2014 respectively. It is submitted that similarly, in the State of Tamil Nadu, for the same period, the equivalent levelized tariff was determined by M/s Deloitte at Rs.5.75 per unit for 25 years and the same was accepted. It is, therefore, submitted that, considering the aforesaid, the levelized tariff of the respondent No.1-MB Power for 25 years at Rs.5.517 per unit is indisputably market aligned even as on 2012-2013.

28. Dr. Singhvi, relied on the following charts to show that the levelized tariff for 25 years, as quoted by the respondent No.1-MB Power, is very much market aligned.

"Market Price as of 2012-13 – at the time of Rajasthan Bid			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Rajasthan – L5 (i.e. SKS)	3.976	5.300	25 years
Rajasthan – L7 (i.e. R1 – MB Power Bid)	**4.137**	**5.517**	**25 years**
UP – 2013 Tariff approved by BEC (Deloitte as consultant)	4.36	5.849	25 years
TN – Approved Tariff	4.117	5.75	15 years

Prices discovered in Rajasthan Medium Term Tender in Sept / Oct 2023			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Rajasthan – 2023	**5.30**	**7.91**	**5 years**
Rajasthan – R1 (i.e. L7 – MB Power 2012 Bid)	**4.137**	**5.517**	**25 years"**

29. Dr. Singhvi, the learned Senior Counsel, relying on clause 3.5.9 of the RFP, submits that, no negotiations were permissible in spite of the specific clause in the RFP and the opinion to the contrary given by the consultant. It is submitted that the appellants tried to negotiate the prices with L-1 to L-3 bidders, which decision has been finally set aside by this Court vide order dated 25th April 2018.

30. Dr. Singhvi submits that in view of the specific certificate dated 4th June 2013, issued by the BEC, certifying that the bidding procedure for the bids in question had been carried out by the appellants in conformity with the provisions of the RFP and the Bidding Guidelines issued by the Government of India, it is not permissible for the appellants to take a contradictory stand.

31. Dr. Singhvi submits that what this Court had directed by order dated 25th April 2018, was to adopt the tariff with regard to L-4 and L-5 bidders. By the subsequent order dated 19th November 2018, this Court clarified and directed to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. It is submitted that the only scrutiny that could be done by the Commission was only with regard to the following of the twin requirements as observed by this Court in the case of ***Energy Watchdog*** (supra).

32. Dr. Singhvi submits that the power to reject the bids is in respect of all price bids. He submits that if it is found that the bidding process was not transparent and the Guidelines were not followed or the bids are not market aligned, then the appellants would be entitled to reject all bids and not individually and selectively some bids. He submits that if the interpretation as placed by the appellants is to be accepted, it will vest an arbitrary power with the procurer of energy to arbitrarily reject the bid of any of the bidders. It is submitted that such an unfettered and unchecked discretion cannot be permitted to be exercised by the appellants/distribution companies ("DISCOMS").

33. Dr. Singhvi submits that insofar as the aspect with regard to "consumer's interest" is concerned, the learned APTEL has squarely covered the same. It has been held by the learned APTEL that the consumers' interest is a broad term and among others, involves reliable, quality and un-interrupted power on long term basis besides being competitive.

34. The learned Senior Counsel submits that the State of Rajasthan needed 1000 MW of power when it invited the bids in question. He submits that the DISCOMS have even fairly admitted that they are still in need of power and as such, filed an Interlocutory Application

being I.A. No. 150366 of 2023 in Civil Appeal No.4612 of 2023 (for permission to file additional documents) seeking permission to procure power for medium term from the State Commission. It is, therefore, submitted that even in the larger public interest and consumer interest, the appellants should procure the power from the respondent No.1-MB Power. Dr. Singhvi submits that the appellants are bound to procure 906 MW of power in view of the orders passed by this Court on 25th of April 2018. He submits that the RFP provides for bucket filling. It is, therefore, submitted that the appellants are required to procure the power going down the ladder from the bidders starting from L-1 to the one till procurement of 906 MW of power is complete. It is submitted that since many of the bidders had now gone into insolvency, it is only 3 bidders, which are left in the fray. L-1 bidder is supplying 195 MW power and L-2 is supplying 311 MW power. It is submitted that even in the event, this Court permits L-5 bidder to supply 100 MW power and 160 MW power for medium term in pursuance to the order passed by this Court on 26th September 2023, still the total would not be beyond 766 MW. Still the balance of 140 MW power would remain.

35. Dr. Singhvi submits insofar as contention of the appellants with regard to delay and laches is concerned, the same is without substance. He submits that only after the respondent No.1 came to know about the incapacity of L-3, L-4 and L-6 bidders to honour their offered capacity, the occasion to revalidate the claim of the respondent No.1 arose. The learned Senior Counsel, relying on clause 3.5.6 of the RFP, submits that the selection process shall continue till the requisitioned capacity has been achieved through the summation of the quantum offered by the "successful bidders" or when the balance of the requisitioned capacity is less than the minimum bid capacity. It is submitted that since there is still a gap of 140 MW, to comply with this Court's order dated 25th April 2018, the appellants are bound to enter into PPAs with the qualified bidders until the entire requisitioned capacity of 906 MW is met.

36. Dr. Singhvi relied on the following chart to show that the prices discovered in all medium and long term bids are much higher than the levelized price quoted by the respondent No.1-MB Power.

"Prices discovered in all medium and long term bids since 2022			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Adani Mumbai– 2022	5.98	8.78	2.1 years
Uttarakhand–2023	5.41	7.93	1.5 years
Noida Power – 2022	5.15	7.46	3 years
Mundra SEZ– 2023	5.00	6.69	15 years
Haryana – 2022	5.70 to 5.75	8.36	3 years
J & K – 2023	6.05	8.22	5 years
Haryana – 2023	6.05	8.22	5 years
NDMC – 2023	6.05	8.22	5 years
Madhya Pradesh–2023	6.05	8.22	5 years
Haryana – 2023	5.79	8.49	5 years
Gujarat – 2023	5.18 to 5.69	6.81	15 years
Uttarakhand–2023	7.97	11.72	3.5 years
Noida Power – 2023	6.30	9.18	3 years"

37. Dr. Singhvi, therefore, submits that, if the directions as issued by the High Court are maintained, it will be in the interests of the consumers, who will be getting the electricity at lesser prices than what has recently been emerged as a levelized price in the bidding process. He submits that this is specifically so when indisputably even according to the appellants they are in dire need of power. Dr. Singhvi, therefore, prays for dismissal of the present appeals.

38. Shri C.S. Vaidyanathan, learned Senior Counsel also addressed similar arguments and prayed for dismissal of the present appeals.

CONSIDERATIONS

39. For considering the rival submissions, it will be necessary to refer to some of the provisions of the Electricity Act, which are as under:

> "**63. Determination of tariff by bidding process. -** Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such

tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

xxx xxx xxx

79. Functions of Central Commission.-(1) The Central Commission shall discharge the following functions, namely:-

(a) ....

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

xxx xxx xxx

“**86. Functions of State Commission.-** (1) The State Commission shall discharge the following functions, namely: -

(a) ....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”

40. It will also be relevant to refer to part of the preamble of the Bidding Guidelines notified by the Union of India vide Resolution dated 19th January 2005, which is as under:

“These guidelines have been framed under the above provisions of section 63 of the Act. The specific objectives of these guidelines are as follows:

1. Promote competitive procurement of electricity by distribution licensees;

2. Facilitate transparency and fairness in procurement processes;

3. Facilitate reduction of information asymmetries for various bidders;

4. Protect consumer interests by facilitating competitive conditions in procurement of electricity;

5. Enhance standardization and reduce ambiguity and hence time for materialization of projects;

6. Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers."

41. It will also be relevant to refer to certain clauses of the RFP, which are as under:

2.15 Right to withdraw the RFP and to reject any Bid.

2.15.1 This RFP may be withdrawn or cancelled by the Procurer/ Authorized Representative at any time without assigning any reasons thereof. The Procurer/ Authorized Representative further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account."

xxx xxx xxx

"3.5 STEP IV- Successful Bidder(s) Selection

3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.

3.5.2 The Levelized Tariff calculated as per Clause 3.4.8 for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.

3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.

3.5.4 The selection process of the Successful Bidder as mentioned above in Clause 3.5.3 shall be repeated for

all the remaining Financial Bids of Qualified Bidders until the entire Requisitioned Capacity is met or until the time when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

3.5.5 At any step in the process in Clause 3.5.4, in case the Requisitioned Capacity has not been achieved and the offered capacity of the Bidder with the lowest Levelized Tariff amongst the remaining Financial Bids is larger than the balance Requisitioned Capacity, any fraction or combination of fractions offered by such Bidder shall be considered for selection, towards meeting the Requisitioned Capacity.

3.5.6 The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

Provided however in case only one Bidder remains at any step of the selection process and the balance Requisitioned Capacity exceeds the Minimum Bid Capacity, Financial Bid(s) of such Bidder shall be referred to Appropriate Commission and the selection of the Bidder shall then be at the sole discretion of the Appropriate Commission.

3.5.7 At any step during the selection of Successful Bidder(s) in accordance with Clauses 3.5.2 to 3.5.6, the Procurer / Authorized Representative reserves the right to increase / decrease the Requisitioned Capacity by up to ten percent (10%) of the quantum indicated in Clause 1.3.1 to achieve the balance Requisitioned Capacity and select the Successful Bidder with the lowest Levelized Tariff amongst the remaining Bids. Any increase / decrease in the Requisitioned Capacity exceeding ten percent (10%) of the quantum in Clause 1.3.1. can be made only with the approval of the Appropriate Commission.

3.5.8 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.

3.5.9 There shall be no negotiation on the Quoted Tariff between the Authorized Representative/ Procurer and the Bidder(s) during the process of evaluation.

3.5.10 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, "Accepted Unconditionally", under the signature of the authorized signatory of the Successful Bidder and return such copy to the Procurer/ Authorized Representative within seven (7) days of issue of LOI.

3.5.11 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Procurer / Authorized Representative reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 (b) shall apply.

3.5.12 The Procurer / Authorized Representative, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices."

42. It will also be relevant to refer to clause 5.15 of the Bidding Guidelines, which is as under:

"5.1 The bidder who has quoted lowest levellised tariff as per evaluation procedure, shall be considered for the award. ***The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices*.**"

[emphasis supplied]

43. Successful bidder has been defined in the RFP as under:

"Successful Bidder(s)" shall mean the Bidder(s) selected by the Procurer/ Authorized Representative, as applicable pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of

the RFP Documents, and to whom a Letter of Intent has been issued;"

44. The impugned judgment of the High Court is basically based on the judgment of the learned APTEL dated 3rd February 2020 in the case of SKS Power and orders passed by this Court as already observed herein above. After the bids were received for procurement of 1000 MW, the BEC decided to accept the bids of L-1, L-2 and L-3 bidders. However, as the State government had recommended reduction of purchase to only 500 MW power, RVPN filed an application under Regulation 7 of the RERC Regulations 2004, for adoption of tariff of L-1 to L-3, so also allowing it to purchase only 500 MW of power as against 1000 MW. The said application was allowed by the State Commission. The State Commission also adopted the tariff determined through the bidding process for purchase of 500 MW power vide its order dated 22nd July 2015. The said order of the State Commission was challenged before the learned APTEL by M/s D.B. Power Ltd [L-2 bidder] and by M/s Lanco Power Ltd. [L-3 bidder] by way of Appeal Nos. 235 of 2015 and 191 of 2015 respectively.

45. The learned APTEL in the said appeals, vide judgment and order dated 2nd February 2018, set aside the order of the State Commission dated 22nd July, 2015, and passed the following directions:

"ORDER

Hence, the Appeal Nos. 235 of 2015 and 191 of 2015 are allowed and the State Commission's order dated 22.07.2015 is set aside. The State Commission is directed to pass consequential order in accordance with the law keeping in view our observations made above as well as the judgments of this Tribunal rendered earlier on the aspects of the scope of Section 63 of the Act as expeditiously as possible, preferably, within 2 months from today. No order as to costs."

46. After the learned APTEL passed the aforesaid order, M/s D.B. Power Ltd. (L-2 bidder) filed an Interlocutory Application before the State Commission, praying for passing forthwith consequential orders in terms of the judgment of the learned APTEL. It also sought a direction to DISCOMS to start procuring power from it to the extent of 410 MW as per the PPA dated 1st November 2013.

47. When the matter was heard by the State Commission on 8th March 2018, it was noticed that appeals against the order of the learned APTEL were pending before this Court.

48. This Court disposed of the said appeals vide judgment and order dated 25th April 2018, and issued the following directions:

> "We are in agreement with the earlier conclusion of the APTEL. We are of the view that the direction of reduction of capacity from 1000 mw to 500 mw by the State Commission was correctly set aside. Since L-1 to L-5 were represented before this Court, we direct that they shall be entitled to supply of power in terms of the originally offered amount, mentioned above, in accordance with para 3.5 of the Request for Proposal. The power supply will now be reduced to a total of 906 mw. The State Commission may now go into the issue of approval for adoption of tariff with regard to L-4 and L-5. All Letters of Intent (LOIs) shall stand modified in terms of the above. All the appeals shall stand disposed of in terms of the above order."

49. Consequent to the orders passed by this Court, the State Commission vide its order dated 29th May 2018, directed RVPN/DISCOMS to file an appropriate application/petition in relation to L-3, L-4 and L-5 bidders.

50. RVPN accordingly filed an application on 27th August 2018 before the State Commission, submitting therein that the tariff of L-4 and L-5 bidders was very high and not aligned to market prices and, therefore, sought not to be adopted in terms of the competitive bidding guidelines and documents.

51. In the meantime, a Contempt Petition came to be filed before this Court by SKS Power. This Court vide order dated 20th September 2018, in the said Contempt Petition, issued the following directions:

> "We are of the view that there is no doubt whatsoever that now the PPA has to be signed between the parties. However, the State Commission, may, as per our order, ***go into the issue of approval of adoption of tariff with regard to L-5***, who is the party before us, and will decide the same within a period of six weeks from today.

PPA is to be signed immediately thereafter."

[emphasis supplied]

52. Thereafter, SKS Power filed an Interlocutory Application on 5th October 2018, praying for adoption of its tariff as per the orders of this Court dated 25th April 2018 and 20th September 2018.

53. It was contended before the State Commission by SKS Power that the State Commission was bound to adopt tariff as quoted by it. However, per contra, it was contended by the RVPN and DISCOMS that since the tariff quoted by SKS Power was not market aligned, it could not be adopted. In view of the counter submission, the State Commission vide its order dated 16th October 2018, gave an opportunity to the RVPN to file an amended application or seek direction on the issue from this Court.

54. Accordingly, RVPN filed a Miscellaneous Application before this Court. This Court vide order dated 19th November 2018, passed the following order:

> "Having heard learned counsels for both the parties, we only clarify that the Rajasthan Electricity Regulatory Commission [the State Commission) is to decide the tariff under-Section 63 of the Electricity Act, 2003 having regard to the law laid down both statutorily and by this Court.
>
> The State Commission to finalise the aforesaid prices within a period of eight weeks from today.
>
> The MAs are disposed of accordingly."

55. A review application was also filed on behalf of the SKS Power. The said review application was disposed of by this Court vide order dated 21st January 2019, with the following directions:

> "------. We find that as per the Standard Bidding Guidelines the PPA is first to be signed after which the question of adoption of tariff has to be taken up.
>
> With this clarification of the 20.09.2018 order, we dispose of the review and the M.A.
>
> The State Commission which has reserved its judgment

on 16.01.2019 will hear the parties within a period of two weeks from today and will pass orders after taking into account the order that we have passed today."

56. In accordance with the directions issued by this Court, the State Commission considered the rival submissions of the parties and came to a conclusion that the tariff quoted by SKS Power was not market aligned. The State Commission also found that, adoption of such high rate would be against the consumer interest. The State Commission, therefore, vide order dated 26th February 2019, decided not to adopt the tariff quoted by L-4 and L-5 bidders.

57. The said order dated 26th February 2019 of the State Commission was challenged before the learned APTEL by SKS Power by way of Appeal No.224 of 2019. The learned APTEL framed the following three issues in the said appeal:

"ISSUE NO.1: Whether the Respondent Commission could reject the tariff/bid of the Appellant, in terms of Section 63 of the Electricity Act, 2003 and the directions issued by the Hon'ble Supreme Court?

ISSUE NO.2: Whether there was a sufficient proof to show that the bid of the Appellant was market aligned?

ISSUE NO.3: Whether the argument of Consumer interest be advanced by the Rajasthan Discoms in the facts of the present Appeal?"

58. The learned APTEL while answering the first issue, came to the conclusion that the State Commission, while adopting tariff under Section 63, has to only consider that the Bidding Guidelines issued by the Central Government providing for tariff structure were complied with or not. The learned APTEL also held that the State Commission cannot exercise its powers *de hors* such guidelines. It further held that the State Commission has no power to reject the tariff of a bidder.

59. Insofar as the second issue is concerned, the learned APTEL came to a finding that, since the bid of SKS Power was already evaluated, and the subsequent certificates were issued by the BEC confirming

the transparency of the bid, it was not open for the State Commission to go into the question, as to whether the tariff quoted by SKS Power was market aligned or not. It further held that, after the order dated 25th April 2018 was passed by this Court, it was not open for the State Commission to re-evaluate the bid.

60. Insofar as the third issue with regard to consumers' interest is concerned, the learned APTEL held that the said issue cannot be raised again at that stage when the same had been dealt with in detail by the learned APTEL vide order dated 2nd February 2018 and also considered by this Court before passing the order dated 25th April, 2018.

61. Accordingly, the appeal was allowed by the learned APTEL vide order dated 3rd February 2020 and the order dated 26th February 2019 of the State Commission was set aside. The learned APTEL directed that the tariff of SKS Power, as offered in its bid, shall be adopted. The parties were directed to revive and implement the PPA dated 4th February 2019. This order dated 3rd February 2020, passed by the learned APTEL has been challenged by the DISCOMS and RVPN before this Court by way of Civil Appeal No.1937 of 2020 and Civil Appeal No. 2721 of 2020 respectively.

62. The respondent No.1 in the present proceedings rests its claim on the aforesaid orders passed by this Court and the order dated 3rd February 2020, passed by the learned APTEL.

63. Basically, it is the contention of the respondent No.1-MB Power that after the orders were passed by this Court, RVPN and the DISCOMS were bound to procure electricity/power from the bidders going down the ladder until the entire 906 MW power was exhausted. It is their contention that once it is certified that the bid evaluation process has been complied with as per the Bidding Guidelines issued by the Central Government, it is presumed that the process was transparent and it is not permissible for the State Commission to go into the question of market aligned tariff and also the consumer interest. It is their contention that without considering the question, as to whether the tariff was market aligned or not, the procurers were bound to accept supply from the bidders at the rates quoted by them. It is their submission that the power under Section 63 of the Electricity

Act restricted the scrutiny only to two aspects, viz., (1) whether the Bidding Guidelines framed by the Union of India under Section 63 of the Electricity Act were followed; and (2) whether the bidding process was transparent or not.

64. The High Court in the impugned judgment, relying on the observations of the learned APTEL and the earlier orders of this Court has come to a conclusion that, applying the test of "filling the bucket", the procurers were bound to take supply from the respondent No.1-MB Power at the rates quoted by it. On the basis of the judgment of the learned APTEL, the High Court held that the respondent No.1-MB Power had a right to supply power since there was a gap of 300 MW between the power procured by the procurers and the ceiling of 906 MW determined by this Court. In these premises, the High Court issued a mandamus directing the appellants to take supply of 200 MW electricity/power from the respondent No.1-MB Power at the rates quoted by it.

65. We, therefore, find that, before deciding the correctness or otherwise of the impugned judgment, it will be necessary for us to examine the correctness of the judgment and order dated 3rd February 2020, passed by the learned APTEL in the case of SKS Power.

66. We have already reproduced Section 63 of the Electricity Act. The provisions of Section 63 of the Electricity Act fell for consideration before this Court in the case of ***Energy Watchdog*** (supra). It will be apposite to refer to paragraphs 19 and 20 of the said judgment, which are as under:

> "**19.** The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government.

What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(*b*). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section

> 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(*b*) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(*d*), Section 79(1)(*b*) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(*b*), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(*b*) can then be used."
>
> [emphasis supplied]

67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. It has further been held that, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate

Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(*b*) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(*b*), only in accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(*b*) can be used.

69. The aforesaid view of this Court in the case of ***Energy Watchdog*** (supra), which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of ***Tata Power Company Limited Transmission*** (supra).

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.

72. It will also be relevant to refer to the Bidding Guidelines notified by the Central Government vide Resolution dated 19th January 2005. The preamble of the Bidding Guidelines specifically states that, one of the objectives of the said Bidding Guidelines is to facilitate transparency and fairness in procurement processes and protection of consumer interests by facilitating competitive conditions in procurement of electricity.

73. Clause 5.15 of the Bidding Guidelines is an important clause. It provides that, the bidder who has quoted lowest levelized tariff as per evaluation procedure, shall be considered for the award. It also provides that the evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

74. It is thus amply clear that the evaluation committee is empowered to consider, as to whether the rates quoted are aligned to the market price or not, and that the evaluation committee shall have the right to reject all the price bids if it finds that the rates quoted are not aligned to the prevailing market price. The orders which are relied upon by the learned APTEL, specifically the order dated 19th November 2018 of this Court, had specifically clarified that the State Commission was to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court.

75. In this background, the State Commission was justified in considering clause 5.15 of the Bidding Guidelines, which specifically permits to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

76. The contention that this Court has ordered that the bids quoted by the bidders are to be accepted without going into the question of it being market aligned or not, in our view, is without substance.

77. If the contention of the respondent No.1-MB Power that the procurer is bound to accept all the bids emerged in a competitive bidding

process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines is to be accepted, in our view, it will do complete violence to clause 5.15 of the Bidding Guidelines itself. If that view is accepted, the DISCOMS will be compelled to purchase electricity at a much higher rate as compared with other suppliers. The said higher rate will be passed on to the consumers. As such, accepting the contention of the respondent No.1 would result in adversely affecting the interests of the consumers and, in turn, would be against the larger public interest. For example, if in a bidding process for 1000 MW power, 10 persons emerged as "qualified bidders". L-1 bidder quotes Rs.2 per unit for 100 MW power and L-2 bidder quotes Rs.2.25 per unit for another 100 MW power and from L-3 bidder onwards, they start quoting Rs.10 per unit and above for balance 800 MW power, could the public interest be subserved by compelling the procurer to buy balance 800 MW power at Rs.10 per unit and above when the prices quoted are totally not aligned to market prices.

78. We are, therefore, of the considered view that the learned APTEL has grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest.

79. When the Bidding Guidelines itself permit the BEC to reject all price bids if the rates quoted are not aligned to the prevailing market prices, there is no question of the State Commission being not in a position to go into the question, as to whether the rates quoted are market aligned or not, specifically, in the light of ample powers vested with the State Commission under Section 86(1)(b) of the Electricity Act, which also includes the power to regulate the prices at which electricity shall be procured from the generating companies, etc. The finding of the learned APTEL, in our view, therefore, is totally erroneous.

80. In the case of SKS Power, the BEC, consisting of following 6 members, has considered the levelized tariff quoted by L-4 and L-5 bidders:

(i) Shri R.K. Jain, Chief Engineer (NPP & RA), RVPN, Jaipur;

(ii) Shri Manish Saxena, Chief Controller of Accounts, RVPN, Jaipur;

(iii) Shri M.M. Ranwa, Chief Engineer, RUVNL, Jaipur;

(iv) Shri K.L. Meena, Addl. Chief Engineer (Fuel), RVUN, Jaipur;

(v) Shri S.K. Mathur, Chief Engineer (HQ), JVVNL, Jaipur; and

(vi) Shri Tarun Agarwal, CA, Partner M/s Shyamlal Agrawal & Co., Jaipur

81. It can be seen that the said Committee consisted of 4 technical members of the rank of Chief Engineer/Additional Chief Engineer. It consisted of the Chief Controller of Account, RVPN, Jaipur. It also consisted of a Chartered Accountant, who is an expert in financial matters. After due deliberations, the BEC consisting of experts found that the prices quoted by L-4 and L-5 bidders were exorbitantly high and it would result in additional financial burden of more than Rs.1715 crore on the consumers of the State as compared to the tariff of L-1 bidder.

82. The State Commission after considering the detailed analysis of the BEC had come to the considered conclusion that the prices offered by SKS Power (L-5 bidder) were not market aligned, and therefore, not in the consumers' interest. We, therefore, find that the learned APTEL has grossly erred in reversing the well-reasoned order passed by the State Commission, which was, in turn, based on the decision of the BEC in accordance with clause 5.15 of the Bidding Guidelines.

83. We further find that it cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled. Firstly, no such direction can be issued by this Court *de hors* the provisions of Section 63 and 86(1)(b) of the Electricity Act and the Bidding Guidelines. In any event, vide order dated 19th November 2018, this Court had specifically directed the State Commission to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. As such, the State Commission was bound to take into consideration the Bidding Guidelines and specifically clause 5.15 thereof.

84. With regard to the contention that the power under clause 5.15 of the Bidding Guidelines can be exercised only when the bidding process is found to be not in compliance with the Bidding Guidelines and is not transparent in respect of all the bidders and not in respect of some of the bidders is concerned, in our view, the same is without substance.

85. We may in this respect refer to Section 13(2) of the General Clauses Act, which reads thus:

> "13. **Gender and number**.—In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—
>
> (1) …………………; and
>
> (2) words in the singular shall include the plural, and vice versa."

86. Apart from that, the Constitution Bench of this Court in the case of ***Vivek Narayan Sharma and others v. Union of India and others***[10] had an occasion to consider the question, as to whether the word "any" would include "all" and vice versa. The Constitution Bench of this Court observed thus:

> "**113.** It is strenuously urged by the learned Senior Counsel appearing on behalf of the petitioners that the word "any" used in sub-section (2) of Section 26 of the RBI Act will have to be given a restricted meaning to mean "some". It is submitted that if sub-section (2) of Section 26 of the RBI Act is not read in such manner, the very power available under the said sub-section will have to be held to be invalid on the ground of excessive delegation. It is submitted that it cannot be construed that the legislature intended to bestow uncanalised, unguided and arbitrary power on the Central Government to demonetise the entire currency. It is, therefore, the submission of the petitioners that in order to save the said section from being declared void, the word "any" requires to be interpreted in a restricted manner to mean "some".
>
> **114.** Per contra, it is submitted on behalf of the respondents that the word "any" under sub-section (2) of Section 26 of the RBI Act, cannot be interpreted in a narrow manner and it will have to be construed to include "all".
>
> ***Precedents construing the word "any"***
>
> **115.** A Constitution Bench of this Court in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC

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838] was considering the question as to whether the phrase "any one of the Directors" as found in Section 76 of the Mines Act, 1952 could mean "only one of the Directors" or could it be construed to mean "every one of the Directors". In the said case, all the Directors of the Company were prosecuted for the offences punishable under Sections 73 and 74 of the Mines Act, 1952. The High Court had held [*Lala Karam Chand Thapar* v. *State of Bihar*, 1958 SCC OnLine Pat 30] that any "one" of the Directors of the Company could only be prosecuted.

116. The Constitution Bench of this Court observed thus : (*Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838], AIR pp. 847-48, paras 29-34)

> "*29*. It is quite clear and indeed not disputed that in some contexts, "any one" means "one only it matters not which one" the phrase "any of the Directors" is therefore quite capable of meaning "only one of the Directors, it does not matter which one". Is the phrase however capable of no other meaning? If it is not, the courts cannot look further, and must interpret these words in that meaning only, irrespective of what the intention of the legislature might be believed to have been. If however the phrase is capable of another meaning, as suggested viz. "every one of the Directors" it will be necessary to decide which of the two meanings was intended by the legislature.
>
> *30. If one examines the use of the words "any one" in common conversation or literature, there can be no doubt that they are not infrequently used to mean "every one" — not one, but all. Thus we say of any one can see that this is wrong, to mean "everyone can see that this is wrong". "Any one may enter" does not mean that "only one person may enter", but that all may enter. It is permissible and indeed profitable to turn in this connection to Oxford English Dictionary, at p. 378, of which, we find the meaning of "any" given thus:'In affirmative sentences, it asserts, concerning a being or thing of the sort named, without limitation as to which, and thus collectively of*

every one of them'. One of the illustrations given is — "I challenge anyone to contradict my assertions". Certainly, this does not mean that one only is challenged; but that all are challenged. It is abundantly clear therefore that "any one" is not infrequently used to mean "every one".

31. But, argues Mr Pathak, granting that this is so, it must be held that when the phrase "any one" is used with the preposition "of", followed by a word denoting a number of persons, it never means "every one". The extract from *Oxford Dictionary*, it is interesting to notice, speaks of an assertion "concerning a being or thing of the sort named"; it is not unreasonable to say that, the word "of" followed by a word denoting a number of persons or things is just such "naming of a sort" as mentioned there. Suppose, the illustration "I challenge any one to contradict my assertions" was changed to "I challenge any one of my opponents to contradict my assertion". "Any one of my opponents" here would mean "all my opponents" — not one only of the opponents.

32. While the phrase "any one of them" or any similar phrase consisting of "any one", followed by "of" which is followed in its turn by words denoting a number of persons or things, does not appear to have fallen for judicial construction, in our courts or in England — the phrase "any of the present Directors" had to be interpreted in an old English case, *Isle of Wight Railway Co.* v. *Tahourdin* [*Isle of Wight Railway Co.* v. *Tahourdin*, (1883) LR 25 Ch D 320 (CA)] . A number of shareholders required the Directors to call a meeting of the company for two objects. One of the objects was mentioned as 'To remove, if deemed necessary or expedient any of the present Directors, and to elect Directors to fill any vacancy on the Board'. The Directors issued a notice to convene a meeting for the other object and held the meeting. Then the shareholders, under the Companies Clauses Act, 1845, issued a notice of their own convening a meeting for both the objects in the original requisition. In an action by the Directors to

restrain the requisitionists, from holding the meeting, the Court of Appeal held that a notice to remove "any of the present Directors" would justify a resolution for removing all who are Directors at the present time. "Any", Lord Cotton, L.J. pointed out, would involve "all".

33. It is true that the language there was "any of the present Directors" and not "any one of the present Directors" and it is urged that the word "one", in the latter phrase makes all the difference. We think it will be wrong to put too much emphasis on the word "one" here. It may be pointed out in this connection that the Permanent Edition of *Words and Phrases*, mentions an American case *Front & Huntingdon Building & Loan Assn.* v. *Berzinski* [*Front & Huntingdon Building & Loan Assn.* v. *Berzinski*, 130 Pa Super 297 : 196 A 572 (Superior Court of Pennsylvania 1938)] where the words "any of them" were held to be the equivalent of "any one of them".

34. After giving the matter full and anxious consideration, we have come to the conclusion that the words "any one of the Directors" is ambiguous; in some contexts, it means "only one of the Directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the Directors". Which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on a consideration of the context in which the words appear, and in particular, the scheme and object of the legislation."

(emphasis supplied)

117. The Constitution Bench in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] found that the words "any one" have been commonly used to mean "every one" i.e. not one, but all. It found that the word "any", in affirmative sentences, asserts, concerning a being or thing of the sort named, without limitation. It held that it is abundantly clear that the words "any one" are not infrequently used to mean "every one".

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118. It could be seen that the Constitution Bench in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838], after giving the matter full and anxious consideration, came to the conclusion that the words "any one of the Directors" was an ambiguous one. It held that in some contexts, it means "only one of the Directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the Directors". It held that which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on consideration of the context in which the words appear, and in particular, the scheme and object of the legislation.

119. After examining the scheme of the Mines Act, 1952, the Constitution Bench of this Court further observed thus : (*Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838], AIR pp. 848-49, paras 36-38)

> "*36*. But, argues Mr Pathak, one must not forget the special rule of interpretation for "penal statute" that if the language is ambiguous, the interpretation in favour of the accused should ordinarily be adopted. If you interpret "any one" in the sense suggested by him, the legislation he suggests is void and so the accused escapes. One of the two possible constructions, thus being in favour of the accused, should therefore be adopted. In our opinion, there is no substance in this contention. *The rule of strict interpretation of penal statutes in favour of the accused is not of universal application, and must be considered along with other well-established rules of interpretation. We have already seen that the scheme and object of the statute makes it reasonable to think that the legislature intended to subject all the Directors of a company owning coal mines to prosecution and penalties, and not one only of the Directors. In the face of these considerations there is no scope here of the application of the rule for strict interpretation of penal statutes in favour of the accused*.
>
> *37*. The High Court appears to have been greatly impressed by the fact that in other statutes where the

> legislature wanted to make every one out of a group or a class of persons liable it used clear language expressing the intention; and that the phrase "any one" has not been used in any other statute in this country to express "every one". *It will be unreasonable, in our opinion, to attach too much weight to this circumstance; and as for the reasons mentioned above, we think the phrase "any one of the Directors" is capable of meaning "every one of the Directors", the fact that in other statutes, different words were used to express a similar meaning is not of any significance*.
>
> *38. We have, on all these considerations come to the conclusion that the words "any one of the Directors" has been used in Section 76 to mean "every one of the Directors", and that the contrary interpretation given by the High Court is not correct*."
>
> (emphasis supplied)

120. It could thus be seen that though it was sought to be argued before the Court that since the rule of strict interpretation of penal statutes in favour of the accused has to be adopted and that the word "any" was suffixed by the word "one", it has to be given restricted meaning; the Court in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] came to the conclusion that the words "any one of the Directors" used in Section 76 of the Mines Act, 1952 would mean "every one of the Directors". It is further to be noted that the word "any" in the said case was suffixed by the word "one", still the Court held that the words "any one" would mean "all" and not "one". It is to be noted that in the present case, the legislature has not employed the word "one" after the word "any". It is settled law that it has to be construed that every single word employed or not employed by the legislature has a purpose behind it.

121. On the very date on which the judgment in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] was pronounced, the same Constitution Bench also pronounced the judgment in *Banwarilal Agarwalla* [*Banwarilal Agarwalla* v.

State of Bihar, (1962) 1 SCR 33 : AIR 1961 SC 849], wherein the Constitution Bench observed thus : (*Banwarilal Agarwalla case* [*Banwarilal Agarwalla* v. *State of Bihar*, (1962) 1 SCR 33 : AIR 1961 SC 849], AIR p. 850, para 3)

> "*3*. The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the Directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (*Chief Inspector of Mines* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838], etc.) and it has been decided there that the word "any one" should be interpreted there as "every one". *Thus under Section 76 every one of the shareholders of a private company owning the mine, and every one of the Directors of a public company owning the mine is liable to prosecution. No question of violation of Article 14 therefore arises*."
>
> (emphasis supplied)

122. Another Constitution Bench of this Court in *Tej Kiran Jain* [*Tej Kiran Jain v. N. Sanjiva Reddy*, (1970) 2 SCC 272] was considering the provisions of Article 105 of the Constitution of India and, particularly, the immunity as available to the Member of Parliament "in respect of anything said … in Parliament". The Constitution Bench observed thus : (SCC p. 274, para 8)

> "*8*. In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of "anything said … in Parliament". *The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament*. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of

> Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."
>
> (emphasis supplied)

123. This Court held in *Tej Kiran Jain case* [*Tej Kiran Jain v. N. Sanjiva Reddy*, (1970) 2 SCC 272] that the word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. It held that, once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court.

124. This Court, in *LDA* [*LDA v. M.K. Gupta*, (1994) 1 SCC 243], was considering clause (*o*) of Section 2(1) of the Consumer Protection Act, 1986 which defines "service", wherein the word "any" again fell for consideration. This Court observed thus : (SCC p. 255, para 4)

> "*4*. … The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" dictionarily means "one or some or all". In *Black's Law Dictionary* it is explained thus, 'word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute'. The use of the word "any" in the context it has been used in clause (*o*) indicates that it has been used in wider sense extending from one to all."

125. This Court held in *LDA case* [*LDA v. M.K. Gupta*, (1994) 1 SCC 243] that the word "any" is of wide amplitude. It means "one or some or all". Referring to *Black's Law Dictionary*, the Court observed that the word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one". However, the meaning which is to be given to it would depend upon the context and the subject-matter of

the statute.

126. In *K.P. Mohammed Salim* [*K.P. Mohammed Salim v. CIT*, (2008) 11 SCC 573], this Court was considering the power of the Director General or Chief Commissioner or Commissioner to transfer any case from one or more assessing officers subordinate to him to any other assessing officer or assessing officers. This Court observed thus : (SCC p. 578, para 17)

> "*17*. The word "any" must be read in the context of the statute and for the said purpose, it may in a situation of this nature, means all. The principles of purposive construction for the said purpose may be resorted to. (See *New India Assurance Co. Ltd. v. Nusli Neville Wadia* [*New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850] .) *Thus, in the context of a statute, the word "any" may be read as all in the context of the Income Tax Act for which the power of transfer has been conferred upon the authorities specified under Section 127*."
>
> (emphasis supplied)

127. The Court in *K.P. Mohammed Salim* [*K.P. Mohammed Salim v. CIT*, (2008) 11 SCC 573] again reiterated that the word "any" must be read in the context of the statute. The Court also applied the principles of purposive construction to the term "any" to mean "all".

128. In *Raj Kumar Shivhare* [*Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712], an argument was sought to be advanced that since Section 35 of the Foreign Exchange Management Act, 1999 uses the words "any decision or order", only appeals from final order could be filed. Rejecting the said contention, this Court observed thus : (SCC pp. 779-80, paras 19-20 & 26)

> "*19*. The word "any" in this context would mean "all". We are of this opinion in view of the fact that this section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of statute. It is

never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by statute, as it is barred here under Section 34 of FEMA, is an inherent right (see Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by a statute. While conferring such right a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise.

20. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from “any” “order” or “decision” of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word “any” would mean “all”.

***

26. In the instant case also when a right is conferred on a person aggrieved to file appeal from “any” order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning. Therefore, in our judgment in Section 35 of FEMA, any “order” or “decision” of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law.”

(emphasis supplied)

129. While holding that the word “any” in the context would mean “all”, this Court in *Raj Kumar Shivhare* [*Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] observed that a right of appeal is always conferred by a statute. It has been held that, while conferring such right, a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law

or sometime to substantial questions of law. It has been held that whenever such limitations are imposed, they are to be strictly followed. It has been held that in a case where there is no limitation, the right of appeal cannot be curtailed by this Court on the basis of an interpretative exercise.

130. Shri P. Chidambaram, learned Senior Counsel relied on the judgment of this Court in *Union of India* v. *A.B. Shah* [*Union of India v. A.B. Shah*, (1996) 8 SCC 540 : 1996 SCC (Cri) 688]. In the said case, the High Court was considering an appeal preferred by the Union of India wherein it had challenged the acquittal of the accused by the learned trial court, which was confirmed in appeal by the High Court. The learned trial court and the High Court had held that the complaint filed was beyond limitation. This Court reversed the judgments of the learned trial court and the High Court.

131. This Court while interpreting the expression "at any time" observed thus : (*A.B. Shah case* [*Union of India v. A.B. Shah*, (1996) 8 SCC 540 : 1996 SCC (Cri) 688], SCC p. 546, para 12)

> "*12*. If we look into Conditions 3 and 6 with the object and purpose of the Act in mind, it has to be held that these conditions are not only relatable to what was required at the commencement of depillaring process, but the unstowing for the required length must exist always. *The expression "at any time" finding place in Condition 6 has to mean, in the context in which it has been used, "at any point of time", the effect of which is that the required length must be maintained all the time*. The accomplishment of object of the Act, one of which is safety in the mines, requires taking of such a view, especially in the backdrop of repeated mine disasters which have been taking, off and on, heavy toll of lives of the miners. *It may be pointed out that the word "any" has a diversity of meaning and in* Black›s Law Dictionary *it has been stated that this word may be employed to indicate "all" or "every", and its meaning will depend "upon the context and subject-matter of the statute"*. A reference to what has been stated in *Stroud's Judicial*

> *Dictionary*, Vol. I, is revealing inasmuch as the import of the word "any" has been explained from pp. 145 to 153 of the 4th Edn., a perusal of which shows it has different connotations depending primarily on the subject-matter of the statute and the context of its use. A Bench of this Court in *LDA* v. *M.K. Gupta* [*LDA v. M.K. Gupta*, (1994) 1 SCC 243], gave a very wide meaning to this word finding place in Section 2(1)(*o*) of the Consumer Protection Act, 1986 defining "service". (*See* para 4)"
>
> (emphasis supplied)
>
> **132.** Shri Chidambaram rightly argued that the word "any" will have to be construed in its context, taking into consideration the scheme and the purpose of the enactment. There can be no quarrel with regard to the said proposition. Right from the judgment of the Constitution Bench of this Court in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838], the position is clear. What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a consideration of the context in which the word(s) appear(s) and in particular, the scheme and object of the legislation."

87. From the perusal of the various judgments, which have been referred to in detail by the Constitution Bench, it will be clear that the words "all" or "any" will have to be construed in their context taking into consideration the scheme and purpose of the enactment. What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a consideration of the context in which the word(s) appear(s) and in particular, the scheme and object of the legislation. We have no hesitation to hold that the word "all" used in clause 5.15 of the Bidding Guidelines, read with the legislative policy for which the Electricity Act was enacted and read with Section 86(1)(b) of the Electricity Act, will have to be construed to be the one including "any". As such, the contention in that regard is to be rejected.

88. In any case, applying the principle of literal interpretation, the evaluation committee/BEC would be entitled to reject only such of the price bids if it finds that the rates quoted by the bidders are not

aligned to the prevailing market prices. It does not stipulate rejection of all the bids in the bidding process. For example, if in a bidding process, which is in accordance with the Bidding Guidelines and is transparent, 5 bidders emerged. Out of the said bidders, the rates quoted by only 3 bidders are market aligned and the rates quoted by rest of the 2 bidders are not market aligned. In accordance with the Bidding Guidelines, the BEC would be entitled to recommend acceptance of the bids of the first 3 bidders and reject the bids of rest of the 2 bidders whose quoted rates/prices are not found to be market aligned. We, therefore, reject the contention in this behalf.

89. We further find that the Court, while interpreting a particular provision, will have to apply the principles of purposive construction. The Constitution Bench of this Court in the case of ***Vivek Narayan Sharma*** (supra) after surveying various judgments on the issue has held thus:

> "**148.** It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."

90. It could thus be seen that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed.

91. If the contention that clause 5.15 of the Bidding Guidelines will come into play, which permits the Evaluation Committee to reject "all" price bids and not "any" one of them is accepted, it will lead to nothing else than resulting in absurdity. Suppose, if L-1 bidder quotes Rs.3 per unit and L-5 bidder quotes Rs.7 per unit, requirement to reject the bid of L-1 bidder, whose bid is found market aligned along with that of L-5 bidder, which is not market aligned, would lead to an anomalous situation. Could the consumer be deprived of the electricity to be procured from L-1 at a market aligned price only because some of the bidders have quoted much higher prices and are not market aligned. In our view, such an interpretation would result in defeating one of the main objects of the enactment, i.e., protection of the consumer.

92. It is needless to state that this Court, time and again, in various judgments including the one in the case of ***GMR Warora Energy Limited*** (supra) has recognised the requirement of balancing the consumers' interest with that of the interest of the generators. It will not be permissible to take a lopsided view only to protect the interest of the generators ignoring the consumers' interest and public interest.

93. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in the case of ***PTC India Limited*** (supra) has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all issues dealing with electricity have to be considered by the authorities constituted under the said Act. As held by the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribunals are tribunals consisting of experts having vast experience in the field of electricity. As such, we

find that the High Court erred in directly entertaining the writ petition when the respondent No.1, i.e., the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission.

94. This Court in the case of ***Reliance Infrastructure Limited v. State of Maharashtra and others***[11] has held that while exercising its power of judicial review, the Court can step in where a case of manifest unreasonableness or arbitrariness is made out.

95. In the present case, there is not even an allegation with regard to that effect. In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute, which is a complete code in itself, in our view, was not justified.

96. No doubt that availability of an alternate remedy is not a complete bar in the exercise of the power of judicial review by the High Courts. But, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. A reference in this respect could be made to the judgments of this Court in the cases of ***Radha Krishan Industries v. State of Himachal Pradesh and others***[12] and ***South Indian Bank Ltd. and others v. Naveen Mathew Philip and another***[13].

97. We may gainfully refer to the observation of this Court in the case of ***Radha Krishan Industries*** (supra), wherein this Court has laid down certain principles after referring to the earlier judgments:

> "**24.** The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in *CCT* v. *Glaxo Smith Kline Consumer Health Care Ltd.* [*CCT v. Glaxo Smith Kline Consumer Health Care Ltd.*, (2020) 19 SCC 681 : 2020 SCC OnLine SC 440], the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the

11 **[2019] 1 SCR 886** : (2019) 3 SCC 352=2019 INSC 63

12 **[2021] 3 SCR 406** : (2021) 6 SCC 771=2021 INSC 266

13 **[2023] 4 SCR 18** : 2023 SCC OnLine SC 435 =2023 INSC 379

aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In *Whirlpool Corpn.* v. *Registrar of Trade Marks* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1], a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

> "*14.* The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".
>
> *15.* Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. *But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or*

> *the vires of an Act is challenged*. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

26. Following the dictum of this Court in *Whirlpool* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1], in *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107], this Court noted that : (*Harbanslal Sahnia case* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107], SCC p. 110, para 7)

> "*7.* So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. *In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged*. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(emphasis supplied)

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (*a*) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (*b*) there has been a violation of the principles of natural justice; (*c*) the order or proceedings are wholly without jurisdiction; or (*d*) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan* v. *Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399], *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB* v. *Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions."

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98. This Court has clearly held that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India.

99. Recently, this Court in the case of ***M/s South Indian Bank Ltd. & Ors.*** (supra) has also taken a similar view.

100. There is another ground on which the High Court ought to have refused to entertain the petition. The bid of L-7 bidder was returned and the Bid Bond bank guarantee was also directed not to be extended vide the communication dated 6th January 2015. The judgment and order passed by this Court, on which reliance is placed by respondent No.1, is also delivered on 25th April 2018. However, the respondent No.1 did not take any steps from 6th January 2015 and in any case, from 25th April 2018 till 14th December 2020, on which date the petition came to be filed before the High Court. No doubt that the petition need not be dismissed solely on the ground of delay and laches. However, if petitioner approaches the Court with delay, he has to satisfy the Court about the justification for delay in approaching the Court belatedly. In our considered view, the High Court ought not to have entertained the petition also on the ground of delay and laches.

101. In any case, we find that the High Court was not justified in issuing the mandamus in the nature which it has issued. This Court in the case of ***Air India Ltd. v. Cochin International Airport Ltd. and others***[14] has observed thus:

> "**7.** The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489], *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* [(1981) 1 SCC 568], *CCE v. Dunlop India Ltd.* [(1985) 1 SCC 260 : 1985 SCC (Tax) 75], *Tata Cellular v. Union of India* [(1994) 6 SCC 651], *Ramniklal N. Bhutta v. State of Maharashtra* [(1997) 1 SCC 134] and *Raunaq International*

14 [2000] 1 SCR 505 : (2000) 2 SCC 617=2000 INSC 39

> *Ltd. v. I.V.R. Construction Ltd.* [(1999) 1 SCC 492] The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

102. It could thus be seen that this Court has held that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are paramount are commercial considerations. It has been held that the State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It has further been held that the State can enter into negotiations

before finally deciding to accept one of the offers made to it. It has further been held that, price need not always be the sole criterion for awarding a contract. It has been held that the State may not accept the offer even though it happens to be the highest or the lowest. However, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. It has further been held that even when some defect has been found in the decision-making process, the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

103. As has been held by this Court in the case of ***Tata Cellular*** (supra), the Court is not only concerned with the merits of the decision but also with the decision-making process. Unless the Court finds that the decision-making process is vitiated by arbitrariness, mala fides, irrationality, it will not be permissible for the Court to interfere with the same.

104. In the present case, the decision-making process, as adopted by the BEC was totally in conformity with the principles laid down by this Court from time to time. The BEC after considering the competitive rates offered in the bidding process in various States came to a conclusion that the rates quoted by SKS Power (L-5 bidder) were not market aligned. The said decision has been approved by the State Commission. Since the decision-making process adopted by the BEC, which has been approved by the State Commission, was in accordance with the law laid down by this Court, the same ought not to have been interfered with by the learned APTEL.

105. In any case, the High Court, by the impugned judgment and order, could not have issued a mandamus to the instrumentalities of the State to enter into a contract, which was totally harmful to the public

interest. Inasmuch as, if the power/electricity is to be procured by the procurers at the rates quoted by the respondent No.1-MB Power, which is even higher than the rates quoted by the SKS Power (L-5 bidder), then the State would have been required to bear financial burden in thousands of crore rupees, which would have, in turn, passed on to the consumers. As such, we are of the considered view that the mandamus issued by the Court is issued by failing to take into consideration the larger consumers' interest and the consequential public interest. We are, therefore, of the view that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be quashed and set aside.

CIVIL APPEAL NO. 6503 OF 2022 AND CIVIL APPEAL NO. 6502 OF 2022

106. The appeals are, therefore, allowed. The impugned judgment and order of the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur dated 20th September 2021 in D.B. Civil Writ Petition No. 14815 of 2020 is quashed and set aside. The respondent No.1-M.B. Power (Madhya Pradesh) Limited is directed to pay costs, quantified at Rs.5,00,000/- (Rupees Five Lakh) in each case to the appellants.

107. Pending applications, if any, shall stand disposed of.

CIVIL APPEAL NO. 4612 OF 2023

108. Since we have already set aside the judgment and order of the High Court dated 20th September 2021 in D.B. Civil Writ Petition No.14815 of 2020 and the order impugned in the present appeal is based on the said order of the High Court dated 20th September 2021, the present appeal is also allowed. The judgment and order of the learned APTEL dated 1st June 2023 is quashed and set aside.

109. Since we have saddled the costs in Civil Appeal Nos. 6503 of 2022 and 6502 of 2022, there shall be no order as to costs in the present appeal.

110. Pending applications, if any, shall stand disposed of.

Headnotes prepared by: Divya Pandey

Result of the case: Appeals allowed.

[2024] 1 S.C.R. 973 : 2024 INSC 30

The State of Himachal Pradesh and Others
v.
Yogendera Mohan Sengupta and Another

(Civil Appeal Nos. 5348-5349 of 2019)
With
Transferred Case (C) No. 2 of 2023

11 January 2024

[B.R. Gavai* and Aravind Kumar, JJ.]

Issue for Consideration

What is the Legislative Scheme of the Himachal Pradesh Town & Country Planning Act, 1977 (TCP Act); What is the nature of functions/powers of the Authorities under Chapter-IV of the TCP Act; Whether the NGT could have issued directions to the legislative body to exercise its legislative functions in a particular manner; Whether observations in Para 47 of the Mantri Techzone Private Limited would operate as *res judicata*; Whether the NGT was justified in passing the order dated 14.10.2022 when the High Court was seized of the same issue during the pendency of Civil Writ Petition No.5960 of 2022; Balancing the need for Development and Protection of the Environment.

Headnotes

Himachal Pradesh Town & Country Planning Act, 1977 (TCP Act) – Legislative scheme of:

Held: The TCP Act has been enacted to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective – It also provides for constitution of Town and Country Development Authority for proper implementation of town and country development plan – It also provides for development and administration of special areas through the Special Area Development Authority – Under Section 13 of the TCP Act, the State Government is empowered to constitute planning areas for the purposes of the Act and define the limits thereof – Under Section 15 of the TCP Act, the Director is required to carry out the survey and prepare an existing land use map and,

* Author

forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map – It also provides for inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice – Section 15-A of the TCP Act deals with "Freezing of land use pending preparation of existing land use map u/s. 15(1)" – S.16 of the TCP Act deals with "Freezing of land use on the publication of the existing land use map u/s. 15" – s.17(1) of the TCP Act deals with "Interim Development Plans" – The provisions of ss.18, 19 and 20 of the TCP Act deals with development plan, Publication of draft publication plan and sanction of development plan. [Paras 30-40]

Himachal Pradesh Town & Country Planning Act, 1977 – Nature of functions/powers of the Authorities under Chapter-IV of the TCP Act – The powers vested with the Director and the State Government are for enacting a piece of delegated legislation:

Held: Chapter-IV of the TCP Act is a complete code, providing for preparation of draft development plan, publication of draft development plan with a publication of its notice, inviting objections and suggestions, giving reasonable opportunity to all persons affected of being heard, making modifications in the draft development plan as may be considered necessary by the Director and thereafter submitting it to the State Government – Chapter-IV of the TCP Act provides for inviting objections and suggestions at two stages – Firstly, at the stage of Section 19 where the Director is required to invite objections and suggestions to the draft development plan and after giving an opportunity of being heard and considering the objections and suggestions, submit the development plan to the State Government – Under Section 20 of the TCP Act, a second opportunity of making objections and suggestions has been provided – Again, the State Government is required to give an opportunity of hearing to such objectors before granting final approval to the development plan – A perusal of the scheme of the TCP Act and particularly Chapter-IV thereof would establish beyond doubt that the powers vested with the Director and the State Government are for enacting a piece of delegated legislation. [Para 45, 47]

Administrative Law – Distinction between the legislative function and administrative function:

The State of Himachal Pradesh and Others v.
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Held: A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; whereas an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy – Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future – Whereas, administration is the process of performing particular acts of issuing particular orders or of making decisions which apply general rules to particular cases – It has also been held that rule-making is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class; whereas an adjudication, on the other hand, applies to specific individuals or situations – In the instant case, it will be amply clear that the preparation of draft development plan u/s. 18 of the Himachal Pradesh Town & Country Planning Act, 1977, finalization of the same u/s. 19 of the TCP Act by the Director and grant of approval by the State u/s. 20 of the TCP Act are all legislative functions – The provisions enable the delegated legislative body to formulate the provisions which will have a general application to all members of the broadly identifiable classes. [Paras 50, 51]

Himachal Pradesh Town & Country Planning Act, 1977 – Whether the NGT could have issued directions to the legislative body to exercise its legislative functions in a particular manner:

Held: A perusal of the first order (16.11.2017) of NGT would reveal that the NGT, in effect, has issued directions to the authority empowered to enact the development plan, to do so in a particular manner – It is a settled law that the Constitution of India does not permit the courts to direct or advise the Executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive – It is also settled that the courts cannot issue directions to the Legislature for enacting the laws in a particular manner or for amending the Acts or the Rules – It is for the Legislature to do so – It is also a settled position of law that neither the High Courts while exercising powers u/Art. 226 of the Constitution nor the Supreme Court while exercising powers u/Art. 32 of the Constitution can direct the legislature or its delegatee to enact a law or subordinate legislation in a particular manner – If the High Courts and the Supreme Court, in their extra-ordinary powers u/Arts. 226 and 32 of the Constitution

cannot do so, the answer to the question as to whether a Tribunal constituted under a statute, having a limited jurisdiction, can do so or not, would be in negative – The first order of NGT is liable to be set aside on the short ground that it has transgressed its limitations and attempted to encroach upon the field reserved for the delegatee to enact a piece of delegated legislation – When the TCP Act empowers the State Government and the Director to exercise the powers to enact a piece of delegated legislation, the NGT could not have imposed fetters on such powers and directed it to exercise its powers in a particular manner. [Paras 66, 69, 70]

Himachal Pradesh Town & Country Planning Act, 1977 – A reliance is placed on the case of Mantri Techzone Private Limited by respondent No.1 – Whether observations in Para 47 of the Mantri Techzone Private Limited would operate as *res judicata*:

Held: In the said case the Advocate General of the State had specifically argued that the Revised Master Plan is statutory in nature and the NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation – It was therefore argued that the order of the NGT to that extent was liable to be set aside – It was similarly argued on behalf of the other appellant that the order of the NGT impugned therein which revised buffer zones also had the effect of amending the Revised Master Plan 2015 – A perusal of para 29 of the Mantri Techzone Private Limited would clearly reveal that the counsel appearing for the applicants before the High Court has fairly conceded to the setting aside of those general directions – It could thus be seen that, though the issue was raised before the High Court with regard to the power of the NGT to issue such directions, the Supreme Court did not go into that issue on the basis of the concessions made by the appellants – Therefore, the observations found in para 47 of the Mantri Techzone Private Limited could not be construed to be a precedent or a *ratio decidendi*. [Para 76]

Himachal Pradesh Town & Country Planning Act, 1977 – Whether the NGT was justified in passing the order dated 14.10.2022 when the High Court was seized of the same issue during the pendency of Civil Writ Petition No.5960 of 2022:

Held: The second order of NGT (order dated 14.10.2022) arises out of publication of the draft development plan on 08.02.2022 – It was held that the draft development plan, being in conflict with the

first order (dated 16.11.2017) of NGT, was illegal and cannot be given effect to – The Constitution Bench of the Supreme Court in the case of L. Chandra Kumar v. Union of India and others clearly holds that all Tribunals will act as the only Courts of first instance in respect of areas of law for which they have been constituted – It is a settled position of law that the High Courts exercise the power of judicial review over all the Tribunals which are situated within its jurisdiction – In view of the settled legal position, the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety – Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT – Despite pendency of the proceedings before the High Court including the one challenging the interim order dated 12.05.2022 passed by NGT, the NGT went ahead with the passing of the second order dated 14.10.2022 impugned herein – The perusal of the orders of the NGT itself reveal that though the NGT was informed about the High Court being in *seisin* of the proceedings, it went on to hold that the judgment given by it was binding and therefore, the draft development plan, which in its view, was not in conformity with its judgment, was liable to be set aside – The NGT ought not to have continued with the proceedings after the High Court was in *seisin* of the matter and specifically when it was informed about the same – That apart, the second order of NGT (dated 14.10.2022) is passed basically on the basis of the first order of NGT (dated 16.11.2017) – Since, the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside.[Paras 91, 94, 105, 106, 109, 111, 112]

Environment – Balancing the need for Development and Protection of the Environment – Discussed.

Himachal Pradesh Town & Country Planning Act, 1977 – Development Plan 2041 – Finalization of:

Held: The development plan has been finalized after taking into consideration the reports of various expert committees, the studies undertaken with regard to various aspects including environmental & ecological aspects and after undergoing the rigorous process, including that of inviting objections and suggestions at two stages. [Paras 123, 124]

Case Law Cited

L. Chandra Kumar v. Union of India and Others [1997] 2 SCR 1186 **: (1997) 3 SCC 261 – followed.**

Himachal Pradesh Bus Stand Management and Development Authority (H.P. BSM & DA) v. Central Empowered Committee and Others [2021] 1 SCR 344 **: (2021) 4 SCC 309;** *State of Madhya Pradesh v. Centre for Environment Protection Research and Development and Others* [2020] 12 SCR 1139 **: (2020) 9 SCC 781;** *Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch and Others* [2020] 6 SCR 1050 **: (2021) 11 SCC 566;** *Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Limited and Others* [2019] 3 SCR 777 **: (2019) 19 SCC 479;** *Techi Tagi Tara v. Rajendra Singh Bhandari and Others* [2017] 12 SCR 956 **;** *State of Himachal Pradesh and Others v. Satpal Saini* [2017] 1 SCR 658 **: (2017) 11 SCC 42;** *Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College, Meerut and Others* [1987] 1 SCR 661 **: 1986 Supp SCC 543;** *Bishambhar Dayal Chandra Mohan and Others v. State of Uttar Pradesh and Others* [1982] 1 SCR 1137 **: (1982) 1 SCC 39;** *State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (Member of Parliament* [2022] 6 SCR 810 **: (2022) 8 SCC 156;** *T.N. Godavarman Thirumulkpad v. Union of India and Others* [1996] 9 Suppl. SCR 982 **: (1997) 2 SCC 267;** *Punjab Termination of Agreement Act, 2004, In Re, Special Reference No. 1 of 2004* [2016] 11 SCR 15 **: (2017) 1 SCC 121;** *State of Tamil Nadu v. State of Kerala and Another* [2014] 12 SCR 875 **: (2014) 12 SCC 696;** *Mantri Techzone Private Limited v. Forward Foundation and Others* [2019] 4 SCR 995 **: (2019) 18 SCC 494;** *Pragnesh Shah v. Dr. Arun Kumar Sharma and Others* [2022] 8 SCR 154 **: (2022) 11 SCC 493;** *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Others* **(1997) 11 SCC 605;** *Resident's Welfare Association and Another v. Union Territory of Chandigarh and Others* [2023] 1

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SCR 601: **(2023) 8 SCC 643;** *Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited and Others* [2012] 4 SCR 881 **: (2012) 3 SCC 442;** *Rajeev Suri v. Delhi Development Authority and Others* [2021] 15 SCR 283 **: (2022) 11 SCC 1;** *T.N. Godavarman Thirumulkpad v. Union of India and Others* [2023] 6 SCR 601 **: 2023 INSC 430 – referred to.**

Union of India and Another v. Cynamide India Ltd. and Another [1987] 2 SCR 841 **: (1987) 2 SCC 720;** *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur* [1980] 2 SCR 1111 **: (1980) 2 SCC 295;** *Sundarjas Kanyalal Bhatija and Others v. Collector, Thane, Maharashtra and Others* [1989] 3 SCR 405 **: (1989) 3 SCC 396;** *Pune Municipal Corporation and Another v. Promoters and Builders Association and Another* [2004] 2 Suppl. SCR 207 **: (2004) 10 SCC 796;** *V.K. Naswa v. Home Secretary, Union of India and Others* [2012] 2 SCR 912 **: (2012) 2 SCC 542;** *Manoj Narula v. Union of India* [2014] 9 SCR 965 **: (2014) 9 SCC 1;** *Union of India and Others v. Dhanwanti Devi and Others* [1996] 5 Suppl. SCR 32 **: (1996) 6 SCC 44;** *Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others* [2012] 12 SCR 818 **: (2013) 11 SCC 404;** *Indian Council for Enviro-Legal Action v. Union of India and Others* [1996] 1 Suppl. SCR 507 **: (1996) 5 SCC 281;** *Essar Oil Limited v. Halar Utkarsh Samiti and Others* [2004] 1 SCR 808 **: (2004) 2 SCC 392;** *N.D. Jayal and Another v. Union of India and Others* [2003] 3 Suppl. SCR 152 **: (2004) 9 SCC 362;** *State of Uttar Pradesh and Others v. Uday Education and Welfare Trust and Others* [2022] 19 SCR 781 **: 2022 SCC OnLine SC 1469 – relied on.**

State of Himachal Pradesh and another v. Yogendra Mohan Sengupta and Others **Civil Writ Petition (CWP) No. 5960 of 2022;** *Rajeev Varma and Others v. State of Himachal Pradesh and Others,* **CWP No. 4595 of 2011;** *Forward Foundation v. State of Karnataka* **2016 SCC OnLine NGT 1409 – referred to.**

List of Acts

Himachal Pradesh Town & Country Planning Act, 1977; Himachal Pradesh Town & Country Planning Rules, 1978; Forest (Conservation) Act, 1980; Administrative Tribunals Act, 1985; Constitution of India.

List Keywords

Planning area, Director to prepare development plans; Existing land use maps; Development plan; Publication of draft publication plan; Sanction of development plan; Delegated legislation; Administrative Law; Legislative body; Legislative function; Administrative function; Tribunals; Power of Judicial review of the High Court; Principles of judicial propriety; High Court's supervisory jurisdiction over the Tribunals; Development and Protection of the Environment; Development Plan 2041.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5348-5349 of 2019.

From the Judgment and Order dated 16.11.2017 of the National Green Tribunal in OA No.121 of 2014 and Dated 16.07.2018 in RA No.08 of 2018.

With

Transferred Case (C) No.02 Of 2023

Appearances for Parties

Anup Rattan, Vinay Kuthalia, Sr. Advs., Puneet Rajta, Joydip Pati, Rishi Malhotra, Himanshu Tyagi, Advs. for the Appellants.

Sanjay Parikh, Rajive Bhalla, P.V. Surendranath, Sr. Advs., Rahul Choudhary, Ms. Srishti Agnihotri, Ms. Itisha Awasthi, Ms. Sanjana Grace Thomas, Ms. Tara Elizabeth Kurien, Raghav Goel, Anurag Tandan, Sanjay Jain, Subhash Chandran K.R., Ms. Krishna L R, Biju P Raman, Sawan Kumar Shukla, Dharmendra Kumar Sinha, Subodh Kr. Pathak, Shashi Ranjan, Raghav Goel, Pawan Kumar Sharma, Advs. for the Respondents.

**The State of Himachal Pradesh and Others v.
Yogendera Mohan Sengupta and Another**

Judgment / Order of the Supreme Court

Judgment

B .R. Gavai, J.

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List of Abbreviations

1.	NGT	-	National Green Tribunal, Principal Bench, New Delhi
2.	First order of NGT	-	Order of NGT dated 16th November 2017

*** Ed. Note: Pagination is as per the original judgment.**

3.	Second order of NGT	-	Order of NGT dated 14th October 2022
4.	SPA	-	Shimla Planning Area
5.	CWP	-	Civil Writ Petition
6.	TCP Act	-	Himachal Pradesh Town & Country Planning Act, 1977
7.	1978 Rules	-	Himachal Pradesh Town & Country Planning Rules, 1978
8.	OA	-	Original Application
9.	FC Act	-	Forest (Conservation) Act, 1980
10.	NDMA	-	National Disaster Management Authority
11.	HPMC Act	-	Himachal Pradesh Municipal Corporation Act, 1994
12.	BPMC Act	-	Bombay Provincial Municipal Corporation Act, 1949
13.	MRTP Act	-	Maharashtra Regional and Town Planning Act, 1966
14.	AT Act	-	Administrative Tribunals Act, 1985

I. INTRODUCTION

Civil Appeal Nos. 5348-5349 OF 2019

1. These appeals challenge the judgment and order dated 16th November 2017 (hereinafter referred to as the "first order of NGT") passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "NGT") in Original Application (OA) No. 121 of 2014, whereby various directions were issued by the NGT, and the order dated 16th July 2018 passed by the NGT in Review Application No. 8 of 2018, whereby the review sought of the first order of NGT by the present appellants was dismissed.

Transferred Case (C) No. 2 of 2023

2. The draft development plan for 22,450 hectares of Shimla Planning Area (hereinafter referred to as "SPA") which was finalized vide a notification dated 16th April 2022, came to be stayed by the NGT, vide an interim order dated 12th May 2022. By the said order, it restrained

the appellants herein from taking any further steps in pursuance of the draft development plan of the SPA. The State of Himachal Pradesh and its instrumentalities-appellants herein preferred Civil Writ Petition (CWP) No. 5960 of 2022 titled ***State of Himachal Pradesh and another v. Yogendra Mohan Sengupta and Others*** before the High Court of Himachal Pradesh challenging the said interim order. Despite the pendency of the said writ petition, the NGT, vide its final order dated 14th October 2022 (hereinafter referred to as the "second order of NGT") in OA No. 297 of 2022, held that the draft development plan, being in conflict with the first order of NGT, was illegal and cannot be given effect to. Thereafter by an amendment in the said CWP No. 5960 of 2022, the second order of NGT also came to be challenged before the High Court of Himachal Pradesh. On 14th November 2022, this Court passed an order in Civil Appeal Nos. 5348-5349 of 2019 transferring the said CWP No. 5960 of 2022 from the High Court of Himachal Pradesh to itself, which came to be re-numbered as Transferred Case (C) No. 2 of 2023.

II. FACTS

Facts giving rise to filing of Civil Appeal Nos.5348-5349 of 2019:

3. Facts, in brief, giving rise to the filing of Civil Appeal Nos. 5348-5349 of 2019, are as follows:

3.1 The Himachal Pradesh Town & Country Planning Act, 1977 (hereinafter referred to as "TCP Act") was enacted by the State of Himachal Pradesh in the year 1977. Vide Government Notification dated 30th November 1977, the SPA came to be constituted. The State of Himachal Pradesh, in exercise of powers conferred upon it by Section 87 of the TCP Act, enacted the Himachal Pradesh Town & Country Planning Rules, 1978 (hereinafter referred to as "1978 Rules"). The existing land-use for SPA was notified by a notice dated 29th December 1977 and was adopted by another notice dated 14th March 1978.

3.2 The interim development plan for SPA was approved by a notification dated 24th March 1979 for the period 1979-2001. Vide notification dated 11th August 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), further amendments were carried out to the interim development plan for the SPA notified by the aforesaid notification dated 24th March 1979.

3.3 By another notification dated 7th December 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), in pursuance of the notification dated 11th August 2000, a survey of "Green Belt" within existing Core & restricted areas of the SPA was carried out and areas were declared as "Green Belt".

3.4 A writ petition being CWP No. 4595 of 2011 titled ***Rajeev Varma and Others v. State of Himachal Pradesh and Others*** came to be filed in the year 2011 before the High Court of Himachal Pradesh. A direction was sought in the said writ petition to the State of Himachal Pradesh to prepare a development plan for the SPA in accordance with the TCP Act within a time-bound schedule.

3.5 Respondent No.1 herein Yogendera Mohan Sengupta filed an OA (No. 121 of 2014) before the NGT, wherein he made the following prayers:

(i) "Direct the State Government and the Respondent Nos. 3 and 4 to recognize the areas mentioned in notification dated 7.12.2000 as forest and any non-forest activity should not be allowed without prior permission under Section 2 of the Forest.

(ii) Direct the State Government not to change the land use in any forests/green belt area as stated in clause d of notification dated 11.8.2000 to protect the ecology, environment and future of Shimla.

(iii) Pass any other orders as the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case."

3.6 The appellant-State of Himachal Pradesh (respondent in the said OA) filed a reply dated 23rd July 2014 before the NGT, wherein it specifically contended that the use of the words "Green Belt" does not include or bring the areas under forests and the "Green Belt" includes both forest and non-forest areas and that no permission for construction or any non-forestry activity would be allowed on forest land without approval under the Forest (Conservation) Act, 1980 (hereinafter referred to as the "FC Act").

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3.7 Despite the assurance given by the State Government, the NGT, *suo motu*, extended the scope of the application and vide an ad-interim order dated 30th May 2014 banned all types of construction activities in the Green Belt areas of Shimla covered under the notification dated 7th December 2000.

3.8 Thereafter, vide order dated 12th October 2015 in the said OA No. 121 of 2014, the NGT constituted a Committee comprising of officers from the National Disaster Management Authority (NDMA), a senior scientist from Wadia Institute of Himalayan Geology, Dehradun as nominated by the Director and other officials of the State and Central Governments for submitting its report on various aspects including water supply and the strength of carrying capacity of the hills.

3.9 Pursuant to the said order dated 12th October 2015 passed by the NGT, the Additional Chief Secretary, Department of Town & Country Planning (Government of Himachal Pradesh) issued a notification dated 6th November 2015 for the constitution of an Expert Committee. The Expert Committee submitted a report to the NGT on 29th August 2016. Along with an affidavit filed by the State of Himachal Pradesh, the final report of the Expert Committee came to be submitted to the NGT on 20th May 2017.

3.10 Thereafter the first order of NGT came to be passed, whereby it issued various directions to the appellants herein and further banned all kinds of construction activities in core/forest/green areas in Shimla and further restricted the construction and re-construction activities in the entire SPA.

3.11 Some of the directions issued *vide* first order of NGT, *inter alia,* prohibited new construction of any kind, i.e. residential, institutional and commercial, in any part of the core and green/forest area and also directed that even in the other areas which fall within the SPA, construction would not be permitted beyond 2 storeys + attic floor. It further directed that, in case of unsafe and unfit residential structures in the core and green/forest areas, re-construction would only be allowed for residential purposes and that too, not beyond 2 storeys and an attic floor.

3.12 In direction No. VIII in the first order of NGT, it directed the State to finalise the development plan within three months

from the date of the pronouncement of its first order. It also directed the said development plan to be notified in accordance with law and directed to take into consideration the directions and precautions as suggested in the first order of NGT while finalizing the development plan.

3.13 The NGT also constituted an Implementation Committee and a Supervisory Committee entrusted with the responsibility for carrying out the specific directions given under the first order of NGT and to provide NOCs or necessary permissions to the stakeholders, whether State or private parties.

3.14 The appellants thereafter filed a Review Application No. 8 of 2018 seeking review of the first order of NGT. However, the same was dismissed vide order dated 16th July 2018. Being aggrieved thereby, Civil Appeal Nos.5348-5349 of 2019 have been filed before this Court.

Facts giving rise to filing of Transferred Case (C) No.2 of 2023:

4. In pursuance of the directions issued vide first order of NGT and in exercise of the powers conferred upon it under the TCP Act and the 1978 Rules framed thereunder, the State of Himachal Pradesh published a draft development plan on 8th February 2022. It is to be noted that various directions were also issued by the High Court of Himachal Pradesh from time to time in CWP No. 4595 of 2011 for finalization of the development plan in accordance with the TCP Act. The State of Himachal Pradesh also invited objections and suggestions from the general public in relation to the draft development plan. In all, 97 objections/suggestions were received by the State of Himachal Pradesh within stipulated time-period and the same were heard by the Director in due course. CWP Nos. 23 and 37 of 2022 were also filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

4.1 In the meantime, respondent No.1 herein-Yogendera Mohan Sengupta filed another OA (No. 297 of 2022) before the NGT in relation to the draft development plan. The NGT, vide interim order dated 12th May 2022, stayed the draft development plan and restrained the State of Himachal Pradesh from taking any further steps in pursuance of the draft development plan. Being aggrieved thereby, the State of Himachal Pradesh filed CWP

No. 5960 of 2022 under Article 226/227 of the Constitution of India before the High Court of Himachal Pradesh. Despite the pendency of the said CWP No. 5960 of 2022, the NGT, vide its second order, held that the draft development plan, being in conflict with the first order of NGT, is illegal and cannot be given effect to. The appellants herein filed an application in CWP No. 5960 of 2022, before the High Court of Himachal Pradesh, praying for amending the writ petition so as to challenge the second order of NGT. Since common issues were being considered by this Court in Civil Appeal Nos.5348-5349 of 2019, this Court vide an order dated 14th November 2022, directed the transfer of the said CWP No. 5960 of 2022 before itself.

III. SUBMISSIONS

5. We have heard Shri Anup Rattan, learned Advocate General appearing on behalf of the State of Himachal Pradesh, Shri Vinay Kuthalia, learned Senior Counsel appearing on behalf of the Shimla Municipal Corporation and Shri Sanjay Parikh, learned Senior Counsel appearing on behalf of the common respondent No.1 in Civil Appeal Nos.5348-5349 of 2019 and Transferred Case (Civil) No.2 of 2023..

Submissions on behalf of the Appellants:

6. It is submitted on behalf of the appellants that the State was fully aware of its duties and responsibilities as envisaged by the Constitution of India as well as the relevant statutory provisions. It is submitted that while finalizing the development plan, the State has adopted a proactive role to ensure that a balance is struck between the developmental and environmental issues.

7. It is submitted on behalf of the appellants that the development plan has been finalized in exercise of statutory powers vested in the appellants under Sections 13 to 20 of the TCP Act, after considering all the recommendations and suggestions of various expert bodies and technical committees as well as the directions and recommendations of the NGT.

8. It is submitted on behalf of the appellants that a bare perusal of Chapters 12 and 17 of the development plan would go to show that the entire environmental aspects as well as the suggestions and directions of the NGT issued vide first order of NGT have been fully and duly considered before finalizing the development plan.

9. It is submitted on behalf of the appellants that while taking steps to finalise the development plan, the appellants have attempted to balance the developmental requirements for catering to the needs of the expanding population, with the safeguards to preserve and protect the environment. It is submitted that while finalizing the development plan, the entire procedure as prescribed under the Statutes was duly followed.

10. The learned Advocate General as well as Shri Kuthalia submitted that the planning regulations divide the areas into different categories. It is submitted that, in order to protect the environment, various stringent provisions have been made such as:

(i) "In the core area, only 2 storeys + attic is permitted and parking floor is permitted only in those plots which are accessible by motorable road;

(ii) In the non-core area and the Planning Area, only 3 storeys + attic is permitted and parking floor is only permitted in plots which are adjacent to motorable roads; and

(iii) Rebuilding and reconstruction of old buildings has been permitted strictly on old lines. With the efflux of time in many buildings, there are different owners of each floor;

(iv) In green belt areas which are lying between constructed areas, only single storey construction with attic is permissible. However, no tree will be permitted to be felled in any such area and no construction will be permitted in forest area without following the mandate of the Forest Conservation Act."

11. It is further submitted on behalf of the appellants that appropriate setbacks have also been made mandatory in order to avoid overcrowding. It is submitted that because of the peculiar climate of Shimla, the attic is necessary because the roof is required to be sloping in hilly terrain, to allow for run-off of rain and snow. It is further submitted that construction will only be permitted after a soil investigation report of the area and assessment of structural stability by an expert are made. The construction is required to be approved by a qualified architect or engineer.

12. The first and second orders of NGT are also challenged by the appellants on the ground that the jurisdiction of NGT is limited to the civil cases where a substantial question relating to environment

(including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 (hereinafter referred to as the "NGT Act"). It is submitted that Schedule I of the NGT Act does not include town and country planning and as such, the orders passed by the NGT are without jurisdiction.

13. It is further submitted on behalf of the appellants that the exercise of power for finalisng the development plan is a quasi-legislative power and the NGT could not have issued directions to exercise that power in a particular manner. It is submitted that the said would amount to encroachment upon the statutory functions of the State which are entrusted to it by virtue of the TCP Act.

14. It is also submitted on behalf of the appellants that the NGT could not have *suo motu* enlarged the scope of OA No. 121 of 2014 as it is a body constituted under a statute and it has to exercise its jurisdiction within the four corners of the statute.

15. It is submitted on behalf of the appellants that various directions issued by the NGT are contrary to the provisions of the TCP Act, Himachal Pradesh Municipal Corporation Act, 1994 (for short, "HPMC Act") and the various Bye-laws, Rules and Notifications framed thereunder and as such, not sustainable in law. A reliance in this respect is placed on the following judgments of this Court:

Himachal Pradesh Bus Stand Management and Development Authority (H.P. BSM & DA) v. Central Empowered Committee and Others[1]***, State of Madhya Pradesh v. Centre for Environment Protection Research and Development and Others***[2]***, Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch and Others***[3]***, Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Limited and Others***[4] and ***Techi Tagi Tara v. Rajendra Singh Bhandari and Others***[5]***.***

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1 **[2021] 1 SCR 344 : (2021) 4 SCC 309 : 2021 INSC 18**

2 **[2020] 12 SCR 1139 : (2020) 9 SCC 781 : 2020 INSC 516**

3 **[2020] 6 SCR 1050 : (2021) 11 SCC 566 : 2020 INSC 452**

4 **[2019] 3 SCR 777 : (2019) 19 SCC 479 : 2019 INSC 220**

5 **[2017] 12 SCR 956 : (2018) 11 SCC 734 : 2017 INSC 986**

16. It is submitted that since the development plan was prepared by the State in exercise of its constitutional powers under Article 162 of the Constitution of India and statutory powers under the TCP Act and HPMC Act, the NGT could not have issued directions to act in a manner which would be contrary to those provisions. Reliance in this respect is placed on the following judgments of this Court:

State of Himachal Pradesh and Others v. Satpal Saini[6]***, Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College, Meerut and Others***[7] and ***Bishambhar Dayal Chandra Mohan and Others v. State of Uttar Pradesh and Others***[8]***.***

17. The learned Advocate General further submitted that the directions issued by the NGT, rather than subserving any public interest are contrary to the public interest inasmuch as vast number of citizens are being put to great hardships and inconvenience. It is submitted that on account of the directions issued by the NGT, re-construction of the old structures which are in dilapidated condition and which is permissible on the existing plinth area, has been brought to a complete halt.

18. The learned Advocate General further submitted that the State is alive to the requirement of protecting environment and as such, the Cabinet has taken a decision wherein it prescribed more stringent measures.

19. Both the orders of NGT are also challenged on the ground that when the High Court was seized of the matter with regard to the draft development plan, the NGT could not have entertained the proceedings and passed the orders therein. Reliance in this respect is placed on the judgment of this Court in the case of ***State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (Member of Parliament)***[9]***.***

Submissions on behalf of the Respondents:

20. Shri Parikh, on the contrary, submitted that the first order of NGT threw light on the serious concerns regarding the fragile ecology of State of Himachal Pradesh in general and Shimla in particular. The

6 **[2017] 1 SCR 658 : (2017) 11 SCC 42**

7 **[1987] 1 SCR 661 : 1986 Supp SCC 543 : 1986 INSC 275**

8 **[1982] 1 SCR 1137 : (1982) 1 SCC 39 : 1981 INSC 189**

9 **[2022] 6 SCR 810 : (2022) 8 SCC 156 : 2022 INSC 632**

first order of NGT has also tried to address issues with regard to continuous instances of landslides and collapsing of buildings, cloud bursts and earthquakes.

21. Shri Parikh further submitted that the first order of NGT is based on the report presented by the High Powered Committee appointed by it. The NGT has considered in detail the report of the High Powered Committee, various other documents and government records. After consideration of the same, directions have been given in order to ensure the protection of ecology and environment. It is submitted that the development plan is finalized keeping in view the directions issued by the NGT with regard to core areas, green areas, sinking areas and heritage areas.

22. It is submitted on behalf of the respondents that the NGT has rightly issued the directions to re-construct in core area or green/forest area within legally permissible statutory limits of the old buildings and in any case not beyond 2 storeys and an attic floor. It is submitted that further direction was that if any construction, particularly public utilities like hospitals, schools, offices are proposed to be constructed beyond 2 storeys plus an attic floor, then the plan has to be duly approved and permission has to be obtained from the concerned authorities.

23. Shri Parikh submitted that the "Green Belt" areas, by notification dated 7th December 2000, are covered under the dictionary meaning of 'forest' and are thus required to be protected under the provisions of the FC Act as per the order of this Court passed in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Others***[10].

24. Shri Parikh submitted that the challenge to the second order of NGT is also without substance inasmuch as the directions issued by the NGT, vide its first order, were binding upon the appellants and the draft development plan could not have been notified in contravention of the directions of the NGT. A reliance in this respect is placed on the judgment of this Court in the case of ***Punjab Termination of Agreement Act, 2004, In Re, Special Reference No. 1 of 2004***[11]. Reliance is also placed on the judgment of this court in the case of ***State of Tamil Nadu v. State of Kerala and Another***[12].

10 [1996] 9 Suppl. SCR 982 **: (1997) 2 SCC 267 : 1997 INSC 226**

11 [2016] 11 SCR 15 **: (2017) 1 SCC 121 : 2016 INSC 1018**

12 [2014] 12 SCR 875 **: (2014) 12 SCC 696 : 2014 INSC 373**

25. Shri Parikh further submitted that this Court in the case of ***Mantri Techzone Private Limited v. Forward Foundation and Others***[13] has held that the NGT has overriding powers over anything inconsistent contained in any other law or in any instrument having effect by virtue of any law. He further submitted that this Court has held that while providing for restoration of environment in an area, the NGT can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or Revised Master Plan.

26. Shri Parikh relies on the judgments of this Court in the cases of ***Pragnesh Shah v. Dr. Arun Kumar Sharma and Others***[14]***, Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Others***[15] and ***Resident's Welfare Association and Another v. Union Territory of Chandigarh and Others***[16] in support of the proposition that the NGT has jurisdiction to issue directions in order to protect the ecologically sensitive areas.

27. It is submitted that the jurisdiction of this Court under Section 22 of the NGT Act is very limited and an interference is warranted only when the court finds that there is an error apparent on the face of record in the findings of the NGT.

28. It is submitted that if the directions issued by the NGT, which provide for a precautionary approach, are not followed and the construction activities as provided in the development plan are carried out, it will be disastrous for future generations and will result in calamities like frequent landslides due to floods and earthquakes, cloudbursts and other natural disasters resulting in loss to the human lives and property. It is therefore submitted that the present appeals as well as the transferred case arising out of the writ petitions pending before the High Court are liable to be dismissed.

Submissions on behalf of the Interveners/Land Owners:

29. It was argued on behalf of the interveners who were owners of the plots in "Green Belt" areas that on account of the restrictions imposed in the "Green Belt" areas, they were deprived of enjoyment of their

13 **[2019] 4 SCR 995 : (2019) 18 SCC 494 : 2019 INSC 315**

14 **[2022] 8 SCR 154 : (2022) 11 SCC 493 : 2022 INSC 47**

15 **(1997) 11 SCC 605**

16 **[2023] 1 S.C.R. 601 : (2023) 8 SCC 643 : 2023 INSC 22**

property which would be violative of Article 300A of the Constitution of India. It was therefore submitted that a direction be given to the State to pay compensation to such owners for not being in a position to utilize their plot of lands. We *prima facie* find that such an issue could be beyond the scope of the present proceedings.

IV. CONSIDERATION:

A. Legislative Scheme of the TCP Act.

30. It will be apposite to refer to the Preamble of the TCP Act, which reads thus:

> "An act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective to constitute the Town and Country Development Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through the Special Area Development Authority[17], to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid."

31. It can thus be seen that the TCP Act has been enacted to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective. It also provides for constitution of Town and Country Development Authority for proper implementation of town and country development plan. It also provides for development and administration of special areas through the Special Area Development Authority.

32. Section 13 of the TCP Act reads thus:

> "**13. Planning Area**.—(1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof.

17 **As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2015 (Act 14 of 2015).**

(2) The State Government may, by notification,-

(a) alter the limits of a planning area so as to include therein or exclude there from such area as may be specified in the notification;

(b) amalgamate two or more planning areas so as to constitute one planning area;

(c) divide any planning area into two or more planning areas;

(d) declare that the whole or part of the area constituting the planning area shall cease to be planning area or part thereof."

33. It can thus be seen that under Section 13 of the TCP Act, the State Government is empowered to constitute planning areas for the purposes of the Act and define the limits thereof. It is also empowered to alter the limits of a planning area, amalgamate two or more planning areas and also to divide any planning area into two or more planning areas.

34. Section 14 of the TCP Act reads thus:

"**14. Director to prepare Development Plans**.—Subject to the provisions of this Act and the rules made thereunder the Director shall—

*(a) prepare an existing land use map indicating the natural hazard proneness of the area;

*(b) prepare an interim development plan keeping in view the regulation for land use zoning for natural hazard prone area;

*(c) prepare a development plan keeping in view the regulation for land use zoning for natural hazard prone area;[18]

(d) prepare a sectoral plan;

18 ***As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).**

(e) carry such surveys and inspections and obtain such pertinent reports from Government departments, local authorities and public institutions as may be necessary for the preparation of the plans;

(f) perform such duties and functions as are supplemental, incidental, and consequential to any of the foregoing functions or as may be assigned by the State Government for the purpose of carrying out the provisions of this Act."

35. Clauses (a), (b) and (c) of Section 14 of the TCP Act have been amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013). It can be seen that these clauses provide a special emphasis on the areas indicating the natural hazard.

36. Section 15 of the TCP Act reads thus:

> "**15. Existing Land use Maps**.—(1) The Director shall carry out the survey and prepare an existing land use map and forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map and of the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice.
>
> (2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, make such modification therein as may be considered desirable.
>
> (3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places where the copies of the same may be inspected.
>
> (4) A copy of the notice shall also be published in the Official Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted."

37. Under Section 15 of the TCP Act, the Director is required to carry out the survey and prepare an existing land use map and, forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map. It also provides for inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice. Sub-section (2) of Section 15 thereof provides for allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions. It also enables the Director to make such modification therein as may be considered desirable. Sub-section (3) thereof provides that after the map is adopted with or without modifications, the Director shall publish a public notice of the adoption of the map. A copy of the notice is required to be published in the Official Gazette.

38. Section 15-A of the TCP Act deals with "Freezing of landuse pending preparation of existing landuse map under Section 15(1)". Section 16 of the TCP Act deals with "Freezing of land use on the publication of the existing land use map under Section 15". Section 17(1) of the TCP Act deals with "Interim Development Plans".

39. The provisions of Sections 18, 19 and 20 of the TCP Act are most relevant for considering the issues involved in the present matter, which read thus:

"**18. Development Plan**.—A development plan shall—

(a) indicate broadly the land use proposed in the planning areas;

(b) allocate broadly areas or sector of land for,—

(i) residential, industrial, commercial or agricultural purposes,

(ii) open spaces, parks and gardens, green belts, zoological gardens and play grounds,

(iii) public institutions and offices,

(iv) such special purposes as the Director may deem fit;

(c) lay down the pattern of National and State highways connecting the planning area with the rest of the region ring roads, arterial roads, and the major roads within the planning area;

(d) provide for the location of airports, railway stations, bus terminal and indicate the proposed extension and development of railways;

(e) make proposals for general landscaping and preservation of natural areas;

(f) project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment;

(g) propose broad based regulations for sectoral development, by way of guideline, within each sector of the location, height, size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put [19]"including regulations for façade control and sloping roof conforming to the hill architecture and environs";

(h) lay down the broad based traffic circulation patterns in a city;

(i) suggest architectural control features, elevation and frontage of buildings and structures;

(j) indicate measures for flood control, *"and protection against land slide", prevention of air and water pollution, disposal of garbage and general environmental control.

19. Publication of Draft Development Plan.—(1) The Director shall forthwith publish the draft development plans prepared under section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected, inviting objections and the suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice. Such notice shall specify in regard to the draft development plan the following particulars, namely:—

(i) the existing land use maps;

19 **As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).**

(ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

(iii) the phasing of implementation of the draft development plan as suggested by the Director;

(iv) the provisions for enforcing the draft development plan and stating the manner in which permission to development may be obtained;

(v) an approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The Director shall, not later than ninety days after the date of expiry of the notice period under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, make such modifications in the draft development plan as he may consider necessary, and submit not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

20. Sanction of Development Plan.—(1) As soon as may be after the submission of the development plan under Section 19, the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Official Gazette invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard the State Government may confirm the modification in the development plan.

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> (4) The State Government shall publish the development plan as approved, under the foregoing provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the place or places where the copies of the approved development plan may be inspected.
>
> (5) The development plan shall come into operation from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area.
>
> (6) After the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan."

40. It can thus be seen that the development plan is required to consist of various factors. Clause (b) of Section 18 of the TCP Act provides that it shall allocate broadly areas or sector of land for various purposes including residential, industrial, commercial or agricultural. It shall also provide for open spaces, parks and gardens, green belts, zoological gardens and play-grounds. It is also required to make proposals for general landscaping and preservation of natural areas. It is required to project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment. It is also required to propose broad-based regulations for sectoral development, by way of guide-lines, within each sector of the location, height, size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put including regulations for façade control and sloping roof conforming to the hill architecture and environs.

41. It can thus be seen that a special emphasis is placed on regulations for façade control and sloping roof conforming to the hill architecture and environs. Clause (j) of Section 18 of the TCP Act, also specifically provides to indicate measures for flood control, protection against land slide, prevention of air and water pollution, disposal of garbage and general environmental control.

42. Under Section 19(1) of the TCP Act, the Director is required to publish the draft development plan prepared under Section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected. It provides for inviting objections and suggestions, in writing, from any person with respect thereto, within thirty days from the date of publication of such notice. The notice to be issued under Section 19 requires that it should specify the existing land use maps, a narrative report supported by maps and charts, explaining the provisions of the draft development plan, the phasing of implementation of the draft development plan as suggested by the Director, the provisions for enforcing the draft development plan and stating the manner in which permission to development may be obtained and the approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

43. Under sub-section (2) of Section 19 of the TCP Act, the Director is required to consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) thereof, not later than ninety days after the date of expiry of the notice period. He is also required to give reasonable opportunity to all persons affected thereby of being heard and make such modifications in the draft development plan as he may consider necessary. He is also required to submit, not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

44. Under Section 20 of the TCP Act, after the development plan under Section 19 is submitted to the State Government, it may either approve the development plan or it may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Under sub-section (2) thereof, where the State Government approves the development plan with modifications, the State Government shall, by a notice, published in the Official Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette. Under sub-section (3) thereof, after considering objections and suggestions

and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan. Sub-section (4) thereof requires the State Government to publish the development plan as approved, under the foregoing provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the place or places where the copies of the approved development plan may be inspected. Sub-section (5) thereof provides that the development plan shall come into force from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area. Sub-section (6) thereof provides that after the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan.

B. Nature of functions/powers of the Authorities under Chapter-IV of the TCP Act.

45. A perusal of the aforesaid provisions, leaves no manner of doubt, that Chapter-IV of the TCP Act is a complete code, providing for preparation of draft development plan, publication of draft development plan with a publication of its notice, inviting objections and suggestions, giving reasonable opportunity to all persons affected of being heard, making modifications in the draft development plan as may be considered necessary by the Director and thereafter submitting it to the State Government.

46. Under Section 20 of the TCP Act, the State Government is empowered to either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Sub-section (2) thereof provides that where the State Government approves the development plan with modifications, it is again required to be published in the Official Gazette to invite objections and suggestions in respect of such modifications. The State Government is empowered to confirm the modification in the development plan after considering objections and suggestions and after giving a hearing to the persons desirous of being heard.

47. It could thus be seen that Chapter-IV of the TCP Act provides for inviting objections and suggestions at two stages. Firstly, at the stage of Section 19 where the Director is required to invite objections and suggestions to the draft development plan and after giving an opportunity of being heard and considering the objections and suggestions, submit the development plan to the State Government. Under Section 20 of the TCP Act, a second opportunity of making objections and suggestions has been provided. Again, the State Government is required to give an opportunity of hearing to such objectors before granting final approval to the development plan.

48. A perusal of the scheme of the TCP Act and particularly Chapter-IV thereof would establish beyond doubt that the powers vested with the Director and the State Government are for enacting a piece of delegated legislation.

49. The distinction between the legislative function and administrative function is succinctly described by this Court in the case of ***Union of India and Another v. Cynamide India Ltd. and Another***[20], which reads thus:

> "**7.** The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is "difficult in theory and impossible in practice". Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as "one between the general and the particular". "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular

20 [1987] 2 SCR 841 : **(1987) 2 SCC 720 : 1987 INSC 100**

> cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases." It has also been said: "Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. ….."

50. Though, this Court, in the celebrated case of ***Cynamide India Ltd.*** (supra) observed that any attempt to draw a distinct line between legislative and administrative functions is difficult in theory and impossible in practice, it attempted to draw a line between the two inasmuch as different legal rights and consequences may ensue, in exercise of such functions. It has been held that the distinction between the two has usually been expressed as "one between the general and the particular". A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; whereas an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. It has been held that legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future. Whereas, administration is the process of performing particular acts of issuing particular orders or of making decisions which apply general rules to particular cases. It has also been held that rule-making is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class; whereas an adjudication, on the other hand, applies to specific individuals or situations.

51. When we apply the aforesaid principles to the facts of the present case, it will be amply clear that the preparation of draft development plan under Section 18 of the TCP Act, finalization of the same under Section 19 of the TCP Act by the Director and grant of approval by

the State under Section 20 of the TCP Act are all legislative functions. The provisions enable the delegated legislative body to formulate the provisions which will have a general application to all members of the broadly identifiable classes.

52. In the case of ***Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur***[21], again a challenge was made to the notification issued under Section 3 of the U.P. Town Areas Act, 1914 on the ground that before issuance of final notification, the principles of *audi alteram partem* were not followed. While rejecting the said contention and holding the exercise of powers as a piece of conditional legislation, this Court observed thus:

> "**7.** …..The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S.A. De Smith in *Judicial Review of Administrative Action* (3rd Edn.) observes at p. 163:
>
>> "However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides."
>
> ………
>
> **9.** We are, therefore, of the view that the maxim "audi alteram partem" does not become applicable to the case by necessary implication."

53. It is thus clear that this Court held that a declaration under Section 3 of the U.P. Town Areas Act, 1914 provided for enabling the application of the rest of the provisions of the Act to the geographical area which is declared as a town area. It was thus held that the declaration made under Section 3 was legislative in character.

21 [1980] 2 SCR 1111 **: (1980) 2 SCC 295 : 1980 INSC 38**

The State of Himachal Pradesh and Others v. Yogendera Mohan Sengupta and Another

54. In the case of ***Sundarjas Kanyalal Bhatija and Others v. Collector, Thane, Maharashtra and Others***[22], the Government of Maharashtra had issued a draft notification under Section 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 (for short, "BPMC Act"). The draft notification proposed for formation of "Kalyan Corporation". Against the said proposal, there were many objections and representations received from different sections. In the earlier draft notification, the area of Ulhasnagar Municipal Council was proposed to be merged in the proposed area of Kalyan Corporation. However, taking into consideration the objections, the area of Ulhasnagar Municipal Council was excluded from the area of Kalyan Corporation while issuing the final notification. The same was challenged before the High Court by filing a writ petition. One of the reasons which weighed with the High Court while allowing the petition was that the opportunity of hearing was not given to one of the parties while issuing the final notification under Section 3(2) of the BPMC Act. It will be relevant to refer to the following observations of this Court while reversing the order of the High Court in the said case:

> "**28.** Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law."

55. It could thus be seen that this Court clearly held that the issuance of draft notification, consideration of objections and publication of final notification are done in exercise of legislative powers. The procedural requirement of hearing would not be implied unless the statute so provides for.

56. This Court, in the case of ***Pune Municipal Corporation and Another v. Promoters and Builders Association and Another***[23], had an occasion to consider somewhat similar provisions under

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22 [1989] 3 SCR 405 **: (1989) 3 SCC 396 : 1989 INSC 202**

23 [2004] 2 Suppl. SCR 207 **: (2004) 10 SCC 796 : 2004 INSC 348**

the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act"). In the said case, this Court was considering the power of the State Government to make any changes of its own in the modifications submitted by the Planning Authority under Section 37 of the MRTP Act. This Court observed thus:

> "**5.** Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (*Union of India* v. *Cynamide India Ltd.* [(1987) 2 SCC 720], SCC paras 5 and 27. See generally *H.S.S.K. Niyami* v. *Union of India* [(1990) 4 SCC 516] and *Canara Bank* v. *Debasis Das* [(2003) 4 SCC 557 : 2003 SCC (L&S) 507] .) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally *ONGC* v. *Assn. of Natural Gas Consuming Industries of Gujarat* [1990 Supp SCC 397] .) Therefore, the view adopted by the High Court does not appear to be correct."

57. It could thus be seen that this Court in the case of ***Pune Municipal Corporation*** (supra) held that making of Development Control Rules (DCR) or amendments thereof are legislative functions.

58. In the said case, the Court also found that since the legislature did not provide for a public hearing before according sanction, the delegated legislation could not be questioned for violating the principles of natural justice in its making except when the statue itself provide for that requirement. The Court went on to hold that where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity.

59. Again, in the case of ***Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited and Others***[24], the scheme for finalization of the development plan as provided under the Karnataka Town and Country Planning Act, 1961 was considered and the said power was held to be in exercise of the legislative powers.

60. Recently, a three-Judges Bench of this Court in the case of ***Rajeev Suri v. Delhi Development Authority and Others***[25], after considering the earlier judgments, held that the change of use of government land which is of general nature would be a function which has a quasi-legislative hue to it.

61. It can thus be seen that it is a settled position of law that the exercise of power for the preparation, finalization and approval of development plan is a power exercised by the delegatee for enacting a subordinate piece of legislation. We therefore have no manner of doubt in holding that the aforesaid provisions as contained in the TCP Act provide for exercise of power by a delegatee to enact a piece of subordinate legislation.

C. Whether the NGT could have issued directions to the legislative body to exercise its legislative functions in a particular manner?

62. A perusal of the first order of NGT would reveal that the NGT, in effect, has issued directions to the authority empowered to enact the development plan, to do so in a particular manner. The question therefore that will have to be considered is as to whether the NGT could have exercised its jurisdiction in such a manner, to issue such directions.

24 [2012] 4 SCR 881 : **(2012) 3 SCC 442 : 2012 INSC 50**

25 [2021] 15 SCR 283 : **(2022) 11 SCC 1: 2021 INSC 4**

63. In the case of ***V.K. Naswa v. Home Secretary, Union of India and Others***[26], the petitioner-in-person had approached this Court to issue directions to the Central Government, through the Ministry of Law & Justice, to amend the law for taking action against a person for showing any kind of disrespect to the national flag or for not observing the terms contained in the Flag Code of India, 2002. In the alternative, it was prayed by the petitioner-in-person that this Court may be pleased to issue direction(s) in that regard.

64. This Court, in the said case, after surveying various earlier judgments on the issue, observed thus:

> "**6. It is a settled legal proposition that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner**.
>
> **7.** In *Mallikarjuna Rao* v. *State of A.P.* [(1990) 2 SCC 707 : 1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and *V.K. Sood* v. *Deptt. of Civil Aviation* [1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285], this Court has held that the writ court, in exercise of its power under Article 226, has no power even indirectly to require the executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. **The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution**. While deciding the said case, the Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj* v. *UT, H.P.* [(1971) 2 SCC 747 : AIR 1971 SC 2399], where it has been held that **legislative power can be exercised only by the legislature or its delegate and none else**.

26 **[2012] 2 SCR 912 : (2012) 2 SCC 542 : 2012 INSC 10**

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8. In *State of H.P.* v. *Parent of a Student of Medical College* [(1985) 3 SCC 169 : AIR 1985 SC 910], this Court deprecated the practice adopted by the courts to issue directions to the legislature to enact a legislation to meet a particular situation observing : (SCC p. 174, para 4)

> "*4*. … The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation."

9. In *Asif Hameed* v. *State of J&K* [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] this Court while dealing with a case like this at hand observed : (SCC p. 374, para 19)

> "*19*. … While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. *The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive*."

10. In *Union of India* v. *Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96], this Court similarly observed : (SCC p. 332, para 14)

> "*14*. … It is not the duty of the court either to enlarge the scope of the legislation.… The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts."

11. Similarly in *Ajaib Singh* v. *Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : AIR 1999 SC 1351], this Court held that the court cannot fix a period of limitation, if not fixed by the legislature, as "the courts can admittedly interpret the law and do not make laws". The court cannot interpret the statutory provision in such a manner "which would amount to legislation intentionally left over by the legislature".

12. A similar view has been reiterated by this Court in *Union of India* v. *Assn. for Democratic Reforms* [(2002) 5 SCC 294 : AIR 2002 SC 2112] observing that the court cannot issue direction to the legislature for amending the Act or Rules. It is for Parliament to amend the Act or Rules. In *District Mining Officer* v. *Tisco* [(2001) 7 SCC 358], this Court held that function of the court is only to expound the law and not to legislate.

13. Similarly, in *Supreme Court Employees' Welfare Assn.* v. *Union of India* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569], this Court held that the court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme Parliament exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation. (See also *State of J&K* v. *A.R. Zakki* [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285 : AIR 1992 SC 1546] .)

14. In *Union of India* v. *Prakash P. Hinduja* [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314 : AIR 2003 SC 2612], this Court held that if the court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the contempt of court for the reason that the order passed by the court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

15. The issue involved herein was considered by this Court in *University of Kerala* v. *Council of Principals of Colleges* [(2010) 1 SCC 353 : AIR 2010 SC 2532] . The Court elaborately explained the scope of separation of powers of different organs of the State under our Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed : (SCC p. 361, para 13)

"*13*. … '*19*. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the rules.' [Ed. : As observed in *Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294, p. 309, para 19.] "

16. In *State of U.P.* v. *Jeet S. Bisht* [(2007) 6 SCC 586], this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.

17. In *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers* [(2011) 8 SCC 568 : (2011) 2 SCC (L&S) 375], this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. (See also *Vishaka* v. *State of Rajasthan* [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : AIR 1997 SC 3011]; *Common Cause* v. *Union of India* [(2008) 5 SCC 511 : AIR 2008 SC 2116] and *Destruction of Public and Private Properties* v. *State of A.P.* [(2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : AIR 2009 SC 2266])

18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. **Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner**."

[emphasis supplied by us]

65. Constitution of India recognizes the independence and separation of powers amongst the three branches of the State viz. the Legislature, the Executive and the Judiciary. Each of the branches are co-equal. The Parliament or the Legislature is entrusted with the function of legislation, i.e., enacting the laws. The Executive is entrusted with the function and power to implement those laws and discharge their functions in accordance with the provisions made in the Constitution of India and the laws so enacted. The Judiciary is entrusted with the function to ensure that the laws enacted by the Legislature

are within the four corners of the Constitution of India and that the Executive acts within the four corners of the Constitution of India and the laws enacted by the Legislature. As to what should be the laws and the policy behind the said laws is clearly within the domain of the Legislature. It is a different matter for Judiciary to examine as to whether a particular piece of legislation stands the scrutiny of law within the limited grounds of judicial review available. However, giving a direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive or the Legislature would neither be legal nor proper. The Court cannot be permitted to usurp the functions assigned to the Executive, the Legislature or the subordinate legislature. The Court cannot also assume a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution of India.

66. It is a settled law that the Constitution of India does not permit the courts to direct or advise the Executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive. It is also settled that the courts cannot issue directions to the Legislature for enacting the laws in a particular manner or for amending the Acts or the Rules. It is for the Legislature to do so.

67. A Constitution Bench, in the case of ***Manoj Narula v. Union of India***[27], was considering various questions. One of the questions that has been considered was whether by taking recourse to the doctrine of advancing constitutional culture, could a court read a disqualification to the already expressed disqualifications either provided under the Constitution or under the Representation of People Act, 1951. Answering the question in the negative, the Court observed thus:

> "**67.** The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review."

27 [2014] 9 SCR 965 **: (2014) 9 SCC 1 : 2014 INSC 568**

68. This Court, in the case of ***Satpal Saini*** (supra), considered whether it was permissible for the High Court to call upon the State Government to amend the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The directions were issued by the High Court to the State Government to make amendment within 90 days. Allowing the appeal filed by the State Government, this Court held that the High Court, while issuing the above directions, acted in a manner contrary to the settled limitations on the power of judicial review under Article 226 of the Constitution of India. It held that the directions cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in the Parliament and the State Legislatures.

69. It can thus be seen that it is a settled position of law that neither the High Courts while exercising powers under Article 226 of the Constitution nor this Court while exercising powers under Article 32 of the Constitution can direct the legislature or its delegatee to enact a law or subordinate legislation in a particular manner. If the High Courts and this Court, in their extra-ordinary powers under Articles 226 and 32 of the Constitution cannot do so, the answer to the question as to whether a Tribunal constituted under a statute, having a limited jurisdiction, can do so or not, would be obviously 'No'.

70. In that view of the matter, we find that the first order of NGT is liable to be set aside on the short ground that it has transgressed its limitations and attempted to encroach upon the field reserved for the delegatee to enact a piece of delegated legislation. We are of the considered view that when the TCP Act empowers the State Government and the Director to exercise the powers to enact a piece of delegated legislation, the NGT could not have imposed fetters on such powers and directed it to exercise its powers in a particular manner.

D. Whether observations in Para 47 of the *Mantri Techzone Private Limited* (supra) would operate as *res judicata*?

71. A reliance in this respect is placed by respondent No.1 on the judgment of this Court in the case of ***Mantri Techzone Private Limited*** (supra). It will be relevant to refer to the arguments advanced by the State Government and the other private parties in the said case, which read thus:

> "**27.** The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/ regulation. Therefore, the order of NGT to that extent is liable to be set aside.
>
> **28.** The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan."

72. It will be relevant to refer to the contention made by the counsel appearing on behalf of the applicants in the said case, which reads thus:

> "**29.** On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against

> the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016 [*Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10."

73. It could thus be seen that this Court has specifically recorded the submissions made by the counsel that he has no objection if this Court sets aside the general conditions and directions of NGT in para 1 of the order dated 4th May 2016 in the case of ***Forward Foundation* v. *State of Karnataka***[28], except the directions issued against Respondents 9 and 10. It could thus be seen that this Court, in view of the submissions recorded on behalf of the counsel for the applicants, did not find it necessary to consider the contentions urged in the other civil appeals except the appeals filed against Respondents 9 and 10. As such, the observations made in para 47 of ***Mantri Techzone Private Limited*** (supra) will have to be construed as restricted to the cases of respondent Nos. 9 and 10. The position is further clarified from the observations of this Court in the said case in paras 60-61.

74. As to what could be a binding precedent has been succinctly observed by this Court in the case of ***Union of India and Others v. Dhanwanti Devi and Others***[29], which reads as under:

> "**9.** ……It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to

28 **2016 SCC OnLine NGT 1409**

29 **[1996] 5 Suppl. SCR 32 : (1996) 6 SCC 44 : 1996 INSC 911**

analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates—(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi.”*

75. This Court, in the case of ***Dhanwanti Devi*** (supra) in paragraph 9, has held that it is not profitable to extract a sentence here and there from the judgment and to build upon it. It has been held that the essence of the decision is its ratio and not every observation found therein. It has been held that a deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue would constitute a precedent.

76. Though at a first blush, the observations made in para 47 of the judgment in the case of ***Mantri Techzone Private Limited*** (supra), would appear to support the case of the respondents, but if the entire judgment in the said case is perused, it is not so. It can clearly be seen that the learned Advocate General of the State has specifically argued that the Revised Master Plan is statutory in nature and the NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. It was therefore argued that the order of the NGT to that extent was liable to be set aside. It was similarly argued on behalf of the other appellant that the order of the NGT impugned therein which revised buffer zones also had the effect of amending the Revised Master Plan 2015. A perusal of para 29 of the ***Mantri Techzone Private Limited*** (supra) would clearly reveal that the counsel appearing for the applicants before the High Court has fairly conceded to the setting aside of those general directions. It could thus be seen that, though the issue was raised before the High Court with regard to the power of the NGT to issue such directions, this Court did not go into that issue on the basis of the concessions made by the appellants. We are therefore of the considered view that the observations found in para 47 of the ***Mantri Techzone Private Limited*** (supra) could not be construed to be a precedent or a *ratio decidendi*.

77. We may also gainfully refer to the observations made by this Court in the case of ***Director General (Road Development) National Highways Authority of India*** (supra). In the said case, one of the challenges was the notification issued by the State Government under Section 154 of the MRTP Act. The notification dated 14th November 2017 referred to the general directions issued by the NGT in its order dated 19th May 2015. Vide the said directions, it was directed that the planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills up to 100 feet should be shown as "No

Development/Open Space Reservation". It further directed that in the event the 100 feet area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR. The Court observed thus:

> "**92.** In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14-11-2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in para 17(*e*). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the authorities concerned. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the State issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders [*Aam Aadmi Lokmanch* v. *State of Maharashtra*, 2015 SCC OnLine NGT 11], only underlines the lack of any application of mind on the part of the State, while issuing them.
>
> **93.** For the above reasons, we hold that the impugned judgment [*Harshada Coop. Housing Society Ltd.* v. *State of Maharashtra*, 2018 SCC OnLine Bom 2576 : (2018) 6 Bom CR 154] of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14-11-2017) are hereby quashed."

78. A perusal of the aforesaid would clearly reveal that, though the directive issued by the State Government under Section 154 of the MRTP Act was issued in accordance with the directions issued by the NGT, this Court found such exercise not to be permissible in

law. This Court held that the complete absence of any reasons as to why the State issued such directions, coupled with the lack of any supporting expert report or input, renders such a directive to be an arbitrary exercise of power. This Court, therefore, disapproved such a directive issued under Section 154 of the MRTP Act merely on the basis of the directions issued by the NGT and set aside the same.

E. Development Plan 2041.

79. In any case, we find that the appellants herein, while preparing the draft development plan, have taken into consideration the suggestions given by the NGT. Chapter 12.10 of the development plan elaborately considers the directions given by the NGT.

80. Insofar as "Green Belt" areas, core areas and non-core areas are concerned, the development plan has considered as under:

> "**12.11.4 Implication of Ld. NGT Order**
>
> That it is a settled position of law that normally a Tribunal will deal with the controversy brought before it. That is to say, it will adjudicate upon case put up by any aggrieved party before it. Without conceding on the point of limitation, that the Learned Tibunal could have only adjudicated upon the case put up before it. The case put up before it in nutshell was that no construction should be allowed in forests and green belt area. As already submitted green belt areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. As per IDP Provisions, only reconstruction is permitted in the area and that too on old lines. No new construction or increase in constructed area is permissible in these areas. So far as the forest lands are concerned, no construction upon that is permissible unless there is a clearance from the Central Government as per the provisions of Forest Conservation Act. Further, no construction is permissible on the forest land until or unless proposal is cleared by the Competent Authority i.e. Central Government, but while disposing of the case, the Learned Tribunal has entered the field, which does not belong to it. Whether the building should be one storey or three storeys is for the Competent Authority to decide. Town Planning does

> not come under the purview of the NGT. Further the state of Himachal Pradesh is not a non-compliant State. It has been taking care of environment and has also been taking care of Town Planning."

81. Insofar as "Green Belt" areas are concerned, it has been found that "Green Belt" areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. It provides that as per the provision, reconstruction would be permitted in the area and that too on old lines. No more new construction or increase in constructed area is permissible in these areas. It further provided that insofar as forest lands are concerned, no construction upon them would be permitted unless there is a clearance from the Central Government as per the provisions of the FC Act.

82. Not only that, as has already been referred to hereinabove, the learned Advocate General has placed on record a Cabinet decision which provides that construction would be permitted only in those plots in which there are no trees. It is further pointed out that the construction in "Green Belt" areas, would be permitted only to the extent of single storey with attic.

83. The development plan has elaborately considered as to how vertical construction will have to be preferred over the horizontal construction, inasmuch as the land to be utilized for actual construction would be lesser and there would be more open space.

84. The development plan also consists of the Chapters on "Land Use Zoning" and "Development Control Regulations". In "Green Belt" areas, limited construction with one parking floor + one floor + habitable attic would be permitted for residential use only. It is further clear that the parking floor is permissible only where the plot of land has an access to the motorable road. The maximum permissible height shall be 10 metre. The maximum permissible FAR shall be 1.0. The setbacks norms as prescribed for R1 use in core area shall be applicable. Reconstruction on old lines shall be permissible with same plinth area and number of storeys. Cutting and felling of trees shall be prohibited. Change of land use and building use shall be prohibited. So also detailed provision has been made for heritage land use as well as core areas and non-core areas.

85. A special provision has been made for Sinking and Sliding Areas which reads thus:

"**17.2.2.9. Sinking and Sliding Area**

i. The development permission shall be granted by the Competent Authority in whose jurisdiction the Sinking and Sliding Area falls.

ii. The Regulations as applicable for Core/Green Area and Non-Core Area shall be applicable in Sinking and Sliding Area.

iii. The Soil Investigation Report shall be submitted by the applicant before construction/reconstruction of building(s) for the areas falling in sinking and sliding zones as defined in Shimla Planning Area, or for any reclaimed piece of land. The Soil Investigation Report shall be given by the Geologist in the prescribed form. In case of negative observations, the construction shall not be allowed/shall be allowed as per conditions imposed by the consultant."

It can thus clearly be seen that unless a Soil Investigation Report is provided by the applicant before construction/reconstruction of building(s) for the areas falling in Sinking and Sliding Zones as defined in SPA, construction would not be allowed or allowed only as per the conditions imposed by the consultant. The Soil Investigation Report is required to be given by the Geologist in the prescribed form.

86. It can thus be seen that while preparing the development plan, due care has been taken to ensure that environmental aspects are taken care of.

87. We, however, do not propose to stamp our approval to all the provisions made in the development plan. In that regard, if any person feels aggrieved by any of the provisions, they would always be at liberty to take recourse to such remedy as is available in law.

88. However, we are of the considered view that the NGT could not have directed the delegatee who has been delegated powers under the TCP Act to enact the regulations, to do so in a particular manner. As a matter of fact, the NGT has imposed fetters on the exercise of powers by the delegatee, who has been delegated such powers by the competent legislature. In any case, it is clear that there were sufficient safeguards under the provisions of the TCP Act inasmuch as

an aggrieved citizen was entitled to raise objections, give suggestions and was also entitled to an opportunity of hearing on more than one occasion. The first one at the stage of finalization of the draft development plan by the Director, and the second one at the stage of grant of approval and publication of the final development plan by the State Government. We are informed that 97 objections were received to the draft development plan in the present case. An opportunity of being heard was given to all of them before finalization of the draft development plan. We are also informed that out of 97 objectors, all, except 5, had requested for more relaxation.

89. The first order of NGT is also sought to be attacked by the appellants on the ground that the subject matter of the dispute did not concern any of the enactments listed in Schedule I of the NGT Act and therefore, the OA filed under Section 14 of the NGT Act itself was not tenable.

90. Since we find that the first order of NGT is not sustainable on the ground of encroaching upon the powers of the delegatee to enact a delegated legislation and also amounts to imposing fetters on the exercise of such powers, we do not propose to go into the said issue and we keep the same open to be adjudicated upon in appropriate proceedings.

Transferred Case (C) No. 2 of 2023.

F. Whether the NGT was justified in passing the order dated 14th October 2022 when the High Court was seized of the same issue during the pendency of Civil Writ Petition No.5960 of 2022?

91. Insofar as the second order of NGT is concerned, the same arises out of publication of the draft development plan on 8th February 2022. After the draft development plan was published, in all 97 objections/suggestions were received by the State of Himachal Pradesh within the stipulated time period and the same were heard. After considering the objections and suggestions including the recommendations made by the NGT in its first order, the development plan was finalized for 22,450 hectares of SPA upto the year 2041. However in the meantime, CWP Nos. 23 and 37 of 2022 were filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

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92. Subsequent to the finalization of the draft development plan, the respondent No.1 herein filed another application being OA No. 297 of 2022 before the NGT. The NGT passed an *ex parte ad interim* order dated 12th May 2022 restraining the appellants herein from taking any further steps in pursuance of the draft development plan.

93. Being aggrieved thereby, the State of Himachal Pradesh – appellant herein preferred CWP No. 5960 of 2022 before the High Court of Himachal Pradesh under Article 226/227 of the Constitution of India. A prayer was made in the said writ petition to declare the order of the NGT dated 12th May 2022 to be without jurisdiction. It was also prayed that the Town and Country Planning Department and Municipal Corporation be permitted to perform their statutory duties and be authorized to grant approvals, sanctions and building permissions in accordance with the development plan. The respondents therein have filed their reply to the said writ petition and the appellants filed their rejoinder.

94. Despite the pendency of CWP No. 5960 of 2022 as well as other writ petitions relating to the same subject matter, the NGT passed its second order holding that the draft development plan, being in conflict with its first order, is illegal and therefore cannot be given effect to.

95. Immediately after the said order was passed, the appellants filed an application before the High Court of Himachal Pradesh in CWP No. 5960 of 2022 seeking leave to amend the writ petition so as to challenge the order of the NGT dated 12th May 2022.

96. This Court, vide order dated 14th November 2022, in Civil Appeal Nos. 5348-5349 of 2019, transferred the said CWP No. 5960 of 2022 before itself and directed it to be heard along with Civil Appeal Nos. 5348-5349 of 2019. The said writ petition has been renumbered as Transferred Case (C) No. 2 of 2023.

97. At the outset, we allow the application seeking leave to amend the writ petition so as to challenge the second order of NGT and the impleadment application filed before the High Court of Himachal Pradesh.

98. Subsequently, on 3rd May 2023, we passed an order in these proceedings, as under:

"1. We are informed that on account of directions issued by the National Green Tribunal (NGT), the final development plan which is presently at the stage of 'draft notification' could not be published. We are further informed by the learned Advocate General for the State of Himachal Pradesh that 97 objections have been received to the draft development plan.

2. In light of the facts and circumstances of these cases, we find that it will be appropriate, that the State Government decides the objections received to the draft development plan and after considering the same issue a final development plan.

3. We, therefore, direct the State of Himachal Pradesh to consider the objections to the draft development plan, decide them and publish the final development plan within a period of six weeks from today.

4. We further clarify that after the final development plan is published, it would not be given effect to for a period of one month from the date of its publication.

5. It is further directed that no construction should be permitted on the basis of the draft development plan.

6. Learned counsel appearing for the impleadors submits that certain constructions are being carried out without there being a sanctioned plan.

7. If any such construction is carried out without there being a sanctioned plan, indisputably, such a construction would be an unauthorized construction.

8. We, therefore, grant liberty to the applicant(s) to take recourse to the remedy available under Article 226 of the Constitution of India and bring unauthorized constructions to the notice of the High Court.

9. Needless to state that on such petitions being filed, the High Court would decide such petitions with due urgency that the issue requires.

10. List these matters on 12.07.2023."

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99. In pursuance of the aforesaid directions, the Town and Country Planning Department, Government of Himachal Pradesh had notified the final development plan on 20th June 2023.

100. It could thus be seen that when the second order of NGT was passed, the writ petition challenging the interim order dated 12th May 2022 was very much pending before the High Court. Not only that, two other writ petitions being CWP Nos. 23 and 37 of 2022, challenging the draft development plan, were also pending before the High Court. It is thus clear that the High Court was in seisin of the matter related to finalization of the draft development plan.

101. A Constitution Bench of this Court in the case of ***L. Chandra Kumar v. Union of India and Others***[30] was considering the issue regarding ouster of jurisdiction of this Court and the High Courts under Articles 32 and 226 of the Constitution of India as was provided under the Administrative Tribunals Act, 1985 (for short, "AT Act"). The AT Act was constituted under the enabling provisions of Article 323-A of the Constitution of India. Sub-clause (d) of Clause (2) of Article 323-A specifically enables the Parliament to legislate a law for establishment of AT Act and also provides for exclusion of jurisdiction of all the Courts except jurisdiction of this Court under Article 136 with respect to disputes or complaints referred to in Clause (1). This Court after scanning the entire law on the question as to whether the powers of this Court and High Courts of judicial review as could be found in Articles 32 and 226 respectively amounts to basic structure or not, observed thus in paragraph nos. 78 & 79:-

> "**78.** The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of

30 [1997] 2 SCR 1186 **: (1997) 3 SCC 261 : 1997 INSC 288**

effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This

is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

102. It could thus be clearly seen that this Court, even when a provision in the Constitution enabled the Parliament to make a law thereby excluding the powers of judicial review except under Article 136 of the Constitution, held that the power of judicial review vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure and, therefore, the power of High Courts and this Court to test the constitutional validity of legislations can never be ousted or excluded. This Court further goes on to observe that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.

103. It will be further relevant to refer to the following observations of this Court in paragraph nos. 90 to 92 in the said case which read thus: -

"**90.** We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14,

15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the Constitution. In *R.K. Jain's case*, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant

to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."

104. It would thus reveal that the Constitution Bench of this Court in unequivocal terms has held that the Tribunals will have a power to handle matters involving constitutional issues. This Court held that if it is held that the Tribunals do not have power to handle matters involving constitutional issues, they could not serve the purpose for which they were constituted. It has further been observed that on the other hand to hold that all such decisions will be subject to jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India and before Division Bench of High Court within whose jurisdiction the concerned Tribunal falls will serve two purposes. It held that while saving powers of judicial review of legislative action, vested in the High Courts under Articles 226 and 227 would ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. The Constitution Bench of this Court clearly holds that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

105. The perusal of paragraph 92 of the judgment of the Constitution Bench would further reveal that the function of the Tribunals is only supplementary and all such decisions of the Tribunals would be subject to scrutiny before the Division Bench of respective High Courts. The Constitution Bench holds that all such Tribunals will continue to act as the only Courts of first instance in respect of areas of law for which they have been constituted. It has been held that it will not be open for a litigant to directly approach the High Courts even in cases where the question of vires of statutory legislations (except as mentioned where the legislations which creates the particular legislation) is challenged by availing the jurisdiction of the Tribunal concerned.

106. It could thus clearly be seen that it is a settled position of law that the High Courts exercise the power of judicial review over all the Tribunals which are situated within its jurisdiction.

107. We may gainfully refer to the observations of this Court in the case of ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***[31]**,** wherein this Court has succinctly culled down the position as under : **-**

> "**12.** The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the

31 **[2012] 12 SCR 818 : (2013) 11 SCC 404 : 2012 INSC 601**

credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. *East India Commercial Co. Ltd.* v. *Collector of Customs* and *Officials Liquidator* v. *Dayanand*) (SCC p.57, paras 90-91)."

108. It could thus be seen that this Court in unequivocal terms held that no Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. It held that such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. It has been held that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court expressed a caution that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. This Court further held that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is *sine qua non* for effective and efficient functioning of the judicial system.

109. In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.

110. It will also be relevant to refer to the observations of this Court in the case of ***Raghu Ramakrishna Raju Kanumuru (Member of Parliament)*** (supra), which read thus:

> "**13.** We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed out that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the overs passed by the statutory tribunals."

111. It can be seen from the perusal of the orders of the NGT itself that though the NGT was informed about the High Court being in seisin of the proceedings, it went on to hold that the judgment given by it was binding and therefore, the draft development plan, which in its view, was not in conformity with its judgment, was liable to be set aside.

112. In any case, the second order of NGT is passed basically on the basis of the first order of NGT. Since we have held the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside, on the short ground. This, apart from the fact that as discussed hereinabove, on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter and specifically when it was informed about the same.

G. Balancing the need for Development and Protection of the Environment.

113. A need for maintaining a balance between the development and protection/preservation of environmental ecology has been emphasized by this Court time and again.

114. A three-Judges Bench of this Court in the case of ***Indian Council for Enviro-Legal Action v. Union of India and Others***[32], has observed thus:

32 [1996] 1 Suppl. SCR 507 **: (1996) 5 SCC 281 : 1996 INSC 237**

> "**31.** ….. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated."

115. This Court, again in the case of ***Essar Oil Limited v. Halar Utkarsh Samiti and Others***[33], emphasizing on the need for removal of deadlock between the development on the one hand and the environment on the other hand, observed thus:

> "**27.** This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other….."

33 [2004] 1 SCR 808 : **(2004) 2 SCC 392 : 2004 INSC 40**

116. Emphasizing the need for sustainable development by balancing between the environmental protection and developmental activities, this Court, in the case of ***N.D. Jayal and Another v. Union of India and Others***[34], observed thus:

> "**22.** Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens' Welfare Forum* v. *Union of India* [(1996) 5 SCC 647] and in *M.C. Mehta* v. *Union of India* [(2002) 4 SCC 356] it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy."

117. Again, in the said case, stressing on the right to clean environment to be a right guaranteed under Article 21 of the Constitution and also noting that the right to development also is a component of Article 21 of the Constitution, this Court observed thus:

> "**24.** The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya

34 [2003] 3 Suppl. SCR 152 **: (2004) 9 SCC 362 : 2003 INSC 438**

Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development."

118. Recently, in the case of ***Rajeev Suri*** (supra), emphasizing the need for sustainable development, this Court observed thus:

"**520.** The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression "sustainable development" incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development, it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.

521. By the Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

"**1.** The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

522. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between the right to development and the right to natural environment.

523. In *International Law and Sustainable Development*, Arjun Sengupta in the chapter "*Implementing the Right to Development* [*International Law and Sustainable Development — Principles and Practice* (Publisher : Martinus Nijhoff, Edn. 2004) p. 354.] " notes thus:

> "… Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other…""

119. In the case of ***Resident's Welfare Association*** (supra), this Court, speaking through one of us (B.R. Gavai, J.), observed thus:

> "**151.** One another important aspect that needs to be taken into consideration is the adverse impact on environment on account of haphazard urbanisation. It will be relevant to refer to Clause 20.3 of the CMP-2031 which we have already reproduced hereinabove. It has been recommended that an Effective Environmental Management Plan be devised for the region including Chandigarh, which includes environmental strategy, monitoring regulation, institutional capacity building and economic incentives. It is observed that the proposal needs a legal framework and a monitoring committee to examine the regional level proposals/big developments by the constitution of an Inter-State High-Powered Regional Environmental Management Board, as per the proposal of the Ministry of Environment and Forests, Government of India.
>
> **152.** The United Nations Environment Programme ("UNEP") notes in its publication titled "*Integrating the Environment in Urban Planning and Management — Key Principles and Approaches for Cities in the 21st Century*" that more than half of the world's population is now living in urban areas. It further noted that by the year 2050, more

than half of Africa and Asia's population will live in towns and cities. It recognised that City Development Strategies ("CDSs") have shown how to integrate environmental concerns in long-term city visioning exercises. It states that environmental mainstreaming can help to incorporate relevant environmental concerns into the decisions of institutions, while emerging ideas about the green urban economy show how density can generate environmental and social opportunities. It states that the strategies need to be underpinned with governance structures that facilitate integration of environmental concerns in the planning process.

153. The said publication defines EIA to be an analytical process or procedure that systematically examines the possible environmental consequences of the implementation of a given activity (project). It is aimed to ensure that the environmental implications of decisions related to a given activity are taken into account before the decisions are made.

154. Judicial notice is also taken of the cover story published in the weekly, *India Today*, dated 24-10-2022, titled as "*Bengaluru — How to Ruin India's Best City*" by Raj Chengappa with Ajay Sukumaran. The said article depicts the sorry state of affairs as to how the City of Bengaluru, once considered to be one of India's best cities, a "Garden city" has been ruined on account of haphazard urban development. It takes note of as to how on account of one major spell of rain in the September of 2022, the city bore the brunt of nature's fury. Various areas of the city were inundated with heavy rains. The loss the flood caused to the Outer Ring Road tech corridor alone was estimated to be over Rs 225 crores.

155. The article notes that, while on one hand, on account of heavy rains, many of the houses were submerged in water, on the other hand, the city faced a huge shortage of drinking water.

156. The article further notes that rapid expansion of the city with no appropriate thought given towards transportation

and ease of mobility has led to nightmarish traffic jams on its arterial roads. It notes that, almost overnight, Bengaluru›s municipal jurisdiction grew from 200 sq km to 800 sq km. It observes that the only one to benefit was the politician-businessman-builder nexus, which has thrived. It further noted that though posh colonies mushroomed in new areas, the infrastructure lagged, as roads remained narrow, the drainage poor, and no adequate provision for garbage disposal too.

157. The article notes that the primary canals known locally as *rajakaluves* were once natural rain-fed streams across which farmers built small bunds over time, to arrest the flow of water and create lakes. It further notes that these interlinked man-made lakes worked as a storm-water drain network. However, in order to meet the demand for space for construction and roads, the administrators allowed the lakes to be breached regularly. The lakes, which once numbered a thousand-odd, are now reduced to a paltry number. Worse, the *rajakaluves* that channelised the storm water had buildings built over them.

158. The warning flagged by the City of Bengaluru needs to be given due attention by the legislature, executive and the policy-makers. It is high time that before permitting urban development, EIA of such development needs to be done."

120. Again, while emphasizing the need for balancing the development along with preservation of ecology and environment, this Court, speaking through one of us (B.R. Gavai, J.), in the case of ***State of Uttar Pradesh and Others v. Uday Education and Welfare Trust and Others***[35]***,*** while referring to the earlier judgments on the issue observed thus:

"**100.** Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the

35 [2022] 19 SCR 781 **: 2022 SCC OnLine SC 1469 : 2022 INSC 465**

environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of *Samatha* v. *State of A.P.* [AIR 1997 SC 3297 : (1997) 8 SCC 191], a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P.* v. *Ganesh Wood Products* [(1995) 6 SCC 363] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of *Essar Oil Ltd.* v. *Halar Utkarsh Samiti* [(2004) 2 SCC 392], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action* v. *Union of India* [(1996) 5 SCC 281] were quoted as under:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment."

(c) In the case of *Maharashtra Land Development Corporation* v. *State of Maharashtra* [(2011) 15 SCC 616] reference was made to *Glanrock Estate Private Limited* v. *State of Tamil Nadu* [(2010) 10 SCC 96] wherein it was observed as under:

> "*27.* …. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.
>
> *28.* What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

The State of Himachal Pradesh and Others v. Yogendera Mohan Sengupta and Another

> *29.* The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.
>
> *30.* The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad* v. *Union of India* [(1997) 2 SCC 267 : AIR 1997 SC 1228] wherein this Court enunciated the definition of "forest" in the following words:

> "**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof…"

> **102.** Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years."

121. It is needless to state that, this Court, in a series of judgments and orders passed in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Others***[36] and lastly vide order dated 26th April 2023, passed by a three-Judges Bench to which one of us (B.R. Gavai, J.) was a member, has emphasized the need to have a balance between the requirement of development and preservation of ecology and environment.

122. It is thus clear that while ensuring the developmental activities so as to meet the demands of growing population, it is also necessary that the issues with regard to environmental and ecological protection are addressed too.

V. CONCLUSION

123. We have gone through the development plan. The development plan has been finalized after taking into consideration the reports of various expert committees and the studies undertaken with regard to various aspects including environmental and ecological aspects.

124. We, however, clarify that we have not considered the development plan in minute details. Upon its *prima facie* consideration, we have come to a view that there are sufficient safeguards to balance the need for development while taking care of and addressing the

36 [2023] 6 SCR 601 : **2023 INSC 430**

environmental and ecological concerns. We may however not be construed as giving our imprimatur to the said development plan. At the same time, it cannot be ignored that the development plan has been finalized after various experts from various fields including those concerned with urban planning, environment etc., were taken on board. It also cannot be ignored that the development plan has been finalized after undergoing the rigorous process including that of inviting objections and suggestions at two stages, giving the hearing to such objectors and suggesters and after considering the same. If any of the citizen has any grievance that any provision is detrimental to the environment or ecology, it is always open to raise a challenge to such an independent provision before the appropriate forum. Such a challenge can be considered in accordance with law. But, in our view, the development plan, which has been finalized after taking recourse to the statutory provisions and undergoing the rigors thereto, cannot be stalled in entirety thereby putting the entire developmental activities to a standstill.

125. Insofar as the grievance of the Interveners, who are the plot holders in the 'Green Belt' area, with regard to payment of compensation is concerned, we find that the said issue would be beyond the scope of the present proceedings. We, therefore, without specifying any opinion on such claim, relegate the interveners to avail the appropriate remedy available to them in law.

126. In the result, we pass the following order:

(i) The Civil Appeal Nos. 5348-49 of 2019 as well as the Transferred Case (C) No. 2 of 2023 are allowed;

(ii) The orders of the NGT dated 16th November 2017 in Original Application No. 121 of 2014, dated 16th July 2018 in Review Application No. 8 of 2018, dated 12th May 2022 and 14th October 2022 in Original Application No. 297 of 2022 are quashed and set aside; and

(iii) The appellant-State of Himachal Pradesh and its instrumentalities are permitted to proceed with the implementation of the development plan as published on 20th June 2023 subject to what has been observed by us hereinabove.

127. In the facts and circumstances of the present case, there is no order as to costs.

128. Pending application(s), if any, shall stand disposed of in the above terms.

Headnotes prepared by: Ankit Gyan

Result of the case: Civil Appeals and Transferred case allowed.

[2024] 1 S.C.R. 1045 : 2024 INSC 51

State Bank of India and Ors
v.
The Consortium of Mr Murari Lal Jalan and Mr Florian Fritsch and Anr

(Civil Appeal Nos 3736-3737 of 2023)

18 January 2024

[Dr Dhananjaya Y Chandrachud*, CJI, J B Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

Consortium of lenders represented by the State Bank of India filed affidavit stating that the lenders were agreeable that if Successful Resolution Applicant (SRA) satisfied particular criteria, including infusing Rs. 350 Crores by 31.08.2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order, they would abstain from challenging extension of time issues. However, the inability to meet these conditions would necessitate directing the Corporate Debtor-Jet Airways Limited into liquidation. SRA sought extension of time for the deposit of Rs 350 crores in two tranches of Rs 100 crores and the balance of Rs 150 crores by the adjustment of the Performance Bank Guarantee (PBG) issued in favour of the lenders. NCLAT whether justified in allowing the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage.

Headnotes

Insolvency and Bankruptcy Code, 2016 – NCLAT permitted the Successful Resolution Applicant (SRA) to adjust the last tranche of Rs 150 crores by adjusting the Performance Bank Guarantee (PBG) of Rs 150 crores – Correctness:

Held: The occasion for an extension of time to the SRA for the deposit of Rs 350 crores arose as a consequence of the affidavit which was filed by SBI before the NCLAT – SBI's affidavit envisaged that the lenders would not contest the issues pertaining to the grant or exclusion of time; or extension in terms of the orders passed by the NCLT on 13.01.2023 and 26.05.2023; and compliance of the conditions precedent by the SRA – However, SBI's offer was subject to the fulfillment of three conditions that the SRA must infuse

* Author

Rs. 350 Crores by 31.08.2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order dtd. 21.10.2022 upheld by this Court – Conditional on compliance with the three conditions, SBI stated that it would be willing to withdraw the company appeals pending before the NCLAT as well as the Civil Appeals pending before this Court – The offer made by SBI on behalf of the lenders had to be complied with as it stood in the event that the SRA sought the benefit of the offer – According to the SRA, the PBG was liable to be released on adjustment in terms of the Resolution Plan – This is a matter which would have to await an adjudication by NCLAT in the pending appeal – Impugned order allowing the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage prima facie would not be in accordance with the tenor of the affidavit filed by SBI – Infusion meant that the third tranche has to be paid in the same manner – Adjustment of the PBG was not permissible – NCLAT not justified in holding that the last tranche of Rs 150 crores which was to be paid would be adjusted against the PBG – The SRA having deposited the first two tranches each of Rs 100 crores must comply with the remaining obligation of depositing Rs 150 crores (to make up a total payment of Rs 350 crores) – Having by its conduct accepted the terms set up by SBI it must be obligated to comply with the entirety of its obligations – It must do so in strict compliance with the time schedule as set out – Directions issued. [Paras 20-22 and 25]

List of Acts

Insolvency and Bankruptcy Code, 2016.

List of Keywords

Corporate Debtor (Jet Airways Limited); Conditions Precedent; Director General of Civil Aviation; Effective Date; Successful Resolution Applicant; Consortium of lenders; Performance Bank Guarantee; Adjustment of Performance Bank Guarantee; Infusing funds; Employees payment obligations

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3736-3737 of 2023.

State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan and Mr Florian Fritsch and Anr

From the Judgment and Order dated 03.03.2023 of the National Company Law Appellate Tribunal, Principal Bench at New Delhi in Company Appeal (AT) (Insolvency) Nos.129-130 of 2023.

With

Civil Appeal Nos.4131-4134 And 6427-6428 of 2023.

Appearances for Parties

R. Venkataramani, Attorney General for India, Tushar Mehta, Solicitor General, N. Venkataraman, A.S.G., Mukul Rohatgi, Krishnendu Datta, Saurabh Kripal, Amit Sibal, Sanjay Singhvi, Ritin Rai, Sr. Advs., Vikas Mehta, Mayan Prasad, Ms. Anshula Vijay Kumar Grover, Ms. Rashi Rampal, Ms. Nitika Grover, Sahil Khan, Sanjay Kapur, Devesh Dubey, Ms. Isha Virmani, Ms. Mahima Kapur, Ms. Mansi Kapur, Mrs. Shubhra Kapur, Aashish Vats, Harish Nadda, Kumar Shashank, Anant Singh, Ms. Srishty Kaul, Rajat Sinha, Ms. Pooja Mahajan, Ms. Arveena Sharma, Ms. Shruti Pandey, Avinash B. Amarnath, Raghav Shankar, Rajendra Barot, Dhirajkumar Totala, Suharsh Sinha, Ms. Liz Mathew, Nishant Upadhyay, Vinay Tripathi, Mayank Bhargava, Darpan Sachdeva, Mehul Bachhawat, Ankit Pal, Ms. Mallika Agarwal, Nisarg Bharadwaj, Ms. Rohini Thyagarajan, Shakti Vardhan, Ms. Amiy Shukla, Pawanshree Agrawal, Ms. Shubhangi Negi, Ms. Ekta Choudhary, Divyank Dutt Dwivedi, Ms. Aditi Sharma, Ms. Petrushka Dasgupta, Mridul Yadav, Ms. Tahira Kathpalia, Ms. Pallavi Pratap, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Dr. Dhananjaya Y Chandrachud, CJI

1. This batch of appeals arises from three orders of the National Company Law Appellate Tribunal[1]. A Resolution Plan was submitted under the Insolvency and Bankruptcy Code, 2016[2] by a consortium of Murari Lal Jalan and Florian Fristch in respect of the Corporate

1 "NCLAT"

2 "IBC"

Debtor (Jet Airways Limited). The Plan was voted upon and approved by the Committee of Creditors on 17 October 2020. The Resolution Professional then filed an application before the Adjudicating Authority to seek approval of the Resolution Plan. The Plan received the imprimatur of the Adjudicating Authority – the National Company Law Tribunal[3] - on 22 June 2021[4].

2. Clause 7.6 of the Resolution Plan stipulates conditions for implementation. Clause 7.6.1 spells out the "conditions precedent":

"7.6.1. Conditions Precedent - The obligation of the Resolution Applicant to re-commence operations as an aviation company, being the business proposed to be acquired is subject to the fulfilment of the following conditions after the Approval Date ("Conditions Precedent"):

(a) Validation of AOP of the Corporate Debtor by DGCA & MoCA - The AOP of the Corporate Debtor shall have been validated by the DGCA, the MoCA and any other relevant Government Authority and grant of all other mandatory approvals to the Corporate Debtor to enable it to re-commence flying operations (including commercial/ cargo operations) and related on-ground services.

(b) Submission and approval of the Business Plan to DGCA & MoCA The Business Plan of the Resolution Applicant shall have been submitted after the Approval Date to the DGCA and MoCA for their review, and approval. The Resolution Applicant agrees to modify its business plan to incorporate all reasonable changes required by the DGCA/ MoCA, which otherwise does not make the business unviable for the Resolution Applicant.

(c) Slots Allotment Approval The DGCA and MoCA shall have approved the reinstatement of all the suspended slots (including the bilateral rights and traffic rights) back to Jet Airways/ Corporate Debtor. The slots (along with related bilateral rights and traffic rights) can be allotted to the Corporate Debtor gradually as per its Business

3 "NCLT"

4 "Plan Approval Order"

Plan with immediate slots allotment approval (along with related bilateral rights and traffic rights) for sectors on which Jet 2.0 proposes to recommence operations after the Effective Date.

(d) International Traffic Rights Clearance The Corporate Debtor shall have received the International Traffic Rights Clearance in compliance with Applicable Laws.

(e) Demerger - The Scheme filed as part of this Resolution Plan shall have been approved under Applicable Laws and the Demerged Employees shall have demerged from the Corporate Debtor to AGSL along with all their past dues, liabilities and outstanding's with effect from the Approval Date, without the requirement of any further consent or approval of any other stakeholder of AGSL (since we understand that AGSL currently does not have any creditor) or any stakeholder of the Corporate Debtor (including existing or past employee or workmen or employees' unions of the Corporate Debtor)."

3. Clause 7.6.4 contains a stipulation for "automatic withdrawal":

> "Automatic Withdrawal - The Resolution Applicant is confident of completing all the Conditions Precedent (as set out in Clause 7.6.1 above) within 90 (ninety) days from the Approval Date. In the unlikely event that all the Conditions Precedent cannot be fulfilled within 90 (ninety) days, the Resolution Applicant takes the responsibility of completing the outstanding Conditions Precedent at the earliest and seeks to extend the Conditions Precedent fulfilment period by another term of maximum 180 (one hundred and eighty) days. If all the Conditions Precedent are not fulfilled within such period (i.e. 270 (two hundred and seventy) days from the Approval Date), then this Resolution Plan shall automatically stand withdrawn without any further acts, deeds, or things. On such withdrawal, the members of the Resolution Applicant in the Monitoring Committee shall resign, and the remaining members of the Monitoring Committee shall assume absolute control of the Corporate Debtor."

4. In terms of Clause 7.6.1 of the Resolution Plan, the SRA is obligated to re-commence operations as an aviation company subject to the fulfilment of five conditions precedent, namely- (i) Validation of Airline Operator Permit of the Corporate Debtor by the Director General of Civil Aviation (DGCA) and Ministry of Civil Aviation (MoCA); (ii) Submission and Approval of Business Plan by DGCA and MoCA, (iii) Slot Allotment Approval, (iv) International Traffic Rights' Clearance; and (v) Approval of Demerger of ground handling business into a company, namely AGSL. The date of completion of the Conditions Precedent was defined as the 'Effective Date'. Given the uncertainty surrounding the Effective Date, the NCLT, in its Plan Approval Order, mandated the completion of Conditions Precedent and the attainment of the Effective Date within the first 90 days from the Approval Date. The Order also granted the flexibility to request an extension of the 180-day timeline, allowing for an outer limit of 270 days, in accordance with the provisions outlined in the Resolution Plan.

5. These conditions precedent had to be fulfilled, in any event, within an outer limit of 270 days failing which the Resolution Plan would automatically stand withdrawn. Upon this eventuality taking place, the members of the Resolution Applicant in the Monitoring Committee are to resign, and the remaining members of the committee are to assume absolute control over the Corporate Debtor. Following the Effective Date, the SRA is then required to infuse funds and fulfil specified payments to stakeholders, including disbursements to Employees, Workmen, and other Operational Creditors, within 180 days from the Effective Date.

6. The Successful Resolution Applicant[5] and the consortium of lenders represented by the State Bank of India[6] were not *ad idem* on whether the conditions precedent were fulfilled. The SRA took the position that all conditions precedent had been duly fulfilled. Consequently, on May 20 2022, the DGCA reissued an Air Operation Certificate, confirming the authorization for the Corporate Debtor to engage in commercial air operations. The SRA communicated via email to the Lenders, affirming compliance with all prerequisites and proposing that May 20 2022, should be recognized as the effective date

5 "SRA"

6 "SBI"

under the Resolution Plan. However, the lenders took a position to the contrary. On 15th November 2022, the SRA filed I.A. No. 3398 of 2022 (Implementation Application) and I.A. No. 3508 of 2022 (Exclusion Application) before the NCLT seeking a determination in accord with its position.

7. By an order dated 13 January 2023, the NCLT came to the conclusion that the SRA was compliant with the conditions precedent. It allowed the Implementation Application, thereby *inter alia* permitting the SRA to take control and management of the Corporate Debtor. The period of six months for implementation would commence from 16 November 2022. The tribunal reasoned that:

   (i) On 21 October 2022, the NCLAT confirmed SRA's compliance with necessary conditions precedent (CPs) to the satisfaction of MC. Despite the lenders seeking clarification through IA 4771 of 2022, the NCLAT's findings were reaffirmed on 20 December 2022;

   (ii) There is no dispute regarding compliance with CPs at serial no. (i) and (v) as per the approved plan, including the validation of the Air Operator Certificate by DGCA and MoCA, and the approval of the demerger of the ground handling business into AGSL;

   (iii) Concerning CP at serial no. (ii), the business plan's submission and approval to DGCA and MoCA were deemed as complete, with the issuance of the Air Operator Certificate (AOC), considered as implicit approval;

   (iv) Regarding slot allotment approval, aligned with the plan approval order, confirming slots were granted as per the plan;

   (v) For International Traffic Right Clearance, the requirement was deemed satisfied after successfully recommencing operations, adhering to applicable laws, and plan approval order conditions. Consequently, all Conditions Precedent were duly complied with; and

   (vi) Regarding the Exclusion Application, it was deemed appropriate to grant an exclusion for 180 days until November 16, 2022, in the interest of justice and to achieve the primary objective of maximizing assets and resolving the insolvency of the Corporate Debtor.

The order of the NCLT has been challenged by SBI in appeal. The appeal is pending before the NCLAT.

8. On 3 March 2023, the NCLAT declined to stay the order of the NCLT, which has given rise to the first in the three sets of appeals being Civil Appeal Nos 3736-3737 of 2023. By a subsequent order dated 26 May 2023, the NCLAT allowed an extension commencing from 3 March 2023 until 31 August 2023. This order has given rise to the second in the batch of appeals being Civil Appeal Nos 4131-4134 of 2023.

9. The Resolution Plan envisaged that with an intent to settle the total outstanding claims made by domestic banks, foreign banks and financial institutions, the assenting financial creditors would be entitled to the benefit of payments and securities. This is described as "Summary of payments and security package". Clause 6.4.4 of the Resolution Plan is titled as "Treatment of Financial Creditors" and is reproduced below, insofar as it is relevant:

<table>
<tr><th>"Head</th><th>Amount payable</th><th>Security Offered</th><th>Value of Security</th><th>Date of Creation of Security</th><th>Date of Release of Security</th></tr>
<tr><td rowspan="3">Cash payment</td><td rowspan="3">Up to Rs.185 crores</td><td>PBG of Rs. 47.5 crores</td><td rowspan="3">Rs. 393.5 cr (with BKC)
or
Rs. 147.5 Cr (without BKC)</td><td rowspan="3">Effective Date</td><td>PBG adjusted</td></tr>
<tr><td>BKC Property (if given)</td><td>To be released on sale of BKC</td></tr>
<tr><td>Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores</td><td>Year 5 or on complete payment, whichever is earlier</td></tr>
<tr><td rowspan="3">Cash payment</td><td rowspan="3">Rs. 195 Crores</td><td>BKC Property (if given)</td><td rowspan="3">Rs. 445 Cr (with BKC)
or
Rs. 200 Cr (without BKC)</td><td>Effective Date</td><td>To be released on sale of BKC</td></tr>
<tr><td>Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores</td><td>Effective Date</td><td rowspan="2">Year 5 or on complete payment, whichever is earlier</td></tr>
<tr><td>Mortgage over Dubai Property No. 2 valued at more than Rs. 100 crores</td><td>Effective Date</td></tr>
</table>

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<table>
<tr><td rowspan="3">Cash payment</td><td rowspan="3">NPV of Rs. 391 Crores (using the discount rate specified in the Evaluation Matrix)</td><td>Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores</td><td rowspan="3">Rs. 600 Crores</td><td>Effective Date</td><td rowspan="3">Year 5 or on complete payment, whichever is earlier”</td></tr>
<tr><td>Mortgage over Dubai Property No. 2 valued at more than Rs. 100 crores</td><td>Effective Date</td></tr>
<tr><td>Mortgage over Dubai Property No. 1 valued at more than Rs. 50 crores</td><td>Effective Date</td></tr>
</table>

10. In an effort to resolve the imbroglio, on 16 August 2023, an affidavit was filed on behalf of SBI, by its Chief Manager. The affidavit stated that the lenders were agreeable to a certain course of action. In other words, the lenders had agreed that if SRA satisfies particular criteria, including infusing Rs. 350 Crores by 31 August 2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order dated 21 October 2022, they would abstain from challenging exclusion/extension of time issues. However, the inability to meet these conditions necessitates directing the Corporate Debtor into liquidation, as stipulated in Paragraphs 8(a) to (c). Paragraph 8 is reproduced below:

“8. In the present appeal, the lenders are agreeable that in case;

a) SRA infuses Rs. 350 Crores by 31.08.2023, the date by which said payment is to be made as per the Resolution Plan, read with Order dated 26.05.2023 passed by this Hon’ble Tribunal; and

b) SRA Undertakes to scrupulously follow the other terms and conditions of the resolution plan and

c) SRA complies with the liabilities relating to payment to the employees as per order of NCLAT dated 21.10.2022 which has been upheld by the Hon’ble Supreme Court in its order dated 30.01.2023,

the Lenders would not contest the issues relating to granting of exclusion/extension of time (in terms of the orders dt. 13.01.2023 passed by NCLT and order dt.

26.05.2023 passed by this Hon'ble Tribunal) as well as on the issue relating to compliance of condition precedent by the SRA and accordingly undertakes to withdraw the present Company Appeal (AT) Ins 129-130 of 2023 which is pending adjudication before this Hon'ble Tribunal along with Civil Appeal Nos. 4131-34 of 2023 & 3736-37 of 2023 filed before the Hon'ble Supreme Court, on the said two issues. In other words, lenders would not contest the granting of exclusions as well as on the issue regarding the compliance of Conditions Precedent, in case the aforesaid steps are taken by SRA without any further delay. Failing to comply with the conditions mentioned in Para 8(a) to (c) above, the Corporate Debtor should be directed to go into liquidation."

11. Following the affidavit, which was filed by SBI, an application was moved by the SRA on 18 August 2023 seeking liberty to pay the amount of Rs 350 crores as envisaged in the affidavit of SBI in the following manner:

    (i) The first tranche of Rs 100 crores by 31 August 2023;

    (ii) The second tranche of Rs 100 crores by 30 September 2023; and

    (iii) The balance of Rs 150 crores by the adjustment of the Performance Bank Guarantee[7] issued by the SRA in favour of the lenders.

12. Permission to do so was granted by the NCLAT on 28 August 2023 extending time until 31 August 2023 for the payment of Rs 100 crores; till 30 September 2023 for the payment of Rs 100 crores and for the balance of Rs 150 crores by adjusting the payment against the PBG issued by the SRA.

13. The reference to the PBG was contained in the tabulated statement in clause 6.4.4 of the Resolution Plan, which is set out above. Apart from the above stipulations, it would be material to make a reference, at this stage, to certain provisions of the Request for Resolution Plans[8]. Clause 3.13 of the RFRP provides for performance security. It stipulates that (i) the SRA must furnish an unconditional

7 "PBG"

8 "RFRP"

and irrevocable PBG, either INR 150 Crores or 10% of the upfront amount, within seven days of declaration; (ii) The PBG, following Format VIII-A, remains valid for 180 days or until Resolution Plan completion, extendable by SRA as directed by the CoC; (iii) Failure to provide the Performance Security upon accepting the Letter of Intent may lead to its cancellation at the discretion of the CoC :

"3.13 Performance Security

3.13.1 The Successful Resolution Applicant shall furnish or cause to be furnished, an unconditional and irrevocable performance bank guarantee or a demand draft, issued by any scheduled commercial bank in India or a foreign bank which is regulated by the central bank of a jurisdiction outside India which is compliant with the Financial Action Task force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding, provided that it is acceptable to the Resolution Professional (acting for the CoC) ("PBG Bank"), of an amount of INR 150 Crores (Indian Rupees Hundred and Fifty Crores only) or 10% of upfront amount (payable as per the resolution plan by the Successful Resolution Applicant), whichever is higher in favour of "State Bank of India, (that is, SBI) (in its capacity as an agent of the CoC (and acting on behalf of the Company), within 7 (seven) days of declaration of the Successful Resolution Applicant, or by way of a direct deposit by way of the real time gross settlement system into a bank account held by the SBI Bank, the details of which shall be shared separately with the Successful Resolution Applicant ("Performance Security")

3.13.2 If the Performance Security is being provided as a performance bank guarantee, it shall be in accordance with Format VIII-A of this RFRP ("PBG"). The PBG shall be valid, till the later of (i) a period of 180 days from the date of the PBG; and (ii) the date of completion of the implementation of the Resolution Plan (as determined by the RP and the (CoC) and shall be subject to re-issuance or extension by the Successful Resolution Applicant as may be required by the CoC (as assisted by the Resolution Professional) ("PBG Validity").

3.13.3 It is hereby clarified that non-submission of the Performance to permit the Resolution Applicant, along with the acceptance of the Letter of Intent, shall lead to cancellation of Letter of Intent issued by the CoC, unless otherwise determined by the CoC at its sole discretion..."

14. Clause 3.13.7 empowers SBI as an agent of the Committee of Creditors to invoke the performance security on the occurrence of certain eventualities:

"3.13.7 SBI, in its capacity as an agent of the CoC (and acting on behalf of the Company), shall have the right to invoke the Performance Security on behalf of the CoC (and upon receiving approval from the CoC), (by issuance of a written demand to the Bank to invoke the Performance Security, if provided as a PBG). The Performance Security can be invoked and appropriated at any time, upon occurrence of any of the following conditions, without any reference to the Resolution Applicant.

i. any of the condition under the Letter of Intent or the Successful Resolution Plan are breached;

ii. if the Resolution Applicant fails to re-issue or extend the Performance Security (if provided as a PBG), in accordance with the terms of this RFRP; or

iii. failure of the Successful Resolution Applicant to implement the Approved Resolution Plan to the satisfaction of the CoC, and in accordance with the terms of the Approved Resolution Plan."

15. Clause 3.13.9 specifies that the performance security shall not be set off against or used as part of the consideration which the SRA proposes to offer in relation to the company:

"3.13.9 The Performance Security shall not be set-off against or used as part of the consideration that the Successful Resolution Applicant proposes to offer in relation to the Company, even if expressly indicated as such by the Successful Resolution Applicant in the Successful Resolution Plan."

16. Clause 9.4 of the Resolution Plan specifically contemplates that the performance guarantee provided by the Resolution Applicant can be invoked in terms of RFRP. NCLAT has permitted the SRA to adjust the last tranche of Rs 150 crores by adjusting the PBG of Rs 150 crores. This forms the subject matter of appeal in this Court.

17. Mr N Venkataraman, Additional Solicitor General appearing on behalf of SBI, submitted that:

    (i) By its affidavit dated 16 August 2023, SBI had clearly stipulated three conditions, among them being that the SRA must infuse Rs 350 crores by 31 August 2023;

    (ii) The plain meaning of the expression “infuse” is that the SRA was liable to pay three tranches of a total amount of Rs 350 crores and the NCLAT was not justified at the interim stage in permitting an adjustment of the PBG of Rs 150 crores against the obligation to deposit the last tranche;

    (iii) The SRA had to undertake to comply with the other terms and conditions of the Resolution Plan besides complying with the liabilities relating to the payment to the employees. As regards the payment to the employees, an appeal filed by the SRA before this Court against the order of the NCLAT dated 21 October 2022 was dismissed on 30 January 2023. Yet there is no compliance towards the employees and staff; and

    (iv) There has been a default on the part of the SRA in complying with the conditions precedent spelt out in clause 7.6 and on various other aspects, including the payment of workmen’s dues, airport dues and other matters.

18. The submission which has been urged on behalf of the lenders has been opposed on behalf of the SRA by Mr Krishnendu Datta, senior counsel. On behalf of the SRA, it has been submitted that:

    (i) The Resolution Plan specifically contemplates the adjustment of the PBG (originally of Rs 47.5 crores, subsequently enhanced to Rs 150 crores). In support of this submission, reliance has been placed on the summary of payments and security package forming a part of clause 6.4.4 of the Resolution Plan;

    (ii) The SRA was in the first tranche required to pay an amount of up to Rs 185 crores against the creation of securities, namely, (i) PBG of Rs 47.5 crores; (ii) BKC Property (if given); and (iii)

Mortgage over Dubai Property No 1 valued at over Rs 100 crores. In the last column of the table, it has been stipulated that the securities would be released, as indicated;

(iii) The PBG was liable to be adjusted against the cash payment of the first tranche of Rs 185 crores;

(iv) No specific date for the release of the security in relation to the PBG has been mentioned;

(v) Moreover, in respect of the second tranche comprising of Rs 195 crores, there was no requirement to furnish any security in the form of a PBG;

(vi) The securities, in other words, were of a revolving nature, but significantly on the release of the PBG against a cash payment of Rs 185 crores, the PBG is not required to be renewed as a fresh security for the following tranches; and

(vii) As regards the creation of security in respect of the Dubai property, at all material times, the SRA has been ready and willing to effect the security and, as a matter of fact, this is evident in the 37th Meeting of the Monitoring Committee of the Corporate Debtor held on 9 October 2023.

19. While considering the rival submissions, it must be noted, at the outset, that the appeal, stemming from the NCLT's January 13 2023 order holding that the SRA is compliant with the conditions precedent is pending before the NCLAT. Hence, the observations in the present judgment are confined to the arrangement which must operate during the pendency of the appeal without this Court expressing a final view on the merits of the appeal, which will fall for consideration before the NCLAT.

20. The occasion for an extension of time to the SRA for the deposit of Rs 350 crores arose as a consequence of the affidavit which was filed by SBI before the NCLAT on 16 August 2023. SBI's affidavit envisaged that the lenders would not contest the issues pertaining to (a) the grant or exclusion of time; or (b) extension in terms of the orders which were passed by the NCLT on 13 January 2023 and 26 May 2023; and (c) compliance of the conditions precedent by the SRA. SBI's offer was, however, subject to the fulfillment of three conditions. The three conditions were:

State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan and Mr Florian Fritsch and Anr

(i) The SRA must infuse an amount of Rs 350 crores by 31 August 2023 (the date by which the payment was to be made in terms of the Resolution Plan read with the order dated 26 May 2023 of NCLT);

(ii) The SRA must undertake to scrupulously follow the other terms and conditions of the Resolution Plan; and

(iii) The SRA must comply with the liabilities in regard to the payment to the employees in terms of the order of the NCLAT dated 21 October 2022 which has been upheld by this Court on 30 January 2023.

21. Conditional on compliance with the three conditions set out above, SBI stated that it would be willing to withdraw both the company appeals which were pending before the NCLAT as well as the Civil Appeals which were pending before this Court, details of which were set out in the affidavit. The offer which was made by SBI on behalf of the lenders had to be complied with as it stood in the event that the SRA sought the benefit of the offer. According to the SRA, the PBG was liable to be released on adjustment in terms of the Resolution Plan. This is a matter which would have to await an adjudication by NCLAT in the pending appeal. The impugned order of the NCLAT, on the other hand, allowed the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage. This *prima facie* would not be in accordance with the tenor of paragraph 8 of the affidavit which was filed by SBI in which it stated that the lenders would not contest the issues in the pending appeal conditional on compliance with the three conditions which were set out in the affidavit. Infusion of Rs 350 crores, as envisaged in the affidavit, could not have been substituted with a direction for adjustment of the PBG, at that stage. Infusion meant that the third tranche has to be paid in the same manner. Adjustment of the PBG was not permissible.

22. In the circumstances, we have come to the conclusion that NCLAT was not justified in holding, in its order dated 28 August 2023, that the last tranche of Rs 150 crores which was to be paid would be adjusted against the PBG. The SRA having deposited the first two tranches each of Rs 100 crores must comply with the remaining obligation of depositing Rs 150 crores (to make up a total payment of Rs 350 crores). Having by its conduct accepted the terms set

up by SBI it must be obligated to comply with the entirety of its obligations. It must do so in strict compliance with the time schedule set out hereafter.

23. The lenders have submitted that:

    (i) The admitted claim of the Financial Creditors is Rs 7800 crores, while the package offered by the SRA in the Resolution Plan is Rs 4783 crores payable in tranches in five years;

    (ii) Instead of infusing Rs 350 crores, being the first tranche of payment, which was to be paid in 180 days, the SRA has infused a sum of Rs 187 crores after two years, in addition to Rs 13 crores paid by a third party; and

    (iii) The lenders have already incurred Rs 386.72 crores during the CIRP and after the approval of the Plan towards maintaining the Corporate Debtor, excluding airport dues. In addition, the lenders are incurring Rs 22.26 crores on a monthly basis towards expenses/carrying cost for maintaining the Corporate Debtor.

24. SBI has stated that the lenders have been saddled with huge recurring expenditure every month to maintain the remaining airline assets of the Corporate Debtor. The lenders have been embroiled in litigation before the NCLT and NCLAT with little progress on this ground towards implementing the resolution plan. Such a state of affairs cannot be permitted to continue interminably as it defeats the very object and purpose of the provisions of and timelines under the IBC. The timely resolution of insolvency cases is vital for sustaining the effectiveness and credibility of the insolvency framework. Therefore, concerted efforts and decisive actions are imperative to break the deadlock and ensure the expeditious implementation of the resolution plan.

25. The lenders have argued in the appeals that there has been a failure on the part of the SRA to comply with the conditions precedent. If the SRA were to comply with the terms as envisaged in SBI's affidavit dated 16 August 2023, evidently issues pertaining to compliance with the conditions precedent were not to be pressed thereafter. In order to furnish this SRA a final opportunity to comply and consistent with the above position, we issue the following directions:

    (i) The SRA shall peremptorily on or before 31 January 2024, deposit an amount of Rs 150 crores into the designated account of SBI, failing which the consequences under the Resolution Plan shall follow;

(ii) The PBG of Rs 150 crores shall continue to remain in operation and effect, pending the final disposal of the appeal before NCLAT, and shall abide by the final outcome of the appeal and the directions that may be issued by NCLAT; and

(iii) Whether or not the SRA has been compliant with all the conditions of the Resolution Plan as well as of the conditions set out in paragraph 8 of the affidavit dated 16 August 2023 shall be decided by the NCLAT in the pending appeal.

26. The order dated 28 August 2023 of the NCLAT is modified in part in terms of the above directions and, hence, the permission which was granted to the SRA to adjust the last tranche of Rs 150 crores against the PBG shall stand substituted by the above directions.

27. The NCLAT is requested to endeavour an expeditious disposal of the appeal by the end of March 2024.

28. The appeals are accordingly disposed of.

29. Pending applications, if any, stand disposed of.

Headnotes prepared by: Divya Pandey

Result of the case: Appeals disposed of.

[2024] 1 S.C.R. 1062 : 2024 INSC 52

Adv Babasaheb Wasade & Ors.
v.
Manohar Gangadhar Muddeshwar & Ors.

(Civil Appeal No. 10846 of 2018)

23 January 2024

[Vikram Nath* And Ahsanuddin Amanullah, JJ.]

Issue for Consideration

i) Whether the Working President could have convened the election meeting for 08.09.2002 as according to the Objectors, it was only the Secretary or in the alternative the President who could have convened the meeting under the bye laws; ii) Whether the 7 Objectors were entitled to a notice for the meeting of 08.09.2002 in view of their disqualification u/s. 15 of the Societies Registration Act, 1860; iii) Whether lack of notice to the said 7 Objectors would vitiate the entire election meeting of 08.09.2002; iv) Whether invalid members had signed the requisition dated 20.08.2002 and had been elected to the Executive Committee; v) Whether the private respondents had the locus to be heard before any forum or to file an appeal/petition against the order of the Joint Charity Commissioner.

Headnotes

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – Whether the Working President could have convened the election meeting for 08.09.2002 as according to the Objectors, it was only the Secretary or in the alternative the President who could have convened the meeting under the bye laws:

Held: The effective office bearers of the Society namely the President, Vice-President and the Secretary of the Society had expired – Prior to his death, the President due to his poor health, the Executive Body under his presidentship passed a resolution on 01.07.1997 empowering appellant no. 1 to be designated as the Working President – He was recognised was by almost all the members of the General Body – In the instant case, it was not only appropriate but also legal for the surviving members to request for convening a meeting – Further, as many as 16 members had requested in writing for convening the meeting – If the submission of the Objectors is to be accepted that the Working President could

* Author

not convene the meeting, then no alternative has been suggested by the Objectors as to who could convene the meeting – Even the Vice-President and the Joint-Secretary had also passed away and they had also not been replaced by any fresh elections – The only person who could be said to be managing the affairs of the Society was the Working President and in particular, when all the 16 surviving and valid members had made a request for convening a meeting, no fault could be found with the decision of the Working President to convene the meeting – The other option could have been that all the 16 members could have themselves nominated any one of the members to chair the meeting of the Executive Body and thereafter they could have proceeded to take appropriate decisions – In such situation, the convening of the meeting for holding the elections on 08.09.2002 cannot be faulted with. [Paras 4, 19, 20]

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – Whether the 7 Objectors were entitled to a notice for the meeting of 08.09.2002 in view of their disqualification u/s. 15 of the Registration Act:

Held: It is not in dispute that all the Objectors were in arrears of their membership fee for a period of more than three months – This fact is admitted as is recorded by not only the High Court but all the three authorities – The specific language used in s. 15 of the Registration Act is that such members in default of membership fee would not be entitled to vote and would not be counted as members of the Society – If they were not entitled to vote and they were not to be counted as members, there would be no illegality or for that matter any prejudice being caused by not issuing any notice as the same would be an exercise in futility. [Para 22]

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – Whether lack of notice to the said 7 Objectors would vitiate the entire election meeting of 08.09.2002:

Held: It is true that in the bye-laws of the present Society or the Rules of the Society, there is no provision of automatic cessation of membership where a member goes in default of payment of membership fee for more than three months – However, the effect of the proviso to Section 15 of the Registration Act which admittedly is applicable to the Society, the Objectors have to be treated as suspended members and therefore, would not be entitled to any notice as they had no right to vote or to be counted as members

– Once they are not to be counted as members, there was no occasion to give them notice as such Non-issuance of notice to the Objectors would not vitiate the proceeding of the special meeting held on 08.09.2002. [Para 26]

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – Whether invalid members had signed the requisition dated 20.08.2002 and had been elected to the Executive Committee:

Held: The signatories at serial nos. 12 to 16 of the requisition dated 20.08.2002, had been duly admitted in the General Body Meeting on 11.11.2001 – The said resolution of the meeting was never challenged – The same is on record as Exhibit 131 and one of the Objectors DVS was a signatory in the said proceeding – With respect to the objections relating to signatory nos. 4 to 7, the explanation is that were of the category of Employee Members – In due course they had retired from service – However, even after their retirement, they had continued to pay their subscription – As their membership(s) have continued, at this stage, objection(s) with regard to the validity thereof is not being examined in detail, given the lack of clarity and absence of material facts on this aspect. [Para 27]

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – Whether the private respondents had the locus to be heard before any forum or to file an appeal/petition against the order of the Joint Charity Commissioner:

Held: During the pendency of the appeal before the Joint Charity Commissioner all the seven objectors had died – The Joint Charity Commissioner decided in favour of the appellants and directed for accepting the Change Report – The contesting respondent preferred a petition before the District Judge – He was neither an objector before the Assistant Charity Commissioner nor a valid member of the Society – He would have no locus to maintain the petition before the District Judge – Although the contesting respondent claimed himself to be the Vice-President of the Society but has not been able to substantiate his claim – On this ground alone the District Judge ought to have dismissed the petition. [Para 29]

Societies Registration Act, 1860 – Bombay Public Trust Act, 1950 – There were four signatories (Members 4 to 7 from the category of Employee Members) to the requisition calling a

Adv Babasaheb Wasade & Ors. v. Manohar Gangadhar Muddeshwar & Ors.

General Body Meeting – From a perusal of the available record, it transpires that they had retired from service and even after that had continued to pay their subscription – Propriety:

Held: In this context, the question that arises is that once the said Members were Employee Members, their categorisation as such was dependent on them being in service – On retirement, the said signatories would cease to be employees, come out of the category of Employee Members and their membership in the Society could not have continued – Upon superannuation or cessation of their employment, such four signatories could very well have been made members of the Society, but there is no indication on the record that they were made members of the Society by a specific resolution and thereafter continued as members and paid the subscription fee(s) – Thus, they could not have continued as members of the Society in the category of Employee Members even upon their superannuation by merely paying the yearly subscription fee thereby blocking the entry of the persons, who were still employees. [Para 34]

Principles/Doctrines – Doctrine of Necessity – When an action is required to be taken under compelling circumstances – Applicability of the doctrine of necessity on the facts of the instant case:

Held: There is a doctrine of necessity where under given circumstances an action is required to be taken under compelling circumstances – The use of the doctrine of necessity is to justify actions that would otherwise be outside the norm due to the urgent need to restore order – In the instant case, had the Working President not convened the meeting, the elections of the executive body would have been in limbo for an unreasonable amount of time – The convening of the meeting by the Working President upon the requests by the 16 surviving members was a "necessity" at the time. [Paras 15, 18]

Case Law Cited

Charan Lal Sahu v. Union of India [1989] 2 Suppl. SCR 597: **(1990) 1 SCC 613 – followed.**

Election Commission of India v. Dr Subramaniam Swamy [1996] 1 Suppl. SCR 637: **(1996) 4 SCC 104 – relied on.**

Hyderabad Karnataka Education Society v. Registrar of Societies and Others [1999] 5 Suppl. SCR 161 **: (2000) 1 SCC 566 – referred to.**

Shri Bhaurao Versus Shri Dyaneshwar **First Appeal No. 1435 of 2017;** *Ramesh Gangadhar Dongre and another vs. Charity Commissioner, Mumbai and other* **2020(5) Mh.L.J.**; *Santosh vs. Purushottam* **2017(6) Mh.L.J.**; *Shri Sarbjit Singh & Others vs. All India fine Arts & Crafts Society & Others* **ILR (1989) 2 Del 585 – referred to.**

Books and Periodicals Cited

"Commentaries on the Laws of England" Book 1 of the Rights of Persons by William Blackstone.

List of Acts

Societies Registration Act, 1860; Bombay Public Trust Act, 1950.

List of Keywords

Society; Members of Society; Trustees of Trust; Rules and regulations of Society; Bye-laws; Life Members; Employee Members; Ordinary Members; Donor Members; Executive Body; Working President; Rights and duties of Working President; Members of the General Body; Surviving Members; Arrears of Membership; Notice; Change Report; Requisition by Members; Meeting for Election; Defaulters; Subscribers; Disqualification; Doctrine of Necessity.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.10846 of 2018.

From the Judgment and Order dated 20.07.2017 of the High Court of Judicature at Bombay at Nagpur in FA No.811 of 2016.

Appearances for Parties

Shekhar Naphade, Sr. Adv., Gagan Sanghi, S.D Abhyankar, Ms. Farah Hashmi, Ms. Aishwarya Dash, Dr. Prashant Pratap, Rameshwar Prasad Goyal, Advs. for the Appellants.

Narender Hooda, Sr. Adv., Prashant Gode, Ms. Jayshree Satpute, Nikhil Kirtane, Ms. Manju Jetley, Advs. for the Respondents.

Adv Babasaheb Wasade & Ors. v. Manohar Gangadhar Muddeshwar & Ors.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. The present appeal assails the correctness of the judgment and order dated 20.07.2017, passed by the Nagpur Bench of the Bombay High Court in First Appeal No. 811 of 2016, whereby the Appeal was dismissed, thereby confirming the order passed by the District Judge-IV, Chandrapur which confirmed the order passed by the Assistant Charity Commissioner, Nagpur rejecting the change report filed by the appellants.

2. There is a society by the name of Shikshan Prasarak Mandal, Mul[1] registered under the Societies Registration Act, 1860[2] as a charitable society since 1946. The Society in its turn framed its rules and regulations. Later on, the Society was registered as a Public Trust under the Bombay Public Trusts Act, 1950[3]. The rules and regulations of the Society were incorporated as its bye-laws and were duly registered under the Trusts Act.

3. As per the rules and regulations, the Society has four types of members i.e. Life members, Employee members, Ordinary members and Donor members. The members of each category were required to pay an annual membership subscription of Rs. 11/- per year to the Society.

4. The effective office bearers of the Society namely the President, Vice-President and the Secretary of the Society expired. Even prior to the death of the President due to his poor health, the Executive Body under his presidentship passed a resolution on 01.07.1997 empowering Advocate Babasaheb Wasade (appellant No. 1) to be designated as the Working President and he was required to look after day-to-day affairs and management of the Society. This status of Working President was given to the appellant No.1 at a time when the President was suffering from serious illness and later on succumbed due to ill health on 24.05.1998.

1 In short, "Society"

2 In short, Registration Act"

3 In short, "Trusts Act"

5. As there was no elected President, Vice-President or the Secretary, 16 members of the Society requested appellant No.1 vide written request dated 20.08.2002 to summon extraordinary meeting to hold the elections. Pursuant to the receipt of the said request, the appellant No.1 acting as Working President, issued notice on 03.09.2002 for summoning a special meeting for the elections of new Executive Body. The elections were held on 08.09.2002 and a new Executive Committee was elected with appellant No.1 as the President and appellant No.2 as the Secretary. Accordingly, a Change Report bearing no. 668 of 2002 was submitted under Section 22 of the Trusts Act before the Assistant Charity Commissioner, Chandrapur.

6. Objections were filed by 7 persons alleging to be members of the Society on the ground that notice dated 03.09.2002 had not been served on them and that appellant No.1 had no authority to issue notice to summon a meeting for election. It was also alleged in the objections that the signatory nos. 12 to 16 to the request letter dated 20.08.2002, were not valid members of the Society and were yet to be approved by the Executive Committee. Further signatory nos. 4 to 7 of the same objection had retired and hence, they ceased to be members.

7. The elected Secretary filed his response to the said objections stating therein that signatory nos. 4 to 7 and 12 to 16 are valid members of the Society. Further that the 7 Objectors had not paid their annual subscriptions for more than the prescribed period under Section 15 of the Registration Act as such they were barred from voting, and therefore, even if notices were not sent to them, it would not make any difference.

8. Before the Assistant Charity Commissioner parties led evidence. The Assistant Charity Commissioner vide order dated 19.06.2010 allowed the objections and accordingly rejected the Change Report. The appellant preferred an appeal before the Joint Charity Commissioner, Nagpur. The appeal was allowed by order dated 12.04.2016 and the Change Report was accepted. Against this, Miscellaneous Civil Application No. 50 of 2016 was filed by the Objectors before the District Judge-4, Chandrapur, which was allowed vide judgment dated 29.07.2016. Aggrieved by the same, the First Appeal was preferred before the Bombay High Court which has since been dismissed by the impugned order, giving rise to the present appeal.

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9. Certain facts are not disputed by the parties. The same are being recorded hereunder:

i) 7 Objectors who had filed objections against the Change Report were admittedly defaulters in payment of their annual subscriptions, and were covered by the second part of Section 15 of the Registration Act which stated that no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months. The 7 Objectors admittedly fell under this category of default.

ii) Notice for the meeting fixed for 08.09.2002 was not issued to the 7 Objectors for the reason that they were in arrears and as such would not have the right to vote or be counted as members.

iii) All the office bearers holding important posts like President, Vice-President and Secretary had expired prior to request dated 20.08.2002 and no election had been held till then to fill up the said posts.

iv) The appellant No.1 was functioning as Working President since 1997 without there being any challenge to such assignment in the Executive Body meeting dated 01.07.1997.

v) All the 7 Objectors who had filed objections to the Change Report had died during the pendency of the appeal before the Joint Charity Commissioner. The contesting respondents applied before the Joint Charity Commissioner to be impleaded as respondents. Said request was allowed, despite objections by the appellants that they had no locus as they were neither trustees or members of the Society or the Trust.

vi) The appellants are in effective control of the Society and the Trust for the last more than two decades and are being elected during fresh elections held in the last two decades.

10. We have heard Shri Shekhar Naphade, learned Senior Counsel for the Appellants and Shri Narender Hooda, learned Senior Counsel appearing for the private respondents.

11. The arguments of Shri Naphade on behalf of the appellants are briefly summarised hereunder:

i) Today none of the 7 Objectors are alive. The private respondents to this appeal having not raised any objections to the Change Report, cannot be heard because they are neither trustees or members of any category of the Society.

ii) Consistent finding recorded by the Authorities, the District Judge and the High Court is that the 7 Objectors were in default in payment of their annual subscription and therefore, were not entitled to any notice for the meeting of the elections as they were prohibited from voting and being counted as member under Section 15 of the Societies Registration Act. The Courts below committed an error in holding that due to lack of service of notice, the proceedings of meeting dated 08.09.2002 were vitiated.

iii) The appellants are in effective control of the Society as also the Trust and have been functioning in accordance with its bye-laws for more than two decades and they are continuing to hold elections from time to time, and should therefore, not be disturbed.

iv) The reasoning given by the Courts below that as there was no order of cancellation of membership or cessation of the membership, the 7 Objectors would be entitled to notice and the question whether they would be allowed to vote or not would be a separate issue.

v) Reliance has been placed upon by Shri Naphade on a judgment of this Court in the case of **Hyderabad Karnataka Education Society Versus Registrar of Societies and Others**[4]**,** where a provision similar to Section 15 of the Registration Act was being considered and this Court held that the provision was valid and a member defaulting in payment of subscription would for all practical purposes be deemed to not be a member entitled to notice.

12. On the other hand, Mr. Hooda has strongly relied upon the reasoning given by the High Court.

4 In [1999] 5 Suppl. SCR 161 : (2000) 1 SCC 566

i) He has submitted that it suffers from no infirmity, warranting any interference.

ii) The appellants are not entitled to any relief from this Court, as they were not entitled to convene the meeting for the elections. Appellant No.1 was neither Secretary nor President and under the bye-laws, it is the Secretary who would convene the meeting.

iii) He further reiterated that the effect of Section 15 of the Registration Act would not be of cancelling the membership of the Objectors. Referring to the **Hyderabad Karnataka Education Society** (supra) case, Mr. Hooda submitted that in the aforesaid case under the bye-laws there was a provision that if there was a default, the membership would stand cancelled, which is not the case here as there is no such provision under the bye-laws. According to him, the said judgment would be of no help to the appellant as it would not apply to the present case.

iv) Lastly, it was submitted that a number of signatories to the requisition dated 20.08.2002 and also elected as executive members on 08.09.2002, were not members of the Society at that time for the reason that either they had retired or were never elected as per the bye-laws.

v) Mr. Hooda has further relied upon the following judgments as part of his submissions:

i. **Shri Bhaurao Versus Shri Dyaneshwar**, in First Appeal No. 1435 of 2017 passed by the High Court of Judicature at Bombay, Nagpur Bench,

ii. **Ramesh Gangadhar Dongre and another vs. Charity Commissioner, Mumbai and others**[5],

iii. **Santosh vs. Purushottam**[6],

iv. **Shri Sarbjit Singh & Others vs. All India fine Arts & Crafts Society & Others**[7].

13. Having considered the respective submissions, the following questions arise for consideration:

5 2020(5) Mh.L.J.

6 2017(6) Mh.L.J.

7 ILR (1989) 2 Del 585

i) Whether the Working President Mr. Wasade could have convened the election meeting for 08.09.2002 as according to the Objectors, it was only the Secretary or in the alternative the President who could have convened the meeting under the bye-laws?

ii) Whether the 7 Objectors were entitled to a notice for the meeting of 08.09.2002 in view of their disqualification under Section 15 of the Registration Act?

iii) Whether lack of notice to the said 7 Objectors would vitiate the entire election meeting of 08.09.2002?

iv) Whether invalid members had signed the requisition dated 20.08.2002 and had been elected to the Executive Committee?

v) Whether the private respondents had the locus to be heard before any forum or to file an appeal/petition against the order of the Joint Charity Commissioner?

14. It is not in dispute that in the meeting of the Executive Body held on 01.07.1997, the then President on account of his ill health had got a resolution passed that Mr. Wasade would thereon be the Working President and will look after the day-to-day affairs and management of the Society. The said resolution of 01.07.1997 was not put to any challenge by any of the Trustees or the members of the General Body. It is also not in dispute that before 20.08.2002, the President, the Secretary, the Vice-President and the Joint-Secretary were not alive. In the absence of the office bearers authorised under the bye-laws who could convene the meeting, the only option left for convening the meeting could either be with the Working President on his own or upon the requisition made by the members to convene a meeting.

15. There is a doctrine of necessity where under given circumstances an action is required to be taken under compelling circumstances. One of the earlier proponents of the Doctrine of necessity in Common Law was William Blackstone, who in his book, **"Commentaries on the Laws of England" Book 1 of the Rights of Persons**, discusses the meeting of the convention-parliament before Charles II's return, noting that it was an extraordinary measure taken out of necessity. He describes the use of the doctrine of necessity to justify actions that would otherwise be outside the norm due to the urgent need to restore order. He describes another instance during the Glorious

Revolution when the lords and commons assembled and acted without the usual royal summons, justified by the extraordinary circumstance of a perceived vacant throne and the urgent need to address the governance of the country.

> "It is also true, that the convention-parliament, which restored king Charles the second, met above a month before his return; the lords by their own authority, and the commons in pursuance of writs issued in the name of the keepers of the liberty of England by authority of parliament: and that the said parliament sat till the twenty ninth of December, full seven months after the restoration; and enacted many laws, several of which are still in force. But this was for the necessity of the thing, which supersedes all law; for if they had not so met, it was morally impossible that the kingdom should have been settled in peace. And the first thing done after the king's return, was to pass an act declaring this to be a good parliament, notwithstanding the defect of the king's writs. So that, as the royal prerogative was chiefly wounded by their so meeting, and as the king himself, who alone had a right to object, consented to wave the objection, this cannot be drawn into an example in prejudice of the rights of the crown. Besides we should also remember, that it was at that time a great doubt among the lawyers, whether even this healing act made it a good parliament; and held by very many in the negative: though it seems to have been too nice a scruple.
>
> It is likewise true, that at the time of the revolution, A.D. 1688, the lords and commons by their own authority, and upon the summons of the prince of Orange, (afterwards king William) met in a convention and therein disposed of the crown and kingdom. But it must be remembered, that this assembling was upon a like principle of necessity as at the restoration; that is, upon an apprehension that king James the second had abdicated the government, and that the throne was thereby vacant: which apprehension of theirs was confirmed by their concurrent resolution, when they actually came together. An in such a case as the palpable vacancy of a throne, it follows ex necessitate rei, that the

form of the royal writs must be laid aside, otherwise no parliament can ever meet again. For, let us put another possible case, and suppose, for the sake of argument, that the whole royal line should at any time fail, and become extinct, which would indisputably vacate the throne: in this situation it seems reasonable to presume, that the body of the nation, consisting of lords and commons, would have a right to meet and settle the government; otherwise there must be no government at all. And upon this and no other principle did the convention in 1688 assemble. The vacancy of the throne was precedent to their meeting without any royal summons, not a consequence of it. They did not assemble without writ, and then make the throne vacant; but the throne being previously vacant by the king's abdication, they assembled without writ, as they must do if they assembled at all. Had the throne been full, their meeting would not have been regular; but, as it was really empty, such meeting became absolutely necessary. And accordingly it is declared by statute 1 W & M. st. 1. c. 1. that this convention was really the two houses of parliament, notwithstanding the want of writs or other defects of form. So that, notwithstanding these two capital exceptions, which were justifiable only on a principle of necessity, (and each of which, by the way, induced a revolution in the government) the rule laid down is in general certain, that the king, only, can convoke a parliament."

16. The doctrine of necessity has been elucidated by a Constitution Bench of this Court in **Charan Lal Sahu vs. Union of India**[8] as follows:

"The question whether there is scope for the Union of India being responsible or liable as a joint tort-feasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope

8 In [1989] 2 Suppl. SCR 597 : (1990) 1 SCC 613 in para 105

of the violation of the principles of natural justice. The doctrine of necessity would be applicable in a situation of this nature. The doctrine has been elaborated, in Halsbury's Laws of England, 4th edn., page 89, paragraph 73, where it was reiterated that even if all the members of the Tribunal competent to determine a matter were subject to disqualification, they might be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In the circumstances of the case, as mentioned hereinbefore, the Government of India is only capable to represent the victims as a party. The adjudication, however, of the claims would be done by the court. In those circumstances, we are unable to accept the challenge on the ground of the violation of principles of natural justice on this score. The learned Attorney General, however, sought to advance, as we have indicated before, his contention on the ground of de facto validity. He referred to certain decisions. We are of the opinion that this principle will not be applicable. We are also not impressed by the plea of the doctrine of bona fide representation of the interests of victims in all these proceedings. We are of the opinion that the doctrine of bona fide representation would not be quite relevant and as such the decisions cited by the learned Attorney General need not be considered."

17. The applicability of the Doctrine of Necessity was further clarified by this Court in **Election Commission of India v. Dr Subramaniam Swamy** reported in **(1996) 4 SCC 104** as follows:

"16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative

for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked."

18. In the present case, had the Working President not convened the meeting, the elections of the executive body would have been in limbo for an unreasonable amount of time. The convening of the meeting by the Working President upon the requests by the 16 surviving members was a "necessity" at the time.

19. There is one more aspect of the matter to be discussed here with respect to the duties of the 'Working President'. Clause 11 of the Byelaws recognizes a Working President and also defines his rights and duties. The same is reproduced below:

"11. "Working President" –

The Rights and Duties of Working President:

1. To complete the work as per the written instructions of the President of the Shikshan Prasarak Mandal, the executive body of the Mandal and the General Body of the Mandal.

2. Make efforts from the point of extending the area of operation of the Shikshan Prasarak Mandal."

As per the above clause, the 'Working President' was to act on the directions of the President, Executive Body and the General Body. In the present case, the recognition was by almost all the members of the General Body. He had no option but to call for a general body meeting in accordance with the rights and duties conferred upon him.

20. In the present case, it was not only appropriate but also legal for the surviving members to request for convening a meeting. Further in the present case, as many as 16 members had requested in writing for convening the meeting. If the submission of the Objectors is to be accepted that the Working President could not convene the meeting, then no alternative has been suggested by the Objectors as to who could convene the meeting. Alternatively, the President and Secretary who were authorized under the bye-laws had died and no election had been held for replacing them. Even the Vice-President and the Joint-Secretary had also passed away and they had also not been replaced by any fresh elections. The only person who could be said to be managing the affairs of the Society was the Working President Mr. Wasade, and in particular, when all the 16 surviving and valid members had made a request for convening a meeting, no fault could be found with the decision of the Working President Mr. Wasade to convene the meeting. The other option could have been that all the 16 members could have themselves nominated any one of the members to chair the meeting of the Executive Body and thereafter they could have proceeded to take appropriate decisions. In such situation, we are of the view that the convening of the meeting for holding the elections on 08.09.2002 cannot be faulted with. Question No.1 is answered accordingly in favour of the appellants.

21. Coming to the next question regarding notice to the objectors, at the outset, Section 15 of the Registration Act is reproduced hereunder:

> **"Section 15 in The Societies Registration Act, 1860**
>
> 15. Member defined.— Disqualified members - For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; Disqualified members.—But in all proceedings

> under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months."

The High Court, in the impugned order, has held that the said provision is applicable.

22. It is not in dispute that all the Objectors were in arrears of their membership fee for a period of more than three months. This fact is admitted as is recorded by not only the High Court but all the three authorities. In fact, these Objectors had gone to the extent of saying that even if notices were issued to them, they will not receive it. The question is what would be the effect of such non-payment in the light of the proviso contained in Section 15 of the Registration Act. The specific language used is that such members in default of membership fee would not be entitled to vote and would not be counted as members of the Society. If they were not entitled to vote and they were not to be counted as members, there would be no illegality or for that matter any prejudice being caused by not issuing any notice as the same would be an exercise in futility.

23. It is a fact that under the bye-laws of the Society, there was no provision that a member defaulting in payment of membership fee and duly covered by the proviso to Section 15 of the Registration Act, would automatically lose his membership or in effect would cease to be a member of the Society. Be that as it may the only limited status left of such members would be that their name would continue to be in the Roll of the Society and at best by clearing of the arrears of the membership fee in addition to any penalty or fine liable to be charged for being reinstated as valid members would survive to them. Such defaulting members could have applied that they are ready and willing to pay their arrears and upon such application and payment being made, the effect of the proviso to Section 15 of the Registration Act could be considered by the appropriate officer/Committee of the Society. Till such time they would continue to remain as suspended members having no right to participate in any meeting.

24. The Executive Body or any other body competent under the bye-laws could take up their matter and give them a show cause notice and opportunity to save their membership by fulfilling their obligations failing which their membership would be terminated. When despite the same, they would not fulfil their obligations their membership would be declared to have been terminated.

25. This Court in the case of **Hyderabad Karnataka Education Society** (supra) was dealing with a similar provision under Rule 7-A of the Rules framed by Hyderabad Karnataka Education Society, read with Section 2(b) and Section 6(2) proviso of the Karnataka Societies Registration Act, 1960. Section 2(b) of the said Act defined 'member' which provided that to be treated as a member of the Society for the year concerned, he should have been admitted to that membership in accordance with rules and regulations and shall have paid the subscription as laid down therein. Section 6(2) of the said Act was akin to the proviso to Section 15 of the Registration Act that in default of payment of membership fee for more than three months, the membership would cease. The validity of such rule 7-A was challenged before the High Court which found the same to be very harsh and accordingly had held it to be ultra vires of Section 6(2) of the Karnataka Societies Registration Act, 1960. This Court disagreed with the reasoning given by the High Court and accordingly set it aside. This Court held that the said rule could not be said to be harsh or unreasonable, rather it was in line and in tune if it is read with Section 2(b) and Section 6(2) of the said Act.

26. It is true that in the bye-laws of the present Society or the Rules of the Society, there is no such provision of automatic cessation of membership where a member goes in default of payment of membership fee for more than three months. However, the effect of the proviso to Section 15 of the Registration Act which admittedly is applicable to the Society, the Objectors have to be treated as suspended members and therefore, would not be entitled to any notice as they had no right to vote or to be counted as members. Once they are not to be counted as members, there was no occasion to give them notice as such Non-issuance of notice to the Objectors would not vitiate the proceeding of the special meeting held on 08.09.2002. The argument raised by Mr. Hooda is to the effect that **Hyderabad Karnataka Education Society** (supra) judgment would not apply to the present case and would be of no help to the appellant. This submission same cannot be accepted in view of the discussion made above and also for the reasoning given by this Court in the said judgment. Even if we do not take into consideration the judgment of this Court **Hyderabad Karnataka Education Society** (supra), we may record that a clear reading and interpretation of the proviso to Section 15 of the Registration Act would disentitle such defaulting

members from being given any notice even if their membership was not terminated or ceased. Question nos. 2 and 3 are thus answered in favour of the appellants.

27. In so far as the fourth question is concerned with regard to the participation of invalid members in signing the requisition and being elected in the executive is concerned, the same have been duly explained by the appellants. The signatories at serial nos. 12 to 16 of the requisition dated 20.08.2002, had been duly admitted in the General Body Meeting on 11.11.2001. The said resolution of the meeting was never challenged. The same is on record as Exhibit 131 and one of the Objectors Dhanji Virji Shah was a signatory in the said proceeding. With respect to the objections relating to signatory nos. 4 to 7, the explanation is that were of the category of Employee Members. In due course they had retired from service. However, even after their retirement, they had continued to pay their subscription. As their membership(s) have continued, at this stage, objection(s) with regard to the validity thereof is not being examined in detail, given the lack of clarity and absence of material facts on this aspect.

28. Coming to the last question regarding locus of the contesting respondent which has been seriously pressed by Mr. Naphade, learned Senior Counsel no material has been placed before us by the respondent senior Counsel Mr. Hooda to establish their locus.

29. During the pendency of the appeal before the Joint Charity Commissioner all the seven objectors had died. The Joint Charity Commissioner decided in favour of the appellants and directed for accepting the Change Report. The contesting respondent preferred a petition before the District Judge. He was neither an objector before the Assistant Charity Commissioner nor a valid member of the Society. He would have no locus to maintain the petition before the District Judge. Although the contesting respondent claimed himself to be the Vice-President of the Society but has not been able to substantiate his claim. On this ground alone the District Judge ought to have dismissed the petition.

30. The judgments relied upon by Mr. Hooda referred to above are on issue which were not argued before the High Court even otherwise they relate to 15 days’ notice for convening a meeting which point could have been raised by a valid member and not by a suspended member.

31. For all the reasons recorded above, the impugned judgment of the High Court and the other authorities adverse to the appellants cannot be sustained. The Change Report No.668 of 2002 deserves to be accepted. The Joint Charity Commissioner had rightly accepted it.

32. The appeal is accordingly allowed. The impugned judgment and order of the High Court as also the orders rejecting the Change Report regarding General Body Meeting dated 08.09.2002 are set aside and the Change Report is accepted.

33. However, having allowed the appeal, before parting, we would like to address one grey area, which having been left unexplained cannot be brushed aside. Insofar as it relates to four signatories to the Requisition for calling a General Body Meeting, specifically being Members 4 to 7 from the category of Employee Members, from a perusal of the available record, it transpires that they had retired from service. Yet even after this, they had continued to pay their subscription and as such, their membership had continued.

34. In this context, the obvious question that arises is that once the said Members were Employee Members, their categorisation as such was dependent on them being in service. On retirement, the said signatories would cease to be employees, come out of the category of Employee Members and their membership in the Society could not have continued. Upon superannuation or cessation of their employment, such four signatories could very well have been made members of the Society, but there is no indication on the record that they were made members of the Society by a specific resolution and thereafter continued as members and paid the subscription fee(s). Thus, they could not have continued as members of the Society in the category of Employee Members even upon their superannuation by merely paying the yearly subscription fee thereby blocking the entry of the persons, who were still employees.

35. Moreover, we find that the stalemate in the Society has continued for a pretty long time, which does not bode well for any institution, much less an institution which is running educational institutions and is required to be run in a fair, transparent and legal manner. Thus, we direct that fresh elections shall be held for the new Executive Committee of the Society by the Charity Commissioner in accordance with law within six months from the receipt of a copy of this Judgment. It is left open for him to delve into all aspects of the matter for

ensuring that the issue of membership/members of the Society is resolved in terms of the existing records of the Society, ascertaining the factual position and status of the members at relevant point of time as also their right to continue as members of the Society and be on the electoral roll for conduct of fresh election for constitution of a new Executive Committee.

36. There shall be no order as to costs.

Headnotes prepared by: Ankit Gyan *Result of the case:* Appeal allowed.

[2024] 1 S.C.R. 1083 : 2024 INSC 63

Ajitsinh Chehuji Rathod
v.
State of Gujarat & Anr.

(Criminal Appeal No. 478 of 2024)

29 January 2024

[B.R. Gavai and Sandeep Mehta*, JJ.]

Issue for Consideration

Appellant-accused convicted u/s.138, Negotiable Instruments Act, 1881, had claimed mismatch of signatures on the cheque in question. His application for comparison of the signature as appearing on the cheque through the handwriting expert was rejected by trial court. High Court whether justified in dismissing the application filed by the appellant u/s.391, CrPC for taking additional evidence at appellate stage and seeking a direction to obtain the opinion of the handwriting expert.

Headnotes

Negotiable Instruments Act, 1881 – ss.118, 138 – Code of Criminal Procedure, 1973 – s.391 – Presumptions under the NI Act though rebuttable, operate in favour of the complainant – Accused to rebut such presumptions by leading evidence – Cheque dishonoured – Appellant convicted for offence punishable u/s.138 – Claiming mismatch of signatures, during the trial, the appellant had filed application seeking comparison of the signature as appearing on the cheque through the handwriting expert – Rejected by trial court – Order not challenged – At appellate stage, the appellant filed application u/s.391, CrPC for taking additional evidence and seeking a direction to obtain the opinion of the handwriting expert – Dismissed:

Held: s.118 sub-clause (e) provides a clear presumption regarding indorsements made on the negotiable instrument being in order in which they appear thereupon – Thus, the presumption of the indorsements on the cheque being genuine operates in favour of the holder in due course of the cheque in question which would be the complainant herein – If the accused intends to rebut such presumption, he would be required to lead evidence to this effect – Certified copy of a document issued by a Bank is itself

* Author

admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof – Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers u/s.73, Evidence Act, 1872 – However, in the present case, despite having opportunity, the appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question – Hence, the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest – Power to record additional evidence u/s.391, CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence or the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and non-recording of such evidence may lead to failure of justice – Furthermore, the appellant also did not challenge the trial court's order rejecting his application for comparison of the signature as appearing on the cheque through the handwriting expert and thus, had attained finality – Impugned orders do not warrant interference. [Paras 14, 15, 17, 9, 18 and 20]

Code of Criminal Procedure, 1973 – s.391 – Power to record additional evidence – Exercise of – Discussed. [Para 9]

Code of Criminal Procedure, 1973 – s.391 – Negotiable Instruments Act, 1881 – s.138 – Appellant-accused alleged that he did not receive the notice u/s.138 of the NI Act and the concerned officer from the Post Office be summoned to prove the same:

Held: It would be for the appellate Court while deciding the appeal to examine such issue based on the evidence available on record – Thus, there was no requirement for the appellate Court to have exercised power u/s.391, CrPC for summoning the official from the Post Office and it rightly rejected the application u/s.391, CrPC. [Para 19]

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973; Bankers' Books Evidence Act, 1891; Evidence Act, 1872.

Ajitsinh Chehuji Rathod v. State of Gujarat & Anr.

List of Keywords

Cheque dishonour; Presumptions under Negotiable Instruments Act; Rebuttable; Indorsements made on negotiable instrument; Holder in due course; Mismatch of signatures; Comparison of the signature; Handwriting expert; Appellate stage, Additional evidence; Document issued by Bank; Certified copy; Specimen signature maintained by Bank; Bank official; Appellate Court; Failure of justice.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.478 of 2024.

From the Judgment and Order dated 25.10.2023 of the High Court of Gujarat at Ahmedabad in CRMA No.17933 of 2023.

Appearances for Parties

Shariq Ahmed, Sunil Kumar Verma, Vinay Vats, Tariq Ahmed for M/s. Ahmadi Law Offices, Advs. for the Appellant.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. The instant appeal by special leave filed at the behest of the appellant accused calls into question the order dated 25th October, 2023 passed by the High Court of Gujarat rejecting the Criminal Misc. Application No. 17933 of 2023 preferred by the appellant under Section 482 read with Section 391 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC').

3. The appellant was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881(hereinafter being referred to as 'NI Act') before the learned trial Court with an allegation that the cheque to the tune of Rs. 10 lakhs issued by the appellant in favour of the complainant Shri Mahadevsinh Cahndaasinh Champavat upon being presented in the bank was dishonoured "for insufficient funds and account dormant".

4. During the course of trial, the appellant preferred an application dated 13th June, 2019 before learned trial Court with a prayer to send the cheque to the handwriting expert for comparison of the

handwriting as well as signature appearing thereon with a plea that his signatures had been forged on the cheque in question. The learned trial Court rejected the application vide order dated 13th June, 2019 itself observing that the application was aimed at delaying the trial. The learned trial Court further observed that the matter was at the stage of defence and the accused could lead evidence to prove his claim pertaining to mismatch of signatures.

5. The order dated 13th June, 2019 passed by learned trial Court was not challenged any further and thus the same attained finality. The trial Court, proceeded to convict the accused appellant vide judgment dated 7th November, 2019.

6. The appellant preferred an appeal before the Principal Sessions Judge, Gandhinagar and during pendency thereof, he filed an application under Section 391 CrPC for taking additional evidence at appellate stage and seeking a direction to obtain the opinion of the handwriting expert after comparing the admitted signature of the accused appellant and the signature as appearing on the disputed cheque. Another prayer made in the said application was that the concerned officer from the Post Office should be summoned so as to prove the defence theory that the notice under Section 138 of NI Act was never received by the accused appellant.

7. Such application preferred by the appellant was rejected by the learned Principal Sessions Judge, Gandhinagar vide detailed order dated 25th July, 2023, which was carried by the appellant to the High Court by filing the captioned Criminal Misc. Application No. 17933/2023 which came to be dismissed by order dated 25th October, 2023 which is under challenge in this appeal.

8. We have considered the submissions advanced by learned counsel for the appellant and have gone through the impugned order and the material placed on record.

9. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391 CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice.

10. It is apposite to mention that the learned first appellate Court, i.e., the Principal Sessions Judge, Gandhinagar had taken note of the fact that during the trial, the appellant examined the witness of the Bank of Baroda in support of his defence but not a single question was put to the said witness regarding genuineness or otherwise of the signatures as appearing on the cheque in question.

11. Furthermore, as per the cheque return memo of the Bank dated 26th February, 2018, the reason for the cheque being returned unpaid is clearly recorded as "funds insufficient and account dormant".

12. There is a specific column no. 10 in the said written memo which reads as follows:-

"Bank of Baroda

(HEAD OFFICE MANDVI, BARODA)

Infocity Branch	Date: 26.02.2018
Cheque No. 503273 for Rs. 10,00,000/- returned unpaid for reason No. 22 3093010008596	

1-9 ….

10 Drawer's signature differs from specimen recorded with us.

11-22 …."

Manifestly, the cheque was not returned unpaid for the reason that the signature thereupon differed from the specimen signature recorded with the bank.

13. Section 118 of the NI Act has a bearing upon the controversy and is thus, reproduced hereinbelow:-

> "**118. Presumptions as to negotiable instruments**.— Until the contrary is proved, the following presumptions shall be made:
>
> (a) **of consideration**: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) **as to date**: that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance**: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer**: that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsements**: that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) **as to stamps**: that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course**: that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

14. Section 118 sub-clause (e) of the NI Act provides a clear presumption regarding indorsements made on the negotiable instrument being in order in which they appear thereupon. Thus, the presumption of the indorsements on the cheque being genuine operates in favour of the holder in due course of the cheque in question which would be the complainant herein. In case, the accused intends to rebut such presumption, he would be required to lead evidence to this effect.

15. Certified copy of a document issued by a Bank is itself admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof. Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872.

16. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.

17. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf.

18. The appellant had sought for comparison of the signature as appearing on the cheque through the handwriting expert by filing an application before the trial Court which rejected the same vide order dated 13th June, 2019. The said order was never challenged and had thus attained finality.

19. So far as the allegation of the accused appellant that he did not receive the notice under Section 138 of the NI Act is concerned, it would be for the appellate Court while deciding the appeal to examine such issue based on the evidence available on record and thus, there was no requirement for the appellate Court to have exercised power under Section 391 CrPC for summoning the official from the Post Office and had rightly rejected the application under Section 391 CrPC.

20. As an upshot of the above discussion, we find no infirmity in the impugned orders warranting interference. The appeal lacks merit and is dismissed as such.

21. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Divya Pandey *Result of the case:* Appeal dismissed.

[2024] 1 S.C.R. 1090 : 2024 INSC 73

Amit Kumar Das, Joint Secretary, Baitanik, A Registered Society v. Shrimati Hutheesingh Tagore Charitable Trust

(Civil Appeal No. 1405-1406 of 2024)

30 January 2024

[Aniruddha Bose And Sanjay Kumar*, JJ.]

Issue for Consideration

Scope and extent of the contempt jurisdiction exercised by a High Court under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971.

Headnotes

Contempt – Constitution of India – Article 215 – Contempt of Courts Act, 1971 – Exercise of contempt jurisdiction by High Court – Scope – Suit filed by Trust against Society, decreed by Trial Court directing delivery of possession of the suit premises to the Trust – Execution proceedings initiated by the Trust– In appeal by Society, order passed staying execution proceedings – Contempt proceedings initiatiated by the Trust alleging violation of the condition set out in the stay order stating that the Society had resorted to letting out the suit premises – High Court found the contemnor-appellant guilty of willfully violating the status quo condition in the stay order however, instead of initiating contempt proceedings, it vacated the stay order passed in the appeal in exercise of contempt jurisdiction – Propriety:

Held: Directions which are explicit in the judgment or 'are plainly self-evident' can be taken into account for the purpose of considering whether there is any disobedience or willful violation – Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the Court order and in that regard, the Court may even take restitutive measures at any stage of the proceedings – In addition to punishing a contemnor for disobeying its orders, the Court can also ensure that such a contemnor does not continue to enjoy the benefits of his disobedience by merely suffering the punishment meted out to him – In the present case, vacating of the stay order in the appeal by the High Court in

* Author

Amit Kumar Das, Joint Secretary, Baitanik, A Registered Society v. Shrimati Hutheesingh Tagore Charitable Trust

exercise of contempt jurisdiction did not assume either a restitutive or a remedying character – Violation of the status quo condition in the stay order stood complete, even as per the High Court, and vacating of the stay order did not have the effect of restoring the parties to their original position or deny the contemnor the benefit of the disobedience which already stood concluded – Violation of a conditional stay order would entail vacating thereof in a properly constituted proceeding – High Court erred by resorting to such a step while exercising contempt jurisdiction – The concluded act in violation of the status quo order in relation to possession of the suit premises amounted to 'civil contempt' u/s.2(b) of the Contempt of Courts Act and warranted appropriate consequences – However, without taking recourse to such a step, the High Court thought it fit to vacate the stay order in the appeal so as to enable the Trust to execute the decree – This action of the High Court transgressed the scope and extent of its contempt jurisdiction and cannot be sustained – Impugned order set aside to that extent – However, as the High Court desisted from exercising contempt jurisdiction, despite finding the contemnor guilty of willfully violating the status quo condition in the stay order, matter remanded to the High Court for continuing with that exercise. [Paras 14-17]

Case Law Cited

Sudhir Vasudeva vs. M.George Ravishekaran [2014] 4 SCR 27 **: (2014) 3 SCC 373;** *Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) vs. Baranagore Jute Factory PLC* [2017] 4 SCR 700 **: (2017) 5 SCC 506;** *Delhi Development Authority vs. Skipper Construction Co. (P) Ltd.* [1996] 2 Suppl. SCR 295 **: (1996) 4 SCC 622;** *Mohammad Idris vs. Rustam Jehangir Babuji* [1985] 1 SCR 598 **: (1984) 4 SCC 216 – relied on.**

List of Acts

Constitution of India; Contempt of Courts Act, 1971.

List of Keywords

Contempt; Contempt jurisdiction of High Court; Execution proceedings stayed; Contemnor guilty; Willful violation of status quo condition; Disobedience or willful violation; Restitutive measures; Remedying character; Stay order vacated; Benefit of the disobedience; Restoring parties to their original position; Civil contempt.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1405-1406 of 2024.

From the Judgment and Order dated 12.11.2014 of the High Court at Calcutta in CPAN No.2113 of 2013 and FA No.229 of 2010.

Appearances for Parties

Jayanta Mitra, Sr. Adv., Ajay Gaggar, Amarjit Singh Bedi, Varun Chandiok, Ms. Riya Seth, Yashwant Gaggar, Uttiyo Mallick, Ms. Anubhi Goyal, Robin Sirohi, Advs. for the Appellant.

Harin P Raval, Sr. Adv., Anando Mukherjee, Ms. Shrestha Narayan, Ms. Shreya Bansal, Shwetank Singh, Ms. Urmi H. Raval, Siddharth H. Raval, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J

1. Leave granted.

2. Focus in this appeal is on the scope and extent of the contempt jurisdiction exercised by a High Court under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971.

3. By judgment dated 12.11.2014 passed in C.P.A.N. 2113 of 2013 in F.A. No. 229 of 2010, a Division Bench of the High Court at Calcutta held that the act of the contemnor therein was in willful disobedience to the stay order passed in the first appeal and was not only contemptuous but also illegal and invalid. However, instead of initiating proceedings for contempt, the Division Bench opined that justice would be subserved by vacating the stay order passed in the first appeal. Aggrieved by this turn of events, the contemnor is before this Court.

4. By order dated 27.01.2015, this Court stayed the operation of the impugned judgment passed by the High Court at Calcutta.

5. Shrimati Hutheesingh Tagore Charitable Trust, Kolkata (for brevity, 'the Trust'), was the plaintiff in T. Suit No. 164 of 2004, filed for declaration of title, recovery of possession and for damages, before

the learned 3rd Civil Judge (Senior Division), Alipore. This suit was instituted by it against Baitanik, a registered society (for brevity, 'the Society'), which was in occupation of the premises, detailed in suit schedules A and B, situated at 4B, Elgin Road (now, Lala Lajpat Rai Sarani), Bhawanipore, Kolkata. The Trial Court decreed the suit by its judgment dated 25.02.2009 and directed delivery of possession of the suit premises to the Trust within 30 days. Execution proceedings were initiated by the Trust on 30.07.2009.

6. While so, the Society preferred an appeal in F.A.T. No. 321 of 2009 against the judgment dated 25.02.2009, which was thereafter renumbered as F.A. No. 229 of 2009, before the High Court at Calcutta. Therein, an interim order was passed on 03.03.2010 in CAN 7021 of 2009 (application for stay) in the following terms: -

> "……. We, therefore, dispose of the application for stay with the following directions: -
>
> 1) There shall be an unconditional order of stay of all further proceedings in title execution case pending in the court of the learned Civil Judge (Senior Division), Third Court at Alipore, for a period of eight weeks.
>
> 2) The appellant is directed to deposit Rs. 10,00,000/- (Rupees Ten Lac only) with the learned Registrar General of this Court by eight weeks without prejudice to the rights and contentions of the parties and subject to the result of the appeal.
>
> 3) The appellant must go on depositing current occupation charges at the rate of Rs. 35,000/- (Rupees thirty five thousand) only per month for the suit premises during the pendency of the appeal with the learned Registrar General of this Court. First of such deposit for the month of March, 2010 is to be made by April 16, 2010. All subsequent deposits are to be made by fifteenth of each succeeding month for which the same is due and payable.
>
> 4) All these deposits are to be made by the defendant no. 1-appellant without prejudice to the rights and contentions of the parties and subject to the result of the appeal.

5) If the defendant no.1-appellant deposits Rs.10,00,000/- (Rupees ten lac), only and goes on paying the monthly occupation charges at the rate of Rs. 35,000/- (Rupees thirty five thousand) only, the interim order of stay shall continue till the disposal of the appeal.

6) The learned Registrar General is requested to invest the amounts that may be deposited by the appellant in; short term renewable interest bearing fixed deposits scheme with any nationalized bank of his choice. He is, further, requested to see that such fixed deposits are renewed from time to time during the pendency of this appeal subject, however, to any order that may be passed in this appeal.

7) In default of the deposits, as aforesaid, the interim order of stay shall stand vacated and the decree shall be executed at once.

However, we clarify that pendency of this appeal shall not prevent the plaintiffs-respondents-decree holders from initiating proceedings for recovery of mesne profit under Order XX, rule 12 of the Code of Civil Procedure and the learned trial judge shall be at liberty to proceed with such proceedings in accordance with law.

However, the learned trial judge shall not pass any final order without the leave of this Court.

The defendant no. 1 appellant is, also, directed to maintain status quo, as regards possession, nature and character, as of to (*sic.*) today, in relation to the property in suit during the pendency of the appeal. We, further, restrain the defendant no.1 appellant from creating any third party interest in relation to the property-in-suit including granting of any licence in favour of any third party during the pendency of this appeal.

With the aforesaid directions, the application for stay, filed under C.A.N. 7021 of 2009, is, thus, disposed of.

We make no order as to costs

Let the hearing of the appeal be expedited……"

7. By order dated 10.08.2010, the High Court is stated to have extended the time to deposit the sum of ₹10 lakh by a period of two months, but it is an admitted fact that the said deposit was made only on 22.12.2010.

8. Pertinent to note, the Society also filed CAN. 8838 of 2010 in its appeal seeking leave to let out a portion of the suit premises. However, by order dated 07.03.2011, the High Court rejected the said application.

9. Developments thereafter led to initiation of contempt proceedings by the Trust, in C.P.A.N. 2113 of 2013, alleging violation of the condition set out in the stay order dated 03.03.2010. More particularly, it was alleged that the Society had resorted to letting out the suit premises for holding exhibitions. While considering this allegation, a Division Bench of the High Court at Calcutta took note of the Report dated 06.06.2013 of the Sub-Inspector of Bhawanipore Police Station, confirming that Ms. Sofia Khatoon and Ms. Roommee Bhattacharya had jointly held an exhibition from 13.05.2013 to 19.05.2013 on the ground floor of the suit premises after paying a sum of ₹6,000/- to the Society towards rent. The Division Bench also noted that a receipt had been issued by the contemnor, *viz*., Amit Kumar Das, the Joint Secretary of the Society, as if it was a donation instead of rent for use of the suit premises. On his behalf, it was contended that the very purpose of the Society was to promote and spread the culture of Tagore amongst the public, through songs, dramas, dances and literary discussions, and even if any such events were held in the suit premises, there was no change in the character of the property. The Division Bench further noted that the inquiring officer had learnt that, after the order of the High Court, the Society was collecting rent in the garb of donations by letting out the suit premises for holding exhibitions.

10. Observing that one of the conditions of the stay order dated 03.03.2010 was that the Society must maintain *status quo* as regards possession of the suit premises pending the appeal and refrain from creating any third-party interest in relation thereto, including by way of grant of a licence, the Division Bench concluded that the Society had, in fact, granted licences for short terms to third parties for the purpose of exhibitions, dances and other functions on payment of donations. Further, the Division Bench noted that all the functions which were being held at the suit premises, in lieu of donations, were

not organized by the Society itself, and such acts on its part amounted to willful and deliberate violation of the order dated 03.03.2010 passed in the first appeal. The Division Bench also took note of the fact that the application filed by the Society seeking leave to let out a portion of the suit premises had already been rejected. As the execution proceedings initiated by the Trust, the decree holder, stood stayed by virtue of the order dated 03.03.2010, the Division Bench opined that justice would be subserved by vacating the said order of stay of execution proceedings without initiating a proceeding for contempt. The Bench accordingly allowed C.P.A.N.2113 of 2013 and vacated the order of stay granted in F.A. No. 229 of 2009. The Bench held that the decree would be executable at once, subject to the result of the pending appeal.

11. The appellant before us, *viz.,* the contemnor, would contend that it was not open to the High Court to vacate the stay order passed in the appeal in exercise of contempt jurisdiction. He would point out that no steps were taken by the Trust to seek such relief in the appeal and the High Court ought not to have resorted to such action in the contempt case.

12. On the contrary, the Trust would argue that the impugned order does not warrant interference at this stage as the order of stay dated 03.03.2010 in the appeal stood vacated automatically in terms of clause 7 thereof, as there was a default in the making of deposits as directed in the earlier clauses. It would point out that the Society was required to deposit a sum of ₹10 lakh with the Registrar General of the High Court within the stipulated time but such deposit was made only on 22.12.2010, well after the expiry thereof. It would also point out that the Society was required to deposit occupation charges @ ₹35,000/- per month during the pendency of the appeal and assert that the Society stopped making such deposits since February, 2020. It is however admitted by the Trust that no steps were taken to revive the execution proceedings on these grounds.

13. Now, a look at caselaw on the point. In ***Sudhir Vasudeva vs. M.George Ravishekaran***[1], a 3-Judge Bench of this Court observed as under, in the context of exercise of contempt jurisdiction: -

1 [2014] 4 SCR 27 : (2014) 3 SCC 373

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971……. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above….."

14. However, in ***Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) vs. Baranagore Jute Factory PLC.***[2], considering the aforestated precedent, a 2-Judge Bench of this Court noted that the 3-Judge Bench had clarified therein that directions which are explicit in the judgment or 'are plainly self-evident' can be taken into account for the purpose of considering whether there is any disobedience or willful violation. The Bench further held that the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the Court order and in that regard, the Court may even take restitutive measures at any stage of the proceedings.

2 [2017] 4 SCR 700 : (2017) 5 SCC 506

15. Significantly, the 2-Judge Bench had merely echoed the affirmation of the legal position by another 2-Judge Bench of this Court in ***Delhi Development Authority vs. Skipper Construction Co. (P) Ltd.***[3]. The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt was reiterated therein. Reference was made by the Bench to ***Mohammad Idris vs. Rustam Jehangir Babuji***[4], wherein it was held that undergoing punishment for contempt would not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders. Therefore, the principle that stands crystallized by these judgments is that, in addition to punishing a contemnor for disobeying its orders, the Court can also ensure that such a contemnor does not continue to enjoy the benefits of his disobedience by merely suffering the punishment meted out to him.

16. This being the settled legal position, we find that the fact situation in the present case is such, that vacating of the stay order in the appeal by the High Court in exercise of contempt jurisdiction did not assume either a restitutive or a remedying character. Violation of the *status quo* condition in the stay order stood complete, even as per the High Court, and vacating of the stay order did not have the effect of restoring the parties to their original position or deny the contemnor the benefit of the disobedience which already stood concluded. Violation of a conditional stay order, in the usual course, would entail vacating thereof in a properly constituted proceeding. By resorting to such a step while exercising contempt jurisdiction, the High Court, in our considered opinion was not acting in furtherance of the principle adumbrated in the above decisions.

17. No doubt, the concluded act in violation of the *status quo* order in relation to possession of the suit premises amounted to ‘civil contempt’ under Section 2(b) of the Contempt of Courts Act, 1971, and warranted appropriate consequences under the provisions thereof. However, without taking recourse to such a step, the High Court thought it fit to vacate the stay order in the appeal so as to enable the Trust to execute the decree. This action of the High Court clearly transgressed the scope and extent of its contempt jurisdiction

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3 [1996] 2 Suppl. SCR 295 : (1996) 4 SCC 622

4 [1985] 1 SCR 598 : (1984) 4 SCC 216

and cannot be sustained. To that extent, the impugned order is set aside. However, as the High Court desisted from exercising contempt jurisdiction, owing to this misconceived measure, despite finding the contemnor guilty of willfully violating the *status quo* condition in the stay order, we consider it appropriate to remand the matter to the High Court for continuing with that exercise as we have now set aside the course of action adopted by the High Court in the alternative.

18. Further, as the Trust asserts that the stay order stood vacated automatically owing to the default by the Society in making deposits, it is for the Trust to take appropriate steps. The Trust would be at liberty to take all such measures as are permissible in law in that regard, be it before the High Court or the executing Court.

19. The appeal is accordingly allowed in part, to the extent indicated above.

Pending applications, if any, shall stand closed.

In the circumstances, parties shall bear their own costs.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal partly allowed.

[2024] 1 S.C.R. 1100 : 2024 INSC 76

Yagwati @ Poonam
v.
Ghanshyam

(Civil Appeal Nos.1318-1319 of 2024)

29 January 2024

[Vikram Nath and Satish Chandra Sharma*, JJ.]

Issue for Consideration

Maintenance granted to the appellant by the Family Court, enhanced by High Court. If to be enhanced further.

Headnotes

Hindu Adoption and Maintenance Act, 1956 – s.18 – Maintenance – Enhancement – Parties having three children were residing separately – Respondent-husband was residing with the two major children and the appellant-wife was residing with the minor child – Ex-parte decree of divorce was passed in favour of the Respondent whereafter he re-married – In the interregnum, the Appellant sought maintenance u/ss.18, 20, application was allowed by the Family Court – Later, ex-parte order decreeing the divorce in favour of the Respondent was set aside; and the application u/s.13, Hindu Marriage Act filed by the Respondent was restored – Cross-appeal(s) filed against the Order of the Family Court – Maintenance granted was enhanced by High Court – Appellant sought further enhancement contending that the Respondents' salary had increased significantly, relying upon an RTI application filed with BSNL revealing that the Respondent was last drawing a salary of Rs.1,05,871/- per month serving as Assistant Manager, BSNL – Respondent submitted that he has since attained the age of superannuation and no longer receives the said salary and is only drawing pension from BSNL:

Held: In view of the position of the parties and the totality of circumstances, the monthly maintenance payable u/s.18 enhanced from Rs. 10,000/- per month to Rs. 20,000/- per month from the date of the pronouncement of the present Order – Furthermore, the arrears payable in respect of the maintenance due to the Appellant be payable in equal instalments by the Respondent in addition to the regular maintenance as quantified – Directions issued to the Family Court. [Paras 11-13]

* Author

Yagwati @ Poonam v. Ghanshyam

List of Acts

Hindu Adoption and Maintenance Act, 1956; Hindu Marriage Act, 1955; Code of Civil Procedure, 1908.

List of Keywords

Maintenance; Monthly maintenance; Maintenance enhancement; Family Court.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1318-1319 of 2024.

From the Judgment and Order dated 11.11.2016 of the High Court of Judicature for Rajasthan at Jaipur in DBCMA Nos.2834 of 2009 and 1514 of 2010.

Appearances for Parties

Sonal Jain, Ajay Veer Singh, Ms. Divya Garg, Uday Ram Bokadia, Shubham Singh, Atit Jain, Ajay Jain, Ms. Deepika Jain, Advs. for the Appellant.

Puneet Jain, Ms. Christi Jain, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

Satish Chandra Sharma, J.

1. Leave granted.

2. The present appeal(s) culminate out of a common order dated 11.11.2016 whereunder the High Court of Rajasthan (the "**High Court**") enhanced the award of maintenance granted to the Appellant by the Family Court at Jaipur under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (the "**Act**") from Rs.3,000/- (Rupees Three Thousand) per month to (i) Rs.6,000/- (Rupees Six Thousand) from the date of filing the application before the High Court i.e., 16.05.2009 up until 31.12.2005; and (ii) Rs.10,000/- (Rupees Ten Thousand) per month from 01.01.2006 onwards (the "**Impugned Order**").

3. The Appellant herein seeks an enhancement of maintenance awarded by the High Court on the ground that the maintenance awarded by the High Court is inadequate and does not reflect the true financial capacity of the Respondent.

4. The marriage between the Appellant and Respondent came to be solemnized on 27.04.1982, thereafter 3 (three) children came to borne out of the wedlock i.e., (i) Abhishek; (ii) Aashish; and (iii) Nikki. Subsequently in 1998, the marriage encountered complications which led to the parties residing separately. Pertinently, the Respondent chose to reside with 2 (two) of his major children, namely (i) Abhishek; and (ii) Aashish. Accordingly, the Respondent left the Appellant and Nikki i.e., a minor, to fend for themselves.

5. In the aforesaid circumstances, the Respondent filed an application under Section 13 of the Hindu Marriage Act, 1955 (the "**HMA**") seeking dissolution of the marriage between the parties. *Vide* an order dated 31.05.2005, an *ex-parte* decree came to be passed in favour of the Respondent. Thereafter, the Respondent married another lady on 20.07.2007.

6. In the *interregnum*, the Appellant preferred an application before the Family Court, Jaipur seeking maintenance under Section 18 and Section 20 of the Act. *Vide* an order dated 15.04.2009, the Family Court, Jaipur allowed the Appellants' application, and accordingly granted maintenance as follows:

   (i) Appellant: Rs.3,000/- (Rupees Three Thousand) per month w.e.f from 15.04.2009;

   (ii) Nikki: Rs.5,000/- (Rupees Five Thousand) per month w.e.f from 15.04.2009 until Nikki attained the age of majority; and

   (iii) Litigation Cost: Rs.2,000/- (Rupees Two Thousand)

   (hereinafter referred to as the "**Underlying Order**")

7. Subsequently, an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (the "**CPC**") came to be preferred by the Appellant. *Vide* an order dated 09.09.2011, in the aforesaid application, the *ex-parte* order decreeing the divorce in favour of the Respondent came to be set aside; and accordingly, the application under Section 13 of the HMA preferred by the Respondent was restored.

8. The parties preferred cross-appeal(s) against the Underlying Order of the Family Court, Jaipur which came to be disposed of by the High Court *vide* the Impugned Order. In the present appeal, the Appellant has drawn the attention of this Court to the considerable salary that

the Respondent was drawing from Bharat Sanchar Nigam Limited ("**BSNL**"), whilst dragging his feet in relation to his obligations qua maintenance under the Impugned Order.

9. The Learned Counsel appearing on behalf of the Appellant has submitted that the Respondents' salary has increased significantly. In this regard he has relied upon a Right to Information ("**RTI**") application filed with BSNL, whereunder it is revealed that the Respondent was last drawing a handsome salary of Rs.1,05,871/- (Rupees One Lakh Five Thousand Eight Hundred and Seventy-One) per month whilst serving as Assistant Manager, BSNL. Accordingly, it is prayed that the maintenance awarded by the High Court ought to be enhanced further. Pertinently, it was also brought to the attention of this Court that the arrear(s) of maintenance have not been paid to the Appellant despite a categorical direction from the High Court to clear the arrear(s) of maintenance within 1 (one) year from date of the Impugned Order i.e., on or before 11.11.2017.

10. On the other hand, the Learned Counsel appearing on behalf of the Respondent submitted that the Respondent has since attained the age of superannuation and accordingly, no longer receives the aforementioned salary. It was submitted that the Respondent is only drawing pension from BSNL; and that the maintenance granted by the High Court ought not to be interfered with.

11. Considering the position of the parties and the totality of circumstances surrounding the present appeal(s), we are of the considered view that the Appellant should be granted a sum of Rs. 20,000/- (Rupees Twenty Thousand) per month as maintenance with effect from the date of this Order.

12. We accordingly allow the appeal(s) preferred by the Appellant and enhance the monthly maintenance payable under Section 18 of the Act from Rs.10,000/- (Rupees Ten Thousand) per month to Rs. 20,000/- (Rupees Twenty Thousand) per month with effect from the date of the pronouncement of this Order. Furthermore, the arrears payable in respect of the maintenance due to the Appellant shall be payable in equal instalments by the Respondent in addition to the regular maintenance as quantified by us above.

13. Resultantly, in furtherance of our orders above, the Family Court, Jaipur is directed to:

(i) Quantify the total arrears due to the Appellant in terms of the Impugned Order;

(ii) Fixate the duration and the quantum of monthly payment to be made by the Respondent in furtherance of arrears of maintenance as computed in terms of Paragraph 13(i) above, in such a manner that the total amount i.e., (a) regular maintenance to the extent of Rs. 20,000/- (Rupees Twenty Thousand); and (b) the amount quantified towards the extinguishment of arrears of maintenance does not exceed 50% of the pension drawn by the Respondent from BSNL;

(iii) Issue necessary directions to the BSNL to ensure that the total amount i.e., (a) regular maintenance to the extent of Rs. 20,000/- (Rupees Twenty Thousand); and (b) the additional monthly payment as more particularly identified in 13(ii) above, is credited into the Appellants' bank account on an identified date of every calendar month; and

(iv) A copy of this Order may also be sent to BSNL for necessary compliance and onward action (if any).

14. Further, it is made clear that the aforementioned quantification process would not interfere with our direction to the Respondent to pay the Appellant regular maintenance to the extent of Rs. 20,000/- (Rupees Twenty Thousand) per month with effect from the date of the pronouncement of this Order.

Headnotes prepared by: Divya Pandey *Result of the case:* Appeals allowed.

[2024] 1 S.C.R. 1105 : 2024 INSC 71

Baitulla Ismail Shaikh and Anr.
v.
Khatija Ismail Panhalkar and Ors.

(Civil Appeal No. 1543 of 2016)

30 January 2024

[Aniruddha Bose* and Bela M. Trivedi, JJ.]

Issue for Consideration

The appellants-landlords purchased the subject-premises in the year 1992 from its erstwhile owner. Both the tenants were inducted by the erstwhile owner of the building in question. On 23.01.2002, a demolition notice was issued by the Municipal Council. Thereafter, the notices for eviction were subsequently sent to the tenants, on the various grounds including municipality's demolition notice and *bonafide* requirement of landlord. In the present appeals, the appellants are assailing a judgment delivered by a Single Judge of the High Court on 04.08.2015 exercising his revisional jurisdiction invalidating eviction decrees against two tenants in respect of two portions of the same building.

Headnotes

Maharashtra Rent Control Act, 1999 – ss. 15 and 16 – The Trial Court opined that the landlord was the best judge of his own requirement and on that basis the issue of bona fide need was decided in favour of the appellants-landlords – The Appellate Court sustained the judgment and decree on the ground of *bona fide* need as also necessity to effect demolition of the subject-building – The Revisional Court on analysing the provisions of ss. 15 and 16 of the said statute set aside the judgment and decree and allowed the revision applications of the tenants – Propriety:

Held: The High Court correctly held that there was no satisfaction in the manner contemplated in s.16 (2) of the 1999 Act as far as *bona fide* need in terms of s.16(1)(g) was concerned – In the impugned judgment, the High Court has dealt with in detail the list of properties which were with the landlords and on that basis gave its own finding in that regard, there is no perversity in such view taken by the High Court – Sub-section (6) of s.16 also mandates satisfaction of the conditions stipulated in sub-clauses (a) to (d) thereof – Subclause (d) in particular, contemplates the landlord to

* Author

give undertaking in terms of paragraphs (i), (ii), (iv) and (v) of that subclause, while dealing with landlord's eviction claim based on s.16(1)(i) of the said statute – These are all mandatory requirements and one cannot find any flaw with the judgment of the High Court to the extent it rejects the claim of the landlord for non-compliance of the aforesaid provisions – As far as demolition notice by the Municipal Authority is concerned, section 16(1)(k) of the said Act permits recovery of possession of tenanted premises on the ground that the premises are required for immediate purpose of demolition ordered by any municipal or other competent authority – The Court trying an eviction proceeding under the aforesaid provision has very limited role in determining as to whether demolition is really necessary or not, but it does not automatically follow therefrom that the Court would mechanically adopt the view of municipal authority of there being urgent need of demolition – The conditions under which a landlord can bring an eviction action under clauses (i) and (k) of s.16(1) are different in their operations – In respect of an eviction proceeding founded on the former provision, it contemplates a lesser degree of immediacy or urgency – But the latter provision requires a greater degree of urgency and it is within the jurisdiction of the Court to test this factor, as held in the cases of M.L. Sonvane and Manohar P. Rampal – Both the fact finding fora failed on this count – The Revisional Court has fitted the facts with the legal provisions and found that there was mismatch on the basis of which the judgment and decree were set aside – The Judgment of the Revisional Court needs no re-appreciation. [Paras 11, 12, 13, 16, 18]

Maharashtra Rent Control Act, 1999 – s.16(1)(h) and (i) – Principle of "comparative hardship" – Tenancy Jurisprudence:

Held: In the instant case, dealing with claim based on s.16(1)(h) and (i) of the Maharashtra Rent Control Act, 1999 Act, the statutory mandate for the Court is to test the question of part vacating – Neither the Trial Court nor the Appellate Court chose to analyse this requirement before directing eviction – This provision becomes relevant as the initial demolition notice identifies a part of the premises requiring demolition and the Commissioner's report is also on that line – Sub-section (2) of s.16 relates to reasonable and bona fide need in terms of s.16(1)(g) and if the requirement is in the aforesaid terms, then the Court has to be satisfied having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the

landlord or the tenant – This provision essentially incorporates the principle of "comparative hardship", as such a test has come to be known in tenancy jurisprudence. [Para 11]

Case Law Cited

Vijay Singh and Others v. Vijayalakshmi Ammal [1996] 7 Suppl. SCR 385: **(1996) 6 SCC 475 – followed.**

P. ORR & Sons (P) Ltd. v. Associated Publishers (Madras) Ltd. [1990] 2 Suppl. SCR 615: **(1991) 1 SCC 301 – referred to.**

M.L. Sonavane v. C.G. Sonar **1981 (1) All India Rent Control Journal 466;** *Manohar Prabhumal Rajpal v. Satara City Municipal Corporation, Satara and Another* **(1993) 1 All India Rent Control Journal 81 – held correct law.**

List of Acts

Maharashtra Rent Control Act, 1999.

List of Keywords

Notices of eviction; Reasonable and bonafide requirement; Demolition notice; Recovery of possession of tenanted premises; Principle of comparative hardship; Tenancy Jurisprudence.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1543 of 2016.

From the Judgment and Order dated 04.08.2015 of the High Court of Bombay at Aurangabad in CRA No.167 of 2014.

With

Civil Appeal No.1544 of 2016.

Appearances for Parties

Vinay Navare, Sr. Adv., Abhay Anil Anturkar, Dhruv Tank, Aniruddha Awalgaonkar, Dr. R. R. Deshpande, Pravartak Pathak, Advs. for the Appellants.

Ms. Aparna Jha, Vishwanath S Talkute, Prashant Padmanabhan, Makarand D Adkar, Shantanu M Adkar, Ms. Rekha Rani, Ms. Bharti Tyagi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

The appellants before us are landlords and they assail a judgment delivered by a Single Judge of the Bombay High Court on 04.08.2015 exercising his revisional jurisdiction invalidating eviction decrees against two tenants in respect of two portions of the same building. The building in question carries House No.86 as per the municipal records, comprised in C.S. No. 111/b as per city survey records, located at Dr. Sobane Road in Mahabaleshwar, District-Satara within the State of Maharashtra. The Civil Appeal No. 1543 of 2016 arises out of Civil Suit No. 136 of 2010 and the tenant/defendant in that suit is one Khatija Ismail Panhalkar. In this suit, two of his sons have also been impleaded as defendants. The premises involved in these proceedings comprise of two blocks within the aforesaid building. One block comprises of 10’×4’ structure made of ‘ita and tin shed’. Civil Appeal No. 1544 of 2016 arises out of Civil Suit No. 137 of 2010 and the tenant whose eviction is sought for in this suit is one Vasant Mahadeo Gujar (since deceased). Before us, his legal representatives have contested the appeal. The property from which the appellants want them to be evicted comprises of two rooms comprising of an area of 10’×12’, which appears to be located in the middle of the said building. The two rooms, at the material point of time, were being used for residential purpose. The appellants purchased the subject-premises in the year 1992 from its erstwhile owner. Both the tenants were inducted by the erstwhile owner of the building in question.

2. On 23.01.2002, a demolition notice was issued by the Mahabaleshwar Giristhan Municipal Council for a part of the subject-building. This notice constituted one of the grounds on which the appellants wanted to evict the respondents under the Maharashtra Rent Control Act, 1999 (“the 1999 Act”). This notice was followed by three subsequent notices by the said Municipal Council on 03.12.2005, 13.07.2009 and 05.07.2010, almost on similar terms. The suit, however, was founded on, inter-alia, the notice dated 23.01.2002. This notice is of relevance so far as these appeals are concerned and we quote below the text thereof:-

"ANNEXURE P- 1

MAHABALESHWAR GIRISTHAN MUNICIPAL COUNCIL,
MAHABALESHWAR, DIST. SATARA- 412806

Municipal office no. 60220 Chief officer no. 60673

President office no. 60232 Chief officer res. No 60671

V.S. NO. 15/527 Date; 23-1-2002

Notice

You are do hereby informed that on inspection of the property comprised in C.S. no. 111-b, house no. 86-b situated within the municipal council, as on today that is 22-1-2002 it is found that the wall from the eastern side is swollen and there are cracks. It is also found that the wooden pillars, wood is damaged and ceiling also has turned out of shape. Due to this the danger to the house is apprehended. There is risk to the persons residing in the house as well as the persons coming and going. At anytime thre is possibility of collapsing the said dangerous building due to which there is possibility of fatalities and the financial loss. Hence vide this notice it is to inform you to demolish the said dangerous portion immediately on receipt of this notice otherwise if any fatality occurs or the financial loss occurs due to the said house then municipal council will not be responsible and the entire responsibility will lie in your part. And please note the same.

Sd/-
Chief officer
Mahabaleshwar Giristhan
Municipal council

To,
Baitulla Ismail sheikh and C.K. Aris.
Vasant Mahadev Gujar
Khatija Ismail Panhalkar"

3. Notices for eviction were subsequently sent to the tenants in each appeal and both these notices are dated 04.02.2002. So far as the notice to the respondents in Civil Appeal No. 1543 of 2016 is concerned, the delivery of vacant possession was asked for on five main grounds. The first one was default in payment of rent. The next ground was erection of a permanent structure by the tenant without permission of the landlord. The third point was subletting and it was also stated in that notice that the landlords had decided to construct a building thereon for residential purpose as also for operating a hotel. Under Section 16(1)(i) of the 1999 Act, the erection of a new building could come within "reasonable and bona fide" requirement of landlord, subject to satisfaction of certain other stipulated conditions. The municipality's demolition notice was also cited as a ground for eviction. We shall reproduce provisions of Sections 15 and 16 of the said enactment in subsequent paragraphs of this judgment. In the eviction notice to the respondent in Civil Appeal No. 1544 of 2016, the grounds cited were, inter-alia, issue of the demolition notice by the municipality, default in payment of rent and also necessity of the tenanted portion for construction of a new building upon demolishing the structures on the land.

4. As the eviction notices did not yield any result, the two suits were instituted on the same date, i.e. 07.08.2002. These suits appear to have had been tried simultaneously and they were decreed by the Trial Court, which was sustained by the Appellate Court. In the Civil Revision Petition, the tenants succeeded as the judgment and decree were set aside.

5. In course of the proceeding before the Trial Court, a Commissioner was appointed. He was an architect. His opinion, however, was not accepted by the Trial Court. He had given his opinion that a portion referred to as "C" in his report was dangerous and was required to be demolished. This portion, however, was in possession of the plaintiffs only, but adjacent to the suit property (in Civil Appeal No. 1543 of 2016). Though his report dated 08.12.2008 carries the caption of suit no. (239 of 2002) 136 of 2010, the report was examined by the Trial Court in connection with both the suits. His report on the necessity of urgent demolition of the tenanted portions was not fully conclusive but his view was that the entire building was about 97 years old and life of the building was over. His opinion has been referred to and dealt with by the Trial Court in the following terms:-

> *"16) In this respect I have perused evidence of D.W.1 Vivek and his commission report at Exh.122. It is pertinent to note that in the commission report Exh.122, the commissioner has given actual position of every room situated in C.T.S.No.111/B. In his conclusion he has opined that, the building is approximately 96 to 97 years old and the life of building is over. Considering all the material he opined that the portion shown as 'C' in the map is dangerous and is required to be demolished. It is important to note that, said portion shown as 'C' is the room which is in possession of plaintiffs and adjacent to suit property. The commissioner has also filed number of photographs showing the position of property at Exh. 135 to Exh. 148. Further, if D.W.1 Vivek's deposition is perused it is clear that he has supported his commission report. In cross examination, he admitted that, if the cementing strength of soi! used for construction is gone then there may be cracks to the wall ·and to reconstruct the said wall the previous wall is required to be demolished, further, if the base of construction is not strong then new construction can also collapse. He further admitted that, if the portion shown by red ink in the map i.e. 'C' is demolished the entire roof on the property is also required to be removed and if said roof is removed it will create danger to the roof of the property on the western side and ta the roof on 'B' portion.* ***Further, if total evidence of D.W.1 Vivek is considered it cannot be said that, he had opined that, suit property is in dilapidated condition though he had admitted that the life of suit property is over****."*
>
> **(Emphasis supplied)**

6. It would be evident from this part of the judgment of the Trial Court that there was no specific finding that the portions in respect of which the respondents have tenancy required immediate demolition. It was a portion of the premises in possession of the landlords which, in the opinion of the Commissioner was dangerous. The Trial Court proceeded on the basis that it could not sit in appeal over the decision of Municipal Council requiring demolition. On plaintiffs' plea of default, the Trial Court rejected that contention holding that the tenants were

ready and willing to pay the rent of the suit property and during the pendency of the suit, they had deposited the rent. The Trial Court also rejected the landlord's contention that the subject-property was sublet or permanent structure was made without consent of the landlord. The Trial Court, however, opined that the landlord was the best judge of his own requirement and on that basis the issue of *bona fide* need was decided in favour of the appellants.

7. The Appellate Court sustained the judgment and decree on the ground of *bona fide* need as also necessity to effect demolition of the subject-building. In addition, it overturned the Trial Court's finding on there being no default in payment of rent on the ground that the provisions of Section 15(3) of the 1999 Act could not support the tenant's case. On the question of permanent structure having been made by the respondent in Civil Appeal No. 1543 of 2016 without permission of the landlord and question of sub-letting, the Trial Court's decision was sustained.

8. The Revisional Court on analysing the provisions of Sections 15 and 16 of the said Statute set aside the judgment and decree and allowed the revision applications of the tenants.

9. The provisions of Sections 15 and 16 of the 1999 Act stipulate:-

"15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;

Explanation.- For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation.- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

(c) *that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of section 280 or of section 281 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or*

(d) *that the tenant has given notice to quit and in consequence of that notice,the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or*

(e) *that the tenant has,-*

(i) *on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or*

(ii) *on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State,*

unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

(f) *that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or*

(g) *that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for*

whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

(j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace;

Explanation.-For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servants quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

(k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

(l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

(m) that the rent charged by the tenant for the premises or any part thereof which are sublet is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

(2) No decree for eviction shall be passed on the ground specified in clause (g) of subsection (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

Explanation. - For the purposes of clause (g) of sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

(3) A landlord shall not be entitled to recover possession of any premises under the provisions of clause (g) of sub-section (1), if the premises are let to the Central Government in a cantonment area, and such premises are being used for residence by members of the armed forces of the Union. or their families.

(4) The court may pass the decree on the ground specified in clause (h) or (i) of subsection (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repair or erection.

(5) Notwithstanding anything contained in any other law for the time being in force, an assignment of a decree for eviction obtained on the grounds specified in clauses (g), (h), (i) and (j) of sub-section (1) shall be unlawful.

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded. extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

(7) Where the possession of premises is recovered on the ground specified under clause (g), (h), (i) or (j) of sub-section (1) and the premises are transferred by the landlord, or by operation of law before the tenant or tenants are placed in occupation, then such transfer shall be subject to the rights and interests of such tenants.

(8) For the purposes of clause (m) of sub-section (1), the standard rent or permitted increase in respect of the part sub-let shall be the amounts bearing such proportion to the standard rent or permitted increases in respect of the premises as may be reasonable having regard to the extent of the part sub-let and other relevant considerations.

(9) Notwithstanding anything contained in this Act, where the premises let to any person include-

(i) the terrace or part thereof; or

(ii) any one or more of the following structures, that is to say, tower-rooms, sitting-outrooms, ornamental structures, architectural features, landings, attics on the terrace of a building, or one or more rooms of whatsoever description on such terrace (such room or rooms being in the aggregate of an area not more than one-sixth of the total area of the terrace); or

(iii) the terrace or part thereof and any such structure,

and the court is satisfied that the terrace or structure or terrace including structure, as aforesaid, are required by the landlord for the purpose of demolition and erection or raising of a floor or floors on such terrace, the landlord shall be entitled to recover possession of the terrace including such tower-rooms, sitting-out-rooms, ornamental structures, architectural features, landings, attics or rooms, the court may make such reduction, if any, in the rent as it may deem just.

(10) A suit for eviction on the grounds specified in clause (h), (i), (i) or (k) of sub-section (1) may be filed by the landlord jointly against all the tenants occupying the premises sought to be demolished."

10. The eviction proceeding was instituted in the suit giving rise to Civil Appeal No.1543 of 2016 against the appellants, inter-alia, on the grounds of having made construction of permanent nature by extending the area of the shop premises, without the landlords' consent, causing permanent damage to the property in question, causing nuisance and annoyance to the adjoining area and neighbouring occupiers as also inducting a relative as sub-tenant. It was pleaded by the appellants that because of rusting of beams holding the tenanted structure, the roof of the rented property was damaged as a result of which it had become dangerous for the occupation of human beings. Demolition notice issued by Mahabaleshwar Giristhan Municipal Council to the landlords dated 23.01.2002 was relied upon in the plaint in this regard. So far as the suit forming the basis of Civil Appeal No.1544 of 2016 is concerned, the grounds for eviction were default in the payment of rent, demolition notice having been issued by the Municipal Council on 23.01.2002, as also for necessity of having the premises for the purpose of carrying out construction for residential purpose and hotel. This requirement, the appellant argued, constituted *bona fide* requirement by the landlord. On the finding of the Appellate Court that there was default in payment of rent, the High Court held:-

"12(c) The Appeal Court has committed an error of law, apparent on face of record in interpreting Section 15 of the Rent Act, in the manner it has. The interpretation is contrary to both, the text as well as the rulings of this Court on the subject. This is a case where ·rents were regularly offered and dispatched by way of money orders.

> *The rents were, however, refused by the landlords. In such circumstances, there is no obligation upon the tenants to comply with conditions prescribed in Section 15(3) of the Rent Act. It is always open to a tenant to establish and prove that the tenant was always ready and willing to pay rent and therefore, there was no cause of action to even initiate proceedings for eviction under Section 15(1) of the Rent Act. Besides, a careful perusal of the impugned orders would indicate that concurrently the two Courts have accepted that there was no default in payment of rents. There is, in any case, ample evidence on record to establish that there was no default in payment of rent;"*

11. The Revisional Court examining the question of reasonable and *bona fide* requirement of the landlords found eviction was sought for demolishing the suit premises and erecting a new building thereon. In the opinion of the High Court, it was incumbent on the part of the fact finding fora to come to a finding on that question and record satisfaction as required under sub-sections (4), (5), (6) and (7) of Section 16 of the 1999 Act. We have quoted above Section 16 of the 1999 Act. The High Court appears to have connected the claim based on reasonable and *bona fide* requirement to Sections 16 (1) (h) and (i) of the said statute. Though these two provisions apply in different contexts, sub-section (4) thereof requires the Court to carry out an exercise to determine which part of the rented-out premises ought to be vacated for carrying out the work of repair or erection. The first two fora did not address this question, which is a statutory requirement. A three-Judge Bench of this Court, in the case of **P. ORR & Sons (P) Ltd. -vs- Associated Publishers (Madras) Ltd.** [(1991) 1 SCC 301] dealing with a provision similar to Section 16(1) (i) contained in the rent legislation for the State of Tamil Nadu, Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 opined that the condition of building had to be considered for determining the legitimacy of the demand for timely demolition by reason of extent of damage to the structure, apart from considering other factors. It was also pointed out in this judgment that there was no necessity of the building being in crumbling condition to invoke the said provision. This view was echoed in a Constitution Bench judgment of this Court in the case of **Vijay Singh and Others -vs- Vijayalakshmi Ammal** [(1996) 6 SCC 475]. But these authorities do not clash with

the reasoning of the High Court anchored on Section 16(4) of the 1999 Act. That provision lays down an entirely different test, and that is to ascertain if part-demolition could save the tenant's interest. Dealing with claim based on Section 16(1)(h) and (i) of the 1999 Act, the statutory mandate for the Court is to test the question of part vacating. Neither the Trial Court nor the Appellate Court chose to analyse this requirement before directing eviction. This provision becomes relevant as the initial demolition notice identifies a part of the premises requiring demolition and the Commissioner's report is also on that line. Sub-section (2) of Section 16 relates to reasonable and *bona fide* need in terms of Section 16(1)(g) and if the requirement is in the aforesaid terms, then the Court has to be satisfied having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant. This provision essentially incorporates the principle of "comparative hardship", as such a test has come to be known in tenancy jurisprudence. We have been taken through the judgments of the Trial Court and the Appellate Court on this point. The Appellate Court came to the finding that balance on this point tilts in favour of the landlord. The High Court rejected this finding, holding:-

> *"54] However, the respondent-landlords, have not at all been candid with the Court insofar as the pleadings are concerned. In the course of evidence, it has come on record that the respondent-landlords have, besides the suit premises several other premises, which are being used by them for purposes of commerce as well as residence. Some of the premises, may have been acquired post the institution of the suit including in particular, the premises acquired by one of the sons of Baitullah Shaikh. Nevertheless, there were no disclosures volunteered in the course of examination-in-chief. Even if, the premises subsequently acquired are left out of consideration, there was a duty upon the respondent-landlords to fully and candidly make disclosure about the premises in their occupation, both for the purposes of residence as well as commerce and thereafter to explain, howsoever briefly, the subsistence of the need in respect of suit premises. The respondent-landlords have completely failed in this aspect. Such non-disclosure is a relevant consideration in the context of determining both the reasonability as well as bona fides.*

> *55] The tenants have managed to bring on record the material in the context of occupation and control of several premises by the respondent-landlords. Looking to the conduct of the respondent-*
>
> *landlords, there is no certainty as to whether the premises in respect of which the tenants have obtained and produced documents, are only premises which are in the occupation or control of the respondent-landlords or whether there are some others as well.*
>
> *However, even on basis of the existing material on record, there was no question of making any decree under Section 16(1) (g) of the Rent Act."*

We affirm the view taken by the High Court that there was no satisfaction in the manner contemplated in Section 16 (2) of the 1999 Act as far as *bona fide* need in terms of Section 16(1)(g) was concerned. In the impugned judgment, the High Court has dealt with in detail the list of properties which were with the landlords and on that basis gave its own finding in that regard. We do not find any perversity in such view taken by the High Court.

12. Sub-section (6) of Section 16 also mandates satisfaction of the conditions stipulated in sub-clauses (a) to (d) thereof. Sub-clause (d) in particular, contemplates the landlord to give undertaking in terms of paragraphs (i), (ii), (iv) and (v) of that sub-clause, while dealing with landlord's eviction claim based on Section 16(1)(i) of the said statute. These are all mandatory requirements and we cannot find any flaw with the judgment of the High Court to the extent it rejects the claim of the landlord for non-compliance of the aforesaid provisions.

13. Section 16(1)(k) of the said Act permits recovery of possession of tenanted premises on the ground that the premises are required for immediate purpose of demolition ordered by any municipal or other competent authority. In the present case, the respective suits were instituted seeking recovery of possession, inter-alia, under this provision. We have already referred to the demolition notice issued by the municipal authority. The High Court opined that it was necessary to satisfy itself that the suit premises were required for immediate purpose of demolition. Contention of the appellants is that the Statute does not require the Court to come to a satisfaction on this point. In the event a tenant questions immediacy of demolition,

then the proper course for him would be to question legality of the said notice. Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("1965 Act") to which the High Court has also referred to, stipulates:-

> *"195. (1) If it shall at any time appear to the Chief Officer that any building or other structure or anything affixed to such building or structure is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or structure or any other structure or place in the neighbourhood thereof, the Chief Officer may, by written notice, require the owner or occupier of such building or structure to pull down, secure, remove or repair such building, structure or thing or do one or more such things and to prevent all causes of danger therefrom.*
>
> *(2) The Chief Officer may also, if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to put down, secure, remove or repair the said building, structure or thing, to set up a proper and sufficient board or fence for the protection of passers by and other persons.*
>
> *(3) If it appears to the Chief Officer that the danger from a building, structure or thing which is ruinous or about to fall is of hourly imminence he shall, before giving notice as aforesaid or before the period of notice expires, fence of, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.*
>
> *(4) Any expenses incurred by the Chief Officer under sub-section (3) shall be paid by the owner or occupier of the structure and shall be recoverable in the same manner as an amount due on account of a property tax."*

14. The High Court found fault with the demolition notice as it carried no reference to the said provision (Section 195 of the 1965 Act). This flaw, by itself would not make the notice unenforceable. Omission to label a notice with the provision under which it is issued would not make it nugatory, if substance thereof is clearly conveyed. But the High Court also found:-

"76…Further, the notice is not directly in the context of suit premises occupied by the tenants, but rather pertains to certain portions of House No.86B. The notice, does not require demolition of the entire House No.86B, but rather requires removal of portions thereof, including in particular eastern wall, rafters and roofing. On basis of such notice, it is difficult to sustain an eviction order under Section 16(1)(k) of the Rent Act, particularly where no satisfaction whatsoever has been recorded by the two Courts on the aspect of 'immediate purpose of demolition', which satisfaction, was required to be recorded, both in terms of the context of Section 16(1)(k) of the Rent Act as also the decision of this Court in case of M.L Sonavane (supra).

77] There is yet another significant aspect in the context of order of eviction under Section 16(1)(k) of the Rent Act. On 6 August 2002, the tenants lodged the complaint to the Municipal Authorities that the landlord Baitulla Shaikh was deliberately indulging in weakening of the walls of the portion of House N0.86, in his possession, with the objective of weakening the entire structure. Based upon such complaint, on 29 August 2002, an inspection was held by the Municipal Authority. Upon finding some merit in the complaint of the tenants, the decision was taken to issue appropriate notice to the landlords Baitulla Shaikh and C.K. Aris, Hamid. Pursuant to such decision, the Municipal Authority, by notice dated 29 August 2002, notified the landlords that during inspection it was revealed that the landlords are illegally and unauthorisedly weakening the walls of House No. 86 and that in future, if the wall collapses and causes loss to the life and property of the tenants, then, it is the landlords, who will be entirely responsible for the same. The documents like compliant of the tenants, inspection report as well as notice dated 29 August 2002 have been proved in the course of evidence and have been marked as Exhibits 223, 224 and 225. This vital material has been completely ignored by the two Courts. Exclusion of relevant and vital material, is also a species of perversity in the record of any finding of fact. The Court Commissioner was also appointed and even the Report

of the Court Commissioner does not make out the case that the premises were required for immediate purpose of demolition. The evidence of the Municipal Engineers as well as the Court Commissioner, at the highest indicates that certain portions of House No.86 are in need of repairs. But the evidence does not make out any case that the suit premises were required for the immediate purpose of demolition. By virtually ignoring such material, the two Courts have proceeded to make a decree of eviction under Section 16(1)(k) of the Rent Act. This is an exercise in excess of jurisdiction. There is both illegality as well as material irregularity in the record of findings of fact, inasmuch as the Courts have failed to ask itself correct question in the context of 'immediate purpose' and further failed to consider relevant circumstances, rather the two Courts have allowed themselves to be persuaded by irrelevant circumstances."

(quoted verbatim from the paperbook)

15. Scope of Section 195 of the 1965 Act has been examined by the Bombay High Court in its judgment in the case of **M.L. Sonavane -vs- C.G. Sonar** [1981 (1) All India Rent Control Journal 466]. It is recorded in this judgment:-

"25. The more pertinent question however, is, whether the satisfaction of a local authority can be a substitute for the satisfaction of a court. The court must be satisfied as the section says of two things. It must be satisfied that a decree for possession has to be passed against a tenant and secondly, "premises are required for the immediate purposes of demolition." Unless the court is satisfied about the existence of both these things, it would be difficult to see how a court can pass a decree for eviction against a tenant. The satisfaction must relate to the requirement of passing a decree for possession against the tenant, and the immediate necessity of demolition. The satisfaction of the court is not a substitute for the satisfaction of the local authority. Nor is it that the court must itself inquire that the premises are in such a ruinous condition that they are required to be demolished. That satisfaction is relegated to

> *the local authority. But, even apart from that satisfaction, an area of satisfaction is still reserved for the court by the terms of the section, which deals with that satisfaction with regard to the passing of a decree for possession against the tenant, such satisfaction has also to be with regard to the immediate purpose of demolition. It is there and under those circumstances that the subsequent events and actions enter into the considerations of the court. If the court is satisfied on a consideration of the subsequent events that the premises are not required "for the immediate purposes of demolition," then, notwithstanding the order passed, upon a bona fide exercise of the power by the local authority, the court may still refuse to pass a decree. To my mind, that is the decision and principle laid down in 72 Bombay Law Reporter 569 and the judgment of Justice Patel referred earlier."*

16. After holding that the satisfaction contemplated in the aforesaid provision is that of the local authority in a suit for eviction, it has been held that an area of satisfaction is still reserved for the Court. Court has to examine if there is immediacy of the need for demolition. Broadly, the same view has been taken by the Bombay High Court in a later judgment, in the case of **Manohar Prabhumal Rajpal -vs- Satara City Municipal Corporation, Satara and Another** [(1993) 1 All India Rent Control Journal 81]. In this judgment, the Court dealt with an eviction suit filed under the provisions of Section 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("1947 Act"). The said provision is near identical to the provisions of Section 16(1)(k) of the Rent Control Act, 1999. While analysing the said provision of the 1947 Act, the High Court had held that the Trial Court while examining a plea for decree under similar statutory provision cannot sit in appeal over the decision of the local authority once the latter had exercised its power after taking into relevant factors into consideration. In our opinion, these two decisions lay down the correct principles of law for construing the provisions of Section 16(1)(k) of the 1999 Act. We accept the appellant's argument that the Court trying an eviction proceeding under the aforesaid provision has very limited role in determining as to whether demolition is really necessary or not, but it does not automatically follow therefrom that the Court would mechanically

adopt the view of municipal authority of there being urgent need of demolition. The conditions under which a landlord can bring an eviction action under clauses (i) and (k) of Section 16(1) are different in their operations. In respect of an eviction proceeding founded on the former provision, it contemplates a lesser degree of immediacy or urgency, as held in the Constitution Bench judgment which we have referred to above. But the latter provision requires a greater degree of urgency and it is within the jurisdiction of the Court to test this factor, as held in the cases of **M.L. Sonvane** (supra) and **Manohar P. Rampal** (supra). Both the fact finding fora failed on this count.

17. On behalf of the appellants, it was brought to our notice that after the first demolition notice on 23.01.2002, three other notices were issued. Obviously the two fact finding Courts did not consider these notices as they did not form part of cause of action and it also does not appear that the said facts were admitted to be brought on the record by way of amendment of plaint or otherwise. These notices would run their own course and we also do not want to take cognizance of these subsequent notices as it would be up to the authorities to take such steps as may be permissible in law in respect of the subsequent notices. The tenants shall also be entitled to question the legality thereof, if so advised.

18. We are conscious that the Revisional Court was examining a judgment and decree already tested by the Appellate Forum and on facts, decree was made. Ordinarily the Revisional Court ought not to interfere with findings on fact. But in the judgment under appeal, we find that the Revisional Court has fitted the facts with the legal provisions and found that there was mismatch on the basis of which the judgment and decree were set aside. We have been taken through the judgment of the Revisional Court and do not find any flaw that needs re-appreciation. We accordingly dismiss both the appeals.

19. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan *Result of the case:* Appeals dismissed.

[2024] 1 S.C.R. 1128 : 2024 INSC 75

Shatrughna Atmaram Patil & Ors. v. Vinod Dodhu Chaudhary & Anr.

(Special Leave Petition (Crl.) No. 14585 of 2023)

30 January 2024

[Vikram Nath* And Satish Chandra Sharma, JJ.]

Issue for Consideration

One R (owner) sold premises in dispute to five persons. Thereafter, R committed suicide and left behind a suicide note, naming the tenants, who were in possession of premises in question, as abettors. On the strength of the same, a complaint was made to the local police. The tenants were held in police station and the premises in question were demolished with the help of local police. Thereafter, two tenants filed complaint u/s. 156(3) Cr.P.C., which was forwarded to the concerned Police Station for registration and investigation. The High Court approved the order of the investigation.

Headnotes

Settlement – During the pendency of the petitions, a settlement was arrived between the parties:

Held: During the pendency of the petitions, it appears that some settlement has been arrived at between the complainants and the 13 accused – The subsequent purchasers (of the premises in question) have paid an amount of Rs. 10 lacs to each of the tenants, and in lieu thereof, the tenants have filed their affidavits stating that they do not wish to further prosecute their complaint – The details of the bank drafts have also been mentioned in the affidavits filed by the tenants – Based on this settlement, it is prayed that these petitions may be allowed, and the proceedings arising out of the two criminal complaints u/s. 156(3) Cr.P.C. be quashed – Since, losses of tenants having been compensated, any further investigation or trial would be an exercise in futility. [Paras 7 and 8]

Cost – Imposition of – Role of the police personnel in conspiring and abetting the crime of the illegal detention of

* Author

the tenants, coercing them to sign the document against their will, and getting the premises in question demolished without any order from a competent Court:

Held: It is directed that the six police personnel will suffer a cost of Rs. 6.0 lacs for each of the two complainants – Out of the six police personnel, three are constables, one is a Head Constable, one is a Sub-Inspector, and one is an Inspector – They shall suffer a cost of Rs. 50,000/- per Constable, Rs.1,00,000/- by the Head Constable, Rs. 1.50 lacs by the Sub-Inspector, and Rs. 2.0 lacs by the Inspector, totalling Rs. 6.0 lacs for each case with the above distribution. [Para 10]

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List Keywords

Suicide; Suicide note; Tenants; Abettors; Demolition of property; Complaint; Investigation; Settlement; Compensation; Cost; Imposition of cost on Police Personnel.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No.14585 of 2023.

From the Judgment and Order dated 23.10.2023 of the High Court of Judicature at Bombay at Aurangabad in CRLWP No.474 of 2023.

With

SLP. (Crl.) Nos.14572, 14734-14735, 15433 and 15294 of 2023

Appearances for Parties

Rahul Chitnis, Hersh Desai, Ms. Shwetal Shepal, Chander Shekhar Ashri, Sudhanshu S. Choudhari, Ms. Rucha A. Pande, M. Veeraragavan, Ms. Gautami Yadav, Ms. Pranjal Chapalgaonkar, Ravindra Keshavrao Adsure, Jitendra Patil, Sagar Nandkumar Pahune Patil, Yash Prashant Sonavane, Advs. for the Petitioners.

Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Raavi Sharma, Ms. Yamini Singh, Anish R. Shah, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. The premises in question were in the possession of three tenants. However, for the present, we are concerned with only two tenants, namely Vijaykumar Vishwanath Dhawale and Vinod Dodhu Chaudhary. As the third tenant had not filed any complaint and only the above two named complainants have filed the complaint, that is why the third tenant is not a party to the proceedings.

2. The premises in dispute were owned by one Rajeev Ramrao Chavan. He sold the property to five persons, namely Sanjay Nathmal Jain, Sunil Mishrilal Jain, Manoj Mishrilal Jain, Ghanshyam Bansilal Agrawal and Prasannachand Sobhagmal Parakh, vide registered sale deed dated 27.10.2021. Unfortunately, Rajeev Ramrao Chavan, the vendor of the sale deed dated 27.10.2021, died allegedly having committed suicide on 08.03.2022 and having left behind a suicide note, naming the tenants as abettors. On the strength of the same, a complaint was made to the local police. However, an accidental death was registered, but no FIR[1] was registered under Section 306 of the Indian Penal Code, 1860[2].

3. Soon thereafter, i.e., on 09.03.2022, the tenants were called to the concerned Police Station. They were held for about 24 hours, and in the meantime, the premises in question were demolished by the brother of the deceased-vendor, his widow, and with the support of the local police. At the Police Station, the tenants were also forced to sign some documents, apparently giving their consent of vacating the premises voluntarily.

4. The two tenants, Vijaykumar Vishwanath Dhawale and Vinod Dodhu Chaudhary lodged complaint initially with the Police Station, but as the same was not acknowledged, they moved an application before the concerned Magistrate under Section 156(3) of Code of Criminal Procedure, 1973[3]. In the complaint made by the two tenants, 13

1 First Information Report

2 'IPC'

3 In short, "Cr.P.C."

accused were named, namely Dr. Sanjeev Ramrao Chavan i.e. brother of the deceased, Smita Rajeev Chavan i.e. widow of the deceased, the five purchasers mentioned above under the sale deed dated 27.10.2021, and six police personnel namely, Shatrughna Atmaram Patil, Jaipal Manikrao Hire, Milind Ashok Bhamare, Suryakant Raghunath Salunkhe, Nilesh Subhash More and Sunil Kautik Hatkar.

5. The learned Magistrate, dealing with the Section 156(3) Cr.P.C. application, instead of directing the police to register the FIR and investigate, passed an order on 20.12.2022 for an inquiry under Section 202 Cr.P.C., confining it to the involvement of the brother of the deceased, widow of the deceased, and the five purchasers. This order of the Magistrate was challenged by the tenants/complainants before the Sessions Judge. The Sessions Judge vide order dated 23.03.2023, allowed the revision and directed that the complaint filed before the Magistrate under Section 156(3) Cr.P.C. be forwarded to the concerned Police Station for registration and investigation.

6. The order of the Revisional Court dated 23.03.2023 was challenged before the High Court by all the 13 accused through separate petitions titled under Section 482 Cr.P.C. and Article 227 of the Constitution of India. The High Court, while deciding these petitions, not only approved the order of the Sessions Judge but also issued further directions regarding investigation, by the impugned order dated 23.10.2023. It is this order which is under challenge before us by way of these six petitions. Special Leave Petition (Crl.) No. 15433 of 2023 and Special Leave Petition (Crl.) No. 15294 of 2023 have been filed by the brother of the deceased with respect to the two complaints made by the two tenants. Special Leave Petition (Crl.) Nos. 14734-14735 of 2023 have been filed by the five purchasers under the sale deed dated 27.10.2021 again with respect to the two complaints filed by the two tenants. Special Leave Petition (Crl.) No. 14585 of 2023 and Special Leave Petition (Crl.) No. 14572 of 2023 have been filed by the six police personnel again arising out of the two complaints filed by the two tenants.

7. During the pendency of the petitions, it appears that some settlement has been arrived at between the complainants and the 13 accused. The subsequent purchasers have paid an amount of Rs. 10 lacs to each of the tenants, and in lieu thereof, the tenants have filed their affidavits stating that they do not wish to further prosecute their complaint. The details of the bank drafts have also been mentioned

in the affidavits filed by the tenants along with Criminal Miscellaneous Petition No. 8150 of 2024 in Special Leave Petition (Crl.) Nos. 14734-14735 of 2023. Based on this settlement, it is prayed that these petitions may be allowed, and the proceedings arising out of the two criminal complaints under Section 156(3) Cr.P.C. be quashed.

8. From the factual matrix as recorded above, we find that the continuance of these two criminal proceedings would not be of any avail once the complainant has himself stated to withdraw the complaint. Their losses having been compensated, any further investigation or trial would be an exercise in futility.

9. The compensation for the tenants has been given by the subsequent purchasers, as stated in the affidavits, apparently for the reason that they are now the owners of the property and they have been instrumental in carrying out the demolition illegally. The widow of the deceased (although not a party before us) and the brother may not be having any further interest inasmuch as the property had already been sold by the deceased four and half months prior to his death. However, what we are not satisfied with is why the police personnel have been allowed to go scot-free in a case where they had an apparent roll in conspiring and in abetting the crime of the illegal detention of the tenants, coercing them to sign the document against their will, and getting the premises in question demolished without any order from a competent Court.

10. We, accordingly, direct that the six police personnel will suffer a cost of Rs. 6.0 lacs for each of the two complainants. Out of the six police personnel, three are constables, one is a Head Constable, one is a Sub-Inspector, and one is an Inspector. They shall suffer a cost of Rs. 50,000/- per Constable, Rs.1,00,000/- by the Head Constable, Rs. 1.50 lacs by the Sub-Inspector, and Rs. 2.0 lacs by the Inspector, totalling Rs. 6.0 lacs for each case with the above distribution. This amount shall be deposited in Account No. 90552010165915 of the Armed Forces Battle Casualties Welfare Fund, Canara Bank, Branch South Block, Defence Headquarters, within four weeks from today. After depositing the said amount in the aforesaid fund, they shall file proof of deposit with the Registry of this Court within six weeks and also before the Magistrate and the High Court. Upon deposit of the said amount, the proceedings of the two complaint cases shall stand quashed and closed.

11. We, however, make it clear that any observations made and also the direction to suffer compensation to the tenants by the six police personnel will not be treated as adverse to their interest in consideration of their promotions etc. that is to say that this order may not be kept in their service records.

12. It is further made clear that if the proof of deposit is not filed within the stipulated time, these petitions filed by the police personnel would stand dismissed.

13. In light of the above, Special Leave Petition (Crl.) No. 15433 of 2023, Special Leave Petition (Crl.) No. 15294 of 2023 and Special Leave Petition (Crl.) Nos. 14734-14735 of 2023 are allowed. Special Leave Petition (Crl.) No. 14572 of 2023 and Special Leave Petition (Crl.) No. 14585 of 2023 are also allowed, subject to fulfilment of the aforesaid condition.

Headnotes prepared by: Ankit Gyan

Result of the case: Special Leave Petitions disposed of.

[2024] 1 S.C.R. 1134 : 2024 INSC 72

Sachin Garg
v.
State of U.P & Anr.

(Criminal Appeal No. 497 of 2024)

30 January 2024

[Aniruddha Bose* and Sanjay Kumar, JJ.]

Issue for Consideration

In a case wherein the dispute was commercial in nature having no element of criminality, whether the Magistrate was justified in issuing summons for trial u/ss.406, 504 and 506, Penal Code, 1860 and the High Court in dismissing the application filed by the appellant for quashing said summons and the complaint case.

Headnotes

Code of Criminal Procedure, 1973 – Issuance of summons, duty of Magistrate – Penal Code, 1860 – ss.406, 504 and 506 – Commercial dispute given criminal colour – Dispute between the parties related to the rate at which the assigned work was to be done – Respondent no.2 filed complaint case – Summons issued by Magistrate for trial u/ss.406, 504 and 506, IPC – Application filed by the appellant for quashing the summons and the complaint case, dismissed by High Court – Propriety:

Held: Past commercial relationship between the appellant's employer and the respondent no.2 was admitted – Dispute between the parties centred around the rate at which the assigned work was to be done – Neither in the complaint petition nor in the initial deposition of the two witnesses (including the complainant), the ingredients of the offence u/s.405, IPC surfaced – Such commercial disputes over variation of rate cannot per se give rise to an offence u/s.405, IPC without presence of any aggravating factor leading to the substantiation of its ingredients – No material to come to a prima facie finding that there was dishonest misappropriation or conversion of any material for the personal use of the appellant in relation to gas supplying work done by the respondent no.2 – The said work was done in course of regular commercial transactions – There was no misappropriation or conversion of the subject property,

* Author

being Dissolved Acetylene Gas which was supplied to the factory for the purpose of battery manufacturing at EIL – No evidence for commission of offence u/s.405/406, IPC – Further, as regards criminal intimidation also there was a mere bald allegation, short of any particulars as regards to the manner in which threat was conveyed – While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding – Magistrate's order issuing summons reflects his satisfaction in a cryptic manner – At the stage of issue of summons, though detailed reasoning as to why a Magistrate is issuing summons is not necessary but in the present case, the allegations made by the complainant do not give rise to the offences for which the appellant was summoned for trial – A commercial dispute, which ought to have been resolved through the forum of Civil Court was given criminal colour by lifting certain words or phrases from the penal code and implanting them in a criminal complaint – Magistrate failed to apply his mind in issuing summons and the High Court failed to exercise its jurisdiction u/s.482, 1973 Code – Impugned judgment set aside, complaint and summoning order quashed. [Paras 14, 17 and 18]

Code of Criminal Procedure, 1973 – s.482 – Jurisdiction – Discussed.

Code of Criminal Procedure, 1973 – Summons issued by Magistrate for trial u/ss.406, 504 and 506, IPC in the complaint case filed by Respondent no.2 – Appellant sought dismissal of the complaint on the ground that the complaint should not have been entertained without arraigning the principal company as an accused:

Held: The perceived wrongdoing was attributed to the appellant, though the complaint petition acknowledges that the job-work was being done for EIL (appellant's employer) – Moreover, the allegation of criminal intimidation was against the appellant directly, whatever be the value or quality of such allegations – Thus, for that reason the complaint case cannot be rejected at the nascent stage on the sole ground of not implicating the company – However, the complaint and the summons quashed for the reasons given. [Para 20]

Case Law Cited

Sharad Kumar Sanghi vs Sangita Rane [2015] 2 SCR 145 **: (2015) 12 SCC 781 – held inapplicable.**

Jagdish Ram vs State of Rajasthan and Another [2004] 2 SCR 846 **: (2004) 4 SCC 432 – relied on.**

Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and Ors., [2021] 4 SCR 1044 **: (2021) 19 SCC 401**; *R.P. Kapur vs State of Punjab*, [1960] 3 SCR 388 **: AIR (1960) SC 866;** *State of Haryana and Ors. vs Bhajan Lal and Ors.*, [1992] Supp. (3) SCR 735 : **(1992) SCC (Cr.) 426;** *State of Bihar and Anr. vs P. P. Sharma, IAS and Anr.*, [1991] 2 SCR 1 : **(1992) SCC (Cr.) 192;** *Zandu Pharmaceutical Works Ltd. and Ors. vs Mohd. Sharaful Haque and Another* [2004] Supp. (5) S.C.R. 790 : **(2005) SCC (Cr.) 283;** *Deepak Gaba and Ors. vs State of Uttar Pradesh and Another* **(2023) 3 SCC 423;** *Prof. R.K. Vijayasarathy and Anr. vs Sudha Seetharam and Anr.* [2019] 2 SCR 185 **: (2019) 16 SCC 739**; *Vijay Kumar Ghai and Ors. vs State of West Bengal and Ors.* [2022] 1 SCR 884 **: (2022) 7 SCC 124;** *Dalip Kaur and Ors. vs Jagnar Singh and Anr.*, [2009] 10 SCR 264 **: (2009) 14 SCC 696;** *Birla Corporation Ltd. vs Adventz Investments and Holdings Ltd. and Ors.*, [2019] 7 SCR 655 **: (2019) 16 SCC 610;** *Smt Nagawwa vs Veeranna Shivalingappa Konjalgi and Others* [1976] 1 Suppl. SCR 123 **: (1976) 3 SCC 736;** *Fiona Shrikhande vs State of Maharashtra and Another*, [2013] 9 SCR 240 **: (2013) 14 SCC 44;** *Binod Kumar and Ors. vs State of Bihar and Another*, [2014] 11 SCR 85 **: (2014) 10 SCC 663;** *Pepsi Foods Ltd. and Anr. vs Special Judicial Magistrate and Ors.*, [1997] 5 Suppl. SCR 12 **: (1998) 5 SCC 749 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Commercial dispute; Criminal colour; Stage of issuing summons; Duty of Magistrate; Quashing; Quashing of summons; Dishonest misappropriation/conversion of material for personal use; Criminal intimidation; Non-application of mind; Principal company not implicated.

Sachin Garg v. State of U.P. and Anr.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.497 of 2024.

From the Judgment and Order dated 23.03.2023 of the High Court of Judicature at Allahabad in A482 No.18603 of 2021.

Appearances for Parties

Mukul Rohatgi, Guru Krishna Kumar, Sr. Advs., Ms. Misha Rohatgi, Sushil Shukla, Nakul Mohta, Ms. Alina Merin Mathew, Muthu Thangathurai, Advs. for the Appellant.

Sarvesh Singh Baghel, Aviral Saxena, Arun Pratap Singh Rajawat, Ms. Vanshaja Shukla, Ms. Divya Jyoti Singh, Ms. Ankeeta Appanna, Manish Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

Leave granted.

2. The appellant, at the material point of time, stood posted as the Head of factory of Exide Industries Limited ("EIL"), a corporate entity, situated at Bawal, District Rewari, Haryana. The respondent no.2, ran a proprietary concern, Ambika Gases. He was the supplier of Dissolved Acetylene Gas ("DA Gas"), which is used for manufacturing battery in the said factory. So far as the present appeal is concerned, the dispute is over a purchase order issued for the supply of the said item. The original purchase order dated 01.04.2019 was amended twice on the basis of representations made by the respondent no.2. The first amendment was made on 18.07.2019 by which the rate was increased from Rs.1.55 per unit to Rs.1.65 per unit and the second amendment was made on 20.12.2019 through which the rate per unit was brought down to Rs.1.48 from Rs.1.65. An invoice was raised by the respondent no.2 with the aforesaid rates for a total sum of Rs.9,36,693.18/-. The dispute revolves around non-payment of the said sum. However, it has been contended by the appellant that EIL, after ascertaining the market price of DA Gas from other vendors, by a letter dated 29.06.2020, reconciled the accounts by informing respondent no.2 of what it claimed was foul play with respect to

revision of rates and appropriated the alleged illegal amounts claimed by the vendor (respondent no.2) from the invoice.

3. The respondent no.2 instituted a complaint case in the Court of the Chief Judicial Magistrate, Ghaziabad and the substance of the complaint would be revealed from the following passages of the petition of complaint (registered as Misc. Application No.317/2020):-

> *"….The Applicant through his aboenamed work do the job work of D.A. Gas. Opposite Party Sachin Garg is posted as Material Head of Exide Industries Ltd. situated at Plot No. 179, Sector-3, Bawal, District- Rewari, Haryana and Opposite Party Sachin Garg also used to issue Purchase Order to the Applicant's company on behalf of the Exide Company and only the Opposite Party Sachin Garg used to make payment of Job Work to the Applicant. Previously, the Transaction of Opposite Party was normal with the Applicant's company and no problem was ever persisted in the payment, due to which, the Applicant started trusting on the Opposite Party and Company. Sachin Garg through the aforesaid company in the capacity of Purchase Head, issued Purchase Order to the Applicant's Company, in which, it was agreed between the Opposite Party and Applicant to do job work @ Rs.1.65/- per piece w.e.f. 18.02.2019, which remained continued on the same rates till December, 2019 and the Opposite Party was regularly making the payment of job work to the Applicant on the same rates. In the month of December, in pursuance of the Purchase Order of Opposite Party, According to Purchase No. 4800253593 dated 01.04.2019, done the job work of Filled DA Gases HSN Code 290129910 quantity 3,07,114/- pieces @ Rs.165 to the tune of Rs.5,06,738.10/-, and Filled DA Gases H{SN Code 29012910 quantity 1,93,966/- pieces @ Rs.1.48 per piece to the tune of Rs. 2,87,069.68/- and 18% GST to the tune of Rs.1,42,885.40/-0, in this manner did the job work of total amount Rs.9,36,693.18/-. The material Head of Opposite Company namely Sachin Garg by admitting the job work done by the Applicant vide Purchaser Order No. 4800253593 dated 01.04.2019, and got done the job work according to the piece rate quoted by the Applicant. On 03.07.2020, Applicant sent*

Bill/Invoice No. AG.SR/20-21/01 dated 02.07.2020 of Rs.9,36,693.18/- to the Material Head of Opposite Party Company namely Sachin Garg through registered post and also sent the aforesaid invoice through email on 14.07.2020, which were received by Opposite Party Sachin Garg. Applicant repeatedly requested the Opposite Party for payment through email, but, the Opposite Party did not make payment of Rs.9,36,693.18/- of job work done by the Applicant Company in the month of December, 2019 and he by keeping the Applicant in dark, kept giving assurances of making full payment. When, the Applicant put more pressure on the Opposite Party for payment, then, Opposite Party stopped to get done the job work from the Applicant Company, and on 29.06.2020, sent a letter with quotation to the Applicant Company, in which, the Opposite Party has fixed the rate of job work done by the Applicant company @ Rs.1.40/- per piece w.e.f. April, 2019, whereas, the job work of Opposite Party was completed by the Applicant Company in the month of December, 2019, in which, Opposite Party on 20.12.2019, requested to change the rate of job work at the rate of Rs.1.48/- per piece, which was accepted by the Applicant w.e.f. 20.12.2019. In this manner, after 20.12.2019, Rs.1.48/- per piece and prior to that the rate of Rs.1.65/- per piece was payable by the Opposite Party, but, the Opposite Party with intention to cheat the Applicant in deliberate manner, and with intention to cause financial loss to him and not to pay the money, has committed criminal breach of trust with the Applicant, which is a cognizable offence. On demanding money by the Applicant, the Opposite Party is abusing him with filthy language and threatening him to kill….."

(quoted verbatim from the paperbook)

4. The learned Magistrate upon recording initial deposition of Saurabh Sharma, the proprietor of the supplier firm and his father Padam Kant Sharma issued summons for trial under Sections 406, 504 and 506 of the Indian Penal Code, 1860 ("1860 Code") on 18.08.2021.

5. The appellant had approached the High Court at Allahabad under Section 482 of Code of Criminal Procedure, 1973 ("the 1973 Code")

by filing, Criminal Miscellaneous Application No.18603/2021, for quashing the said summons and also the complaint case itself. The judgment of the High Court was delivered dismissing the application filed by the appellant on 23.03.2023 and it is this judgment which is under appeal before us. The main reason for dismissal of the appellant's quashing plea was that the subject-complaint involved adjudication of disputed questions of fact. Referring to the judgments of this Court in the cases of **Neeharika Infrastructure Pvt. Ltd. -vs- State of Maharashtra and Ors.** [(2021) 19 SCC 401], **R.P. Kapur -vs- State of Punjab** [AIR 1960 SC 866], **State of Haryana and Ors. -vs- Bhajan Lal and Ors.** [1992 SCC (Cr.) 426], **State of Bihar and Anr. -vs- P. P. Sharma, IAS and Anr.** [1992 SCC (Cr.) 192] and lastly **Zandu Pharmaceutical Works Ltd. and Ors. -vs- Mohd. Sharaful Haque and Another** [2005 SCC (Cr.) 283], the High Court refrained from considering the defence of the accused.

6. In the case of **Neeharika Infrastructure Ltd** (supra), a three-judge Bench of this Court examined the factors which were to be considered by the High Court for quashing an F.I.R. at the threshold, relating to factors which would apply to a proceeding which forms the subject-matter of the present case. Referring to the judgment in the case of **R.P. Kapur** (supra), principles for quashing were set down as:-

*"**10.1** The first case on the point which is required to be noticed is the decision of this Court in the case ofc8R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:*

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.""

7. In the same decision (i.e. **Neeharika Infrastructure Ltd**.) (supra), the seven-point edict laid down in the case of **Bhajan Lal** (supra) was also referred to. These are:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their

face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. It was observed in the judgment under appeal that the applicant has got the right of discharge which could be freely taken up by him before the Trial Court. Mr. Mukul Rohatgi, learned senior counsel has appeared in this matter on behalf of the appellant along with Mr. Guru Krishna Kumar, while the case of respondent no.2 has been argued by Ms. Divya Jyoti Singh. State was represented before us by Mr. Sarvesh Singh Baghel. The main contentions urged by Mr. Rohatgi is that the complaint made against the appellant does not disclose any criminal offence and at best, it is a commercial dispute, which ought to be determined by a Civil Court. In so far as the allegations of commission of offence under Sections 405 and 406 are concerned, he has relied on a judgment of this Court in the case of **Deepak Gaba and Ors. -vs- State of Uttar Pradesh and Another** [(2023) 3 SCC 423]. This decision deals with the basic ingredients of a complaint under Sections 405 and 406 of the 1860 Code and it has been held in this judgment:-

> *"15. For Section 405 IPC to be attracted, the following have to be established:*
>
> *(a) the accused was entrusted with property, or entrusted with dominion over property;*
>
> *(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
>
> *(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

9. The judgment in **Deepak Gaba** (supra) was delivered in a case in which there was subsisting commercial relationship between the parties and the complainant had made allegations of a forged demand, for a sum of around rupees six and a half lakhs. On that basis a summoning order was issued for trial under Section 406 of the 1860 Code. A coordinate Bench of this Court held:-

> *"17. However, in the instant case, materials on record fail to satisfy the ingredients of Section 405 IPC. The complaint does not directly refer to the ingredients of Section 405IPC*

> *and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account. On these aspects, the summoning order is equally quiet, albeit, it states that "a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of statements by Shubhankar P. Tomar and Sakshi Tilak Chand". A mere wrong demand or claim would not meet the conditions specified by Section 405IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405 IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405IPC, a mere dispute on monetary demand of Rs 6,37,252.16p, does not attract criminal prosecution under Section 406IPC."*

10. The same view was expressed by this Court in the cases of **Prof. R.K. Vijayasarathy and Anr. -vs- Sudha Seetharam and Anr.** [(2019) 16 SCC 739] and **Vijay Kumar Ghai and Ors. -vs- State of West Bengal and Ors.** [(2022) 7 SCC 124]. The judgment of this Court in the case of **Dalip Kaur and Ors. -vs- Jagnar Singh and Anr.** [(2009) 14 SCC 696] has also been cited in support of the appellant's case and in this decision it has been, inter-alia, held:-

> *"**10.** The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code."*

This goes for allegations relating to Section 406 of the 1860 Code.

11. So far as the allegations of commission of offence under Sections 504 and 506 of the 1860 Code are concerned, we have gone through the petition of complaint as well as the initial depositions. The allegations pertaining to the aforesaid provisions of the 1860 Code surfaces in the last portion of the petition of complaint. The complainant, in his initial deposition has not made any statement relatable to criminal intimidation. But his father made the following statement at that stage under Section 202 of the 1973 Code:-

> *"…With effect from 18.07.2019, the Opposite Party had fixed rate of job work as Rs.1.65/- per piece with the company of my son, which remained continued till December, 2019 and Opposite Party used to make payment of job work to my son, also on this rate and an amount of Rs. 9,36,693.18/- of my son was due for payment on the Opposite Party, due to which, he demanded the Opposite Party to make payment, but, Opposite Party did not make payment and after doing calculation on less rates, he said that no amount is due for payment and on demanding money, the Opposite Party has abused my son with filthy language and has threatened him to kill. An amount of Rs. 9,36,693.18/- of my son is due for payment on the Opposite Party, which he clearly refused to pay the same."*
>
> **(quoted verbatim from paperbook)**

12. On behalf of the complainant, it has been urged that a detailed description of the offending acts need not be disclosed at the stage at which the appellant wants invalidation of the complaint. He has drawn our attention to the judgment of this Court in the case of **Jagdish Ram -vs- State of Rajasthan and Another** [(2004) 4 SCC 432]. In this judgment it has been, inter-alia, held:-

> *"10.… It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient*

ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

Similar views have been expressed by this Court in the case of **Birla Corporation Ltd. -vs- Adventz Investments and Holdings Ltd. and Ors.** [(2019) 16 SCC 610] as also **Smt Nagawwa -vs-Veeranna Shivalingappa Konjalgi and Others** [(1976) 3 SCC 736].

13. As far as the allegations of criminal intimidation are concerned, our attention has been drawn to the judgment of this Court in the case of **Fiona Shrikhande -vs- State of Maharashtra and Another** [(2013) 14 SCC 44]. It has been held in this case that the petition of complaint need not repeat the actual words or language of insult word by word and the complaint has to be read as a whole. If the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence it should be sufficient to bring the complaint within the ambit of the aforesaid provision. It has also been argued on behalf of the respondent no.2 that the appellant in any event has got the right to apply for discharge and the petition of complaint does not suffer from the defect of not having made out any offence at all. This was the view taken by the High Court.

14. Past commercial relationship between the appellant’s employer and the respondent no.2 is admitted. It would also be evident from the petition of complaint the dispute between the parties centred around the rate at which the assigned work was to be done. Neither in the petition of complainant nor in the initial deposition of the two witnesses (that includes the complainant) the ingredients of the offence under Section 405 of the 1860 Code surfaced. Such commercial disputes over variation of rate cannot per se give rise to an offence under Section 405 of the 1860 Code without presence of any aggravating factor leading to the substantiation of its ingredients. We do not find any material to come to a prima facie finding that there was dishonest misappropriation or conversion of any material for the personal use of the appellant in relation to gas supplying work done by the respondent no.2. The said work was done in course of regular commercial transactions. It cannot be said that there was misappropriation

or conversion of the subject property, being dissolved acetylene gas which was supplied to the factory for the purpose of battery manufacturing at EIL. The dispute pertains to the revision of rate per unit in an ongoing commercial transaction. What has emerged from the petition of complaint and the initial deposition made in support thereof that the accused-appellant wanted a rate variation and the entire dispute arose out of such stand of the appellant. On the basis of these materials, it cannot be said that there was evidence for commission of offence under Section 405/406. The High Court also did not apply the test formulated in the case of **Dalip Kaur** (supra). We have narrated the relevant passage from that decision earlier.

15. In the case of **Binod Kumar and Ors. -vs- State of Bihar and Another** [(2014) 10 SCC 663], a coordinate Bench of this Court dealt with a criminal complaint arising out of retention of bill amount in course of commercial transaction. The Court found essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint were missing. The High Court's judgment rejecting the plea for quashing the criminal proceeding was set aside by this Court. The reasoning for quashing the criminal proceeding would be revealed from paragraphs 18 and 19 of the Report, which reads:-

> *"**18.** In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.*

> ***19.*** *Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."*

16. So far as the criminal complaint and the initial depositions with which we are concerned in this case, the factual basis is broadly similar. We have reproduced these materials earlier in this judgment. We do not find they carry the ingredients of offence as specified in Section 405 of the 1860 Code.

17. The allegation of criminal intimidation against the accused is made in the complaint statements made by the appellant, no particulars thereof have been given. Both in the complaint petition and the initial deposition of one of the witnesses, there is only reproduction of part of the statutory provision giving rise to the offence of criminal intimidation. This would constitute a mere bald allegation, short of any particulars as regards to the manner in which threat was conveyed.

18. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of **Jagdish Ram** (supra). The same proposition of law has been laid down in the case of **Pepsi Foods Ltd. and Anr. -vs- Special Judicial Magistrate and Ors.** [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to

apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court.

19. It is true that the appellant could seek discharge in course of the proceeding itself before the concerned Court, but here we find that no case at all has been made out that would justify invoking the machinery of the Criminal Courts. The dispute, per se, is commercial in nature having no element of criminality.

20. The appellant also wanted dismissal of the complaint and the orders passed in ensuing proceeding on another ground. The respondent no. 2's allegations were against EIL, for whom he did the job-work. The appellant's argument on this point is that the complaint should not have been entertained without arraigning the principal company as an accused. The judgment relied upon on this point is a decision of a Coordinate Bench in the case of **Sharad Kumar Sanghi -vs-Sangita Rane** [(2015) 12 SCC 781]. This was a case where complaint was made by a consumer for being sold a damaged vehicle under Section 420 of the 1860 Code. But arraigned as accused was the managing director of the dealer, the latter being a corporate entity. Cognizance was taken in that case and summons were issued. The accused failed to get relief after invoking the High Court's jurisdiction, but two-judge Bench of this Court quashed the proceeding primarily on the ground that the company was not made an accused. The Coordinate Bench found that the allegations were made against the company, which was not made a party. Allegations against the accused (managing director of that company) were vague. So far the present case is concerned, the ratio of the decision in the case of **Sharad Kumar Sanghi** (supra) would not be applicable for ousting the complaint at the threshold on this ground alone. The perceived wrongdoing in this case has been attributed to the appellant, though the complaint petition acknowledges that the job-work was being done for EIL. Moreover, the allegation of criminal intimidation is against the appellant directly – whatever be the value or quality of such allegations. Thus, for that reason the complaint case cannot be rejected at the nascent stage on the sole ground of not implicating the company. But as otherwise we have given our reasons for quashing the complaint and the summons, we do not find any reason to dilate further on this point.

21. We accordingly set aside the impugned judgment and quash the Criminal Complaint Case No.7990 of 2020 as also the summoning order issued on 18.08.2021. The appeal stands allowed in the above terms. All consequential steps in connection with the said proceeding shall stand quashed.

Headnotes prepared by: Divya Pandey *Result of the case:* Appeal allowed.

[2024] 1 S.C.R. 1151 : 2024 INSC 74

Gulshan Bajwa
v.
Registrar, High Court of Delhi & Anr.

(Criminal Appeal No. 577 of 2007)

30 January 2024

[Vikram Nath and Pamidighantam Sri Narasimha, JJ.]

Issue for Consideration

High Court exercising suo motu contempt jurisdiction against the appellant for repeatedly disobeying the orders of the court, and for casting aspersions and threatening the Judges hearing the matters, and thereafter, holding him guilty of criminal contempt and sentencing him, if calls for interference

Headnotes

Contempt of Courts Act, 1971 – Appellant-practising advocate and former army personnel threatened lady counsel appearing for the opposite side after seeking adjournment in the matter, repeatedly disobeyed orders, repeatedly failed to appear before the court despite attempts made to secure his presence and casted aspersions and threatened the Judges hearing the matters – Suo motu contempt jurisdiction exercised by the High Court – Appellant held guilty of criminal contempt and awarded a punishment of simple imprisonment of 3 months along with a fine of Rs. 2000, in each contempt proceeding – Interference with:

Held: Appellant's conduct before the High Court and even before this Court, amounts to undermining the system of the law and interfering with the course of justice administration – High Court observed a pattern in the behaviour of the appellant – He has had a habit of misbehaving with a Bench which is not agreeing with him – Misbehaviour goes to the extent of casting aspersions and threatening the Judges hearing the matters – High Court rightly held that there is need to maintain the dignity and reputation of judicial officers and to protect them from motivated, libellous and unfounded allegations which interfere with the administration of justice – Also, the High Court rightly rejected the apology tendered by the appellant since it was not bonafide and lacked in sincerity, apart from being belated and a mere 'lip service' – Furthermore, the appellant was trying to resort to forum shopping by asking this

Court to refer the matter to a judge who had issued notice in a connected matter – Appellant failed to see that notice in the lead matter was issued more than a decade and half ago – In view thereof, the finding of conviction against the appellant warrants no interference – However, considering his age and his medical ailments, the sentence imposed is modified from imprisonment for three months till the rising of the court. [Paras 17-18, 21, 22, 23]

Judicial independence – Protection of:

Held: Judicial independence ought to be protected from acts maligning the reputation of judicial officers – There is need to maintain the dignity of the Court and majesty of law. [Para 17]

Contempt of court – Apology tendered, when can be accepted:

Held: Apology must evidence remorse with respect to the contemptuous acts and is not to be used as a weapon to purge the guilty of their offence – An apology lacking in sincerity and not evidencing contriteness, cannot be accepted. [Para 22]

Case Law Cited

M.B. Sanghi, Advocate v. High Court of Punjab & Haryana, 1991 (3) SCR 312 **: (1991) 3 SCC 600**; *Pritam Pal v. High Court of M.P., Jabalpur,* [1992] 1 SCR 864 **: 1993 Supp (1) SCC 529**; *Ajay Kumar Pandey, Advocate, In Re*, 1998 (2) Suppl. SCR 87 **: (1998) 7 SCC 248 – relied on.**

M.Y. Shareef v. Hon'ble Judges of High Court of Nagpur, (1955) 1 SCR 757 **;** *Omesh Saigal and State v. R.K. Dalmia,* **1968 SCC OnLine Del 179**; *L. D. Jaikwal v. State of U.P.,* 1984 (3) SCR 833 **: (1984) 3 SCC 405 – referred to.**

List of Acts

Contempt of Courts Act, 1971.

List Keywords

Contempt of Court; Suo motu contempt jurisdiction; Criminal contempt; Civil imprisonment; Adjournment; Casting aspersions and threatening the Judges hearing the matters; Bailable warrents; Non-Bailable warrents; Judicial independence; Maligning the reputation of judicial officers; Libellous and motivated allegations

against the Court and its Judges; Administration of justice; Dignity and reputation of judicial officers; Apology; Forum shopping; Service of notice; Bias; Misbehaviour; Modification of sentence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.577 of 2007.

From the Judgment and Order dated 19.10.2006 of the High Court of Delhi at New Delhi in CC Nos.16 and 17 of 2006.

With

M.A. 256 of 2017 In Contempt Petition (C) No.64 of 2007 With SLP (Crl.) No.9689 of 2018 With Diary No.44408 of 2018.

Appearances for Parties

Petitioner-in-person

Kanhaiya Singhal, Prasanna, Mrs. Vani Singhal, Ajay Kumar, Udit Bakshi, Anmol Sharma, Teeksh Singhal, Ujwal Ghai, Chirag M. Shroff, Ardhendumauli Kumar Prasad, Gopal Singh Chauhan, Deepak Goel, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. The Criminal Appeal No. 577/2007 arises out of the common judgment and order of the High Court of Delhi ("**High Court**") dated 19.10.2006 in Criminal Contempt Case Nos. 16 of 2006 and 17 of 2006.

2. By virtue of the impugned order, the High Court exercising its *suo motu* contempt jurisdiction, convicted the sole appellant herein, a practising advocate and a former army personnel, under the Contempt of Courts Act, 1971 ("**Act**") and sentenced him to civil imprisonment of three months which was to run concurrently and a fine of Rs. 2,000, each in both the contempt cases.

3. ***Facts in the lead matter:*** On 17.08.2006, in a writ petition before the High Court, the appellant, appearing as counsel, sought an adjournment. After granting an adjournment, the Court noticed the appellant's conduct relating to giving threats to the lady counsel

who was appearing for the other side. Thereafter, the High Court passed an order directing him to explain his conduct. The order is reproduced herein for ready reference:-

> "*Learned Counsel for the petitioner states that he wishes to file some applications and requests for adjournment. Request is allowed.*
>
> *At this stage, after the request for filing the applications was allowed, learned Counsel appearing for the petitioner while going back passed a comment on the lady Advocate opposing him in the case and appearing for the respondents. She brought it to the notice of the Court and we requested the Counsel appearing for the petitioner to come back, which he did.*
>
> *Learned Counsel for the petitioner made a threatening remark to her, saying that now she be prepared for the consequences. Shri Dipak Bhattacharya (Advocate), who was also present in the Court duly confirmed that he overheard this remark being made to the lady Advocate appearing for the respondents.*
>
> *We find this attitude of the Counsel appearing for the petitioner to be undesirable and needs to be deprecated and dealt with in accordance with law. It is unfair for any Counsel to give any threats to the Counsel appearing on the other side, as all of them appear as officers of the Court and assist the Court or their respective clients. However, before we direct any further action or issue notice for contempt, learned Counsel for the petitioner made a request and the case is directed to be listed for tomorrow.*
>
> *List on 18.8.2006.*"

4. On 18.08.2006, when the matter was called out, the appellant failed to appear. Therefore, the Bench adjourned the matter to 21.08.2006. In fact, a counsel standing in the courtroom at that time undertook to personally inform the appellant about the next date of hearing. Surprisingly, the appellant had filed an application seeking transfer of the said writ petition to a different bench of the High Court, even though he failed to physically appear in the matter. Later in the day, a counsel appearing on behalf the appellant made a request for an

adjournment on the ground that the appellant was unwell. That said, the standing counsel for the Union of India, who was also present in the same court at that time, informed the Bench that the appellant was seen in the court premises earlier in the day. Nonetheless, in the interest of justice, the Bench adjourned the matter to 21.08.2006.

5. Thereafter, even on 21.08.2006, the appellant failed to appear. However, he had filed applications in the same matter making reckless and unsubstantiated allegations against the judges of the High Court. Clearly, by failing to appear and filing baseless allegations, the appellant had disobeyed the orders of the Court. In fact, it also came to the knowledge of the High Court that the appellant herein has frequently filed transfer applications on behalf of his clients, without their knowledge. Therefore, by its order dated 21.08.2006, a Division Bench of the High Court issued a notice to the appellant asking him to show cause as to why proceedings under the Act should not be initiated against him (Suo Motu Contempt Case No. 16 of 2006).

6. Around the same time, another Division Bench of the Court had also initiated *suo motu* contempt action against the appellant after noticing that he had filed an application in a writ petition, where he had made certain improper allegations against the Judges. Even in this contempt proceeding as well as the writ petition, the appellant failed to appear. However, he was filing applications day-after-day making reckless allegations against the Judges. While issuing a show-cause notice on 08.08.2006 (Suo Motu Contempt Case No. 17 of 2006), the High Court noted as follows:

> "*We have looked into the statement made in the application, which is registered as CM No. 9695/2006. Having gone through the same, we direct for issuance of a notice to the petitioner to show cause why appropriate action under the provisions of the Contempt of Courts Act or otherwise shall not be initiated against him. Notice shall be issued to the petitioner by the registry of this Court without process fee and shall be served by the Process Serving Agency of this Court, returnable on 3rd October, 2006.*"

7. Both the *suo motu* contempt proceedings were tagged and listed for 22.08.2006. However, neither on that date nor on subsequent dates did the appellant appear.

8. Multiple ways were adopted to secure the presence of the appellant, without any avail. The appellant was not to be found on the addresses mentioned and hence, service of notice under the Act could not be completed. As a last resort, the High Court issued bailable warrants against the appellant. Upon failure to secure the appellant's presence even then, non-bailable warrants were issued. The said warrants could also not be executed since the appellant was not available on any of the addresses mentioned.

9. After numerous attempts, the High Court directed the Deputy Commissioner of Police, New Delhi, to be present in Court. Upon his appearance in Court, the Deputy Commissioner of Police, New Delhi was directed to ensure the presence of the appellant in Court. Soon thereafter, on 18.09.2006, he was produced in Court. On the same day, while the Appeallant was released upon furnishing a personal bond, he was arrested by the Police of Uttarakhand in furtherance of another non-bailable warrant issued by a Family Court in a case filed by the appellant's wife for execution of a decree. The High Court noted that even during this time, the appellant failed to appear before the Court, instead, he was filing applications challenging the jurisdiction of the Court in issuing such warrants.

10. This is a long-drawn case in which the appellant has been committing successive acts of contempt. There are about seven instances which the High Court has taken into account, where the conduct of the appellant came under scrutiny in different proceedings. In all those cases, the egregious act of contempt of the appellant was recorded. These instances in short are as follows:

    (i) In a case concerning his dismissal from service, the matter got carried up to this Court. While dismissing a review petition filed by him, this Court noted the allegations and insinuations made by the appellant against the conduct of the judges of this Court. While referring the matter to the Bar Council, this Court observed as under

    "*We have carefully perused the review petition as well as the documents annexed therewith, but we find no merit in the review petition and the same is accordingly dismissed.*

    Having regard to the allegations and insinuations contained in the review petition, there is justification for action under the Contempt of Courts Act, against the petitioner. However,

considering his background as is apparent from the record of the case and the apparent frustration caused to the petitioner as a result of his losing his appeal before this Court, we do not propose to initiate any action under the said Act, since the respondent has preferred the review petition in-person.

However, we notice that the petitioner is an Advocate and is practising as an Advocate-on-Record in this Court. The conduct of the petitioner in filing a review petition containing such baseless allegations and insinuations reflecting on the conduct of Judges of this Court does call for closer scrutiny, as to whether his conduct does no credit to the noble profession to which he belongs. However, since that matter is not within our jurisdiction and it is only the Bar Council of India which is empowered to take appropriate action, we refer this matter to the Bar Council of India for such action as it may consider appropriate."

(ii) In Suo Motu Contempt Case No. 16 of 2006, the appellant had filed transfer petitions seeking transfer of the underlying matter as well as the *suo motu* contempt proceeding before a different bench of the High Court. Admittedly, he had filed the transfer petition on grounds which were devoid of the writ petitioner's knowledge. The transfer petitions filed by the appellant in this matter, along with the various other matters, were firstly placed before the then Acting Chief Justice of the High Court, and pursuant to his order dated 24.08.2006, the matter was listed before the same Bench which issued notice in Suo Motu Contempt Case No. 16 of 2006 on 21.08.2006. It has to be stated here that the original writ petitioner in this writ petition was personally present in the Court on 29.08.2006 and stated that he had not read the content of the transfer petition nor did he sign the transfer petition.

(iii) In a different writ petition before High Court, in which the appellant was appearing as a counsel, he had filed an application wherein he made allegations against the Judges of the High Court as well as this Court. He also alleged that the transfer petitions were never placed before the then Acting Chief Justice of the High Court, thus, causing injustice.

(iv) In W.P. No. 245 of 1986 before the High Court, the appellant had filed a written submission, where he had made the following statement (we have deliberately redacted the names of the Hon'ble Judges of this Court and that of the High Court to maintain the decorum of these proceedings. The details are however, available in the order impugned before us):

'The following Hon'ble Judges declined to hear the personal matters of the petitioner— (1) ... (2) ... (3) ... (4) ... (5) ...

In addition, from time-to-time, the following Hon'ble Judges also declined to hear the petitioner's personal matters— (6) ... (7) … (8) … (9) … (10) ... (11) ... (12) ... (13) ... The said refusal stemmed partly from the death of Hon'ble Mr. Justice …'s son and the death of Hon'ble Mr. Justice … as a result of the written curse ('shrap') made by the humble petitioner; Hon'ble Mr. Justice …'s son, too, died, and Hon'ble Mr. Justice … has been paralysed for life.'

(v) Further, in W.P. No. 5183 of 2005 before the High Court, the appellant had filed a written submission, where he had made the following statement (we have deliberately redacted the names of the Hon'ble Judges of this Court and that of the High Court to maintain the decorum of these proceedings. The details are however, available in the order impugned before us):

"*Apparently, it is the ego of the judicial office and the accompanying powers—which can be used or mischievously abused/misused, which is making him ill-treat the Hon'ble Members of the Bar and to act in a whimsical, vengeant and harassing manner towards me, in particular. But the learned Judge overlooks the fact that he is not the Lord Almighty and there are Members of the Bar who are close to the real Lord Almighty—for example, I wrote to the then Hon'ble Chief Justice of India and therein cursed that the way justice had been delayed, there will be delay in medical aid and one son of Mr. Justice … shall die; his son died within 4 days. Again, I wrote to His Lordship that Mr. Justice … shall die—he died within 7 days. Similarly, Mr. Justice …. died, Mr. … (retired Judge) has been paralysed for life, Mr. Justice … is also suffering with medical problems, etc. Since then at least 13 Hon'ble Judges have declined to hear my personal matters—including Mr. Chief Justice …*"

Gulshan Bajwa v. Registrar, High Court of Delhi & Anr.

(vi) In CM 9695 of 2006 in WP (C) No. 9244 of 2006 before the High Court, the appellant had filed a written submission, where he had made the following statement (we have deliberately redacted the names of the Hon'ble Judges of this Court and that of the High Court to maintain the decorum of these proceedings. The details are however, available in the order impugned before us):

"3. That several Universal Legal Maxims/Principles/ Premises—which are followed by all the civilised Nations, have been given a go-by in several legal cases (including the instant case) and the same is palpably apparent on the face of the record. Hence, the humble Applicant hereby curses that one son/child of each of the individuals who passed the motivated orders shall die prematurely—and so shall it happen soon. Bismillah!

In this regard, it is pertinent to mention that it is on the written record of the Hon'ble Supreme Court that the applicant herein had stated in writing that one son of the then Mr. Justice … would die—he died within 4 days, that the then Mr. Justice … would die—he, too, died within 7 days. And the then Mr. Justice …'s son also died, Mr. … (retired Judge) has been paralysed. Moreover, ACM … (the individual, who had tried to harass the humble Applicant) was not only himself paralysed, but his daughter also committed suicide and his son died in an air-crash. It is pertinent to mention that blatant and motivated abuse of their powers by certain public officials has occasioned miscarriage of justice against the ex-servicemen/servicemen, and their said acts are an open instigation to the ex-servicemen/ servicemen to abuse their powers, too in any case, this is a reason enough for lowering the morale of the Armed Forces personnel who may even refuse to fight against the intruders to save the lives of such corrupted individuals. Hence a copy of this Application is being sent to the Supreme Commander of the Armed Forces."

(vii) Lastly, the High Court noted that in a matter where the appellant was appearing before a Division Bench of the High Court, the appellant sought an adjournment in the matter and requested listing the matter a day after the next day owing to an out-

station matter. While granting an adjournment, the Bench listed the matter for the next day. The next day when the matter was called for hearing, it was again adjourned. It is the claim of the appellant that the same was done out of vengeance since one of the Judges on the Bench had a pre-existing tiff with the appellant.

Findings of the High Court:

11. While analysing the conduct of the appellant, the High Court summarised his contemptuous acts in the following words:

> *"(a) Use of undesirable language as afore-noticed with an intention to malign the Court and to lower the dignity of the Court. The intention is obvious i.e. transferring of the cases in which he is the petitioner himself or Counsel for the petitioner unless you are willing to pass favourable orders only in those cases, failing which the threats were extended to the various Courts with dire consequences resulting from the curse written or otherwise of the said person. This amounts to apparent interference with the administration of justice and extending undesirable threats to the Courts.*
>
> *(b) Wild allegations are made in the transfer petitions filed by the said person without getting them signed from the petitioner concerned and in fact even without bringing it to the notice of the client as to what application was filed, obviously with an intention to hamper the administration of justice and making allegations in other cases, wherein he was not a petitioner, to browbeat the Courts and filing applications even without the knowledge and contents of the application being known to the petitioners in those cases.*
>
> *(c) Extending threats in presence of the Court to Ms. Rekha Palli, Advocate for the respondents of facing dire consequences in the case filed by the petitioner. This was done in presence of the Court and the threats extended were even overheard by a senior member of the Bar Mr. Deepak Bhattacharya (Refer to order dated 17th August, 2006)."*

12. The High Court categorically noted that the appellant has *prima facie* committed criminal contempt of court and the magnanimity shown to him has resulted in doing acts and omissions of graver nature, thus, treating the tolerance as weakness of administration of justice. The High Court held that the acts are intentional, malicious and have persisted over a long period and are now clearly interfering with the administration of justice and lowering the dignity of the Court.

13. Having recounted the above-referred incidents, the High Court through its judgment and order dated 19.10.2006 found the appellant guilty of criminal contempt and awarded a punishment of simple imprisonment of 3 months along with a fine of Rs. 2000, in each contempt proceeding. It is basing this conviction and sentence that the appellant has filed the instant appeal.

Proceedings before this Court:

14. While admitting the appeal, this Court by order dated 16.04.2007, granted a stay of the impugned order dated 19.10.2006. Thereafter, the record of proceedings are replete with requests for adjournments, and finally, by order dated 01.08.2023, one of us, vacated the interim order and directed that the case will be heard without any further adjournments. Thus, we heard the appellant and have also permitted him to file written submissions. The written submissions were filed.

Submissions before this Court:

15. The appellant made the following submissions: (i) notice in one of the connected matters was issued by a Judge who is still a member of this Court. Therefore, it is the submission of the appellant that these matters should be heard by a bench presided over by that particular Judge; (ii) none of the connected matters are related to the contempt petition. Therefore, they must be de-tagged and be heard separately; (iii) the Court Martial proceedings which were relied upon by the High Court are not relevant to the present proceedings; (iv) the matters before the High Court, in which the appellant was appearing as a counsel, were being adjourned without a pass-over being granted on the first call; (v) the threat given to the lady advocate was nothing but elderly advice; (vi) no show cause notice in the contempt proceedings was served on him; (vii) all the transfer petitions and the underlying matters were transferred to one single bench without following the rules framed by the High Court relating

to assignment of matters; (viii) the Judges who heard his case and issued notice under the Act were biased against him; and (ix) the appellant challenged all other proceedings initiated against him on the ground that the authorities conducting such proceedings were biased against him.

16. We have also heard the learned counsel for the Respondent. It was their submission that the order impugned herein has been rendered after a detailed consideration of the material placed before them. It was submitted that the appellant had appeared before the Court pursuant to service of show cause notice under the Act, and the submission that there was no proper service of notice is not correct. It has also been contended that till date, the appellant has never apologised for his actions. In fact, even before this Court, he has been writing letters making reckless allegations against Judges and the Judiciary.

Analysis:

17. At the outset, we note that the order impugned herein is a detailed one, which considers and answers each and every aspect of the matter. While imposing the punishment, the High Court relied on a decision of this Court to highlight that judicial independence ought to be protected from acts maligning the reputation of judicial officers[1]. Further, the High Court also reiterated the finding of this Court, wherein it was highlighted that a contemnor ought to be punished with imprisonment for making libellous and motivated allegations against the Court and its Judges which interfere with the administration of justice[2]. Furthermore, the High Court highlighted the importance of protecting and upholding the dignity of the Court and the majesty of the law as also observed previously by this Court[3]. We are in complete agreement with the decision of the High Court on the need to maintain the dignity and reputation of judicial officers and to protect them from motivated, libellous and unfounded allegations. We are also of the opinion that the High Court was correct in not accepting the apology tendered by the appellant since it was not *bonafide* and lacked in sincerity, apart from being belated and a mere 'lip service'.

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1 *M.B. Sanghi, Advocate v. High Court of Punjab & Haryana*, 1991 (3) SCR 312 : (1991) 3 SCC 600.

2 *Pritam Pal v. High Court of M.P., Jabalpur*, 1993 Supp (1) SCC 529.

3 *Ajay Kumar Pandey, Advocate, In Re,* 1998 (2) Suppl. SCR 87 : (1998) 7 SCC 248.

18. The submissions made before us are also not appealing. Even here, the appellant is trying to resort to forum shopping by asking us to refer the matter to a judge who had issued notice in a connected matter. The appellant has failed to see that notice in the lead matter was issued more than a decade and half ago. While the appellant seeks to de-tag the court martial proceedings as if they are unconnected to the egregious act of contempt, we note that those proceedings were not of a client of the appellant, in fact, the appellant himself was subjected to court martial proceedings, and he was in fact appearing as a party-in-person. We do not see two different lives here. The appellant contemnor is the petitioner in the court-martial proceedings.

19. It is also incorrect to say that there was no service of notice on the appellant. The appellant had in fact appeared before the Court after issuance of notice under the Act. Making an assertion that there was no service of the notice is factually wrong. The appellant, while making an allegation of bias should have supplemented it with cogent material, which he has failed to do. This again, is an irresponsible statement.

20. With respect to the other arguments made by the appellant before us, we are of the view that the High Court has elaborately dealt with the same and they require no interference or indulgence by us.

21. The appellant's conduct before the High Court and for that matter, even before this Court, amounts to undermining the system of the law and interfering with the course of justice administration. The High Court observed a pattern in the behaviour of the appellant. He has had a habit of misbehaving with a Bench which is not agreeing with him. The misbehaviour goes to the extent of casting aspersions and threatening the Judges hearing the matters.

22. We are of the opinion that the High Court correctly rejected the apology. An apology must evidence remorse with respect to the contemptuous acts and is not to be used as a weapon to purge the guilty of their offence[4]. Further, an apology lacking in sincerity and not evidencing contriteness, cannot be accepted[5].

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4 *M.Y. Shareef v. Hon'ble Judges of High Court of Nagpur*, (1955) 1 SCR 757.

5 *Omesh Saigal and State* v. *R.K. Dalmia*, 1968 SCC OnLine Del 179 and *L. D. Jaikwal v. State of U.P.*, 1984 (3) SCR 833 : (1984) 3 SCC 405.

23. Having considered the order impugned before us in detail and having perused the way the appellant has conducted the proceedings before this Court, and after giving our anxious consideration, we are of the opinion that the finding of conviction against the appellant warrants no interference. However, considering the age of the appellant and taking note of his submission that he is suffering from certain medical ailments, we modify the sentence imposed by the High Court from imprisonment for three months till the rising of the court.

24. The three other connected matters being (a) M.A. 256/2017 in Contempt Petition (C) No. 64/2007, (b) SLP (Crl.) No. 9689/2018, and (c) Diary No. 44408/2018 are not related to the present criminal appeal and, therefore, we de-tag them and direct them to be listed for hearing separately.

25. In view of the above, Criminal Appeal No. 577/2007 arising out of SLP (Crl.) No. 1756 of 2007 against Final Common Judgment and Order dated 19.10.2006 passed by the High Court of Delhi in Criminal Contempt Cases Nos. 16 & 17 of 2006, is dismissed, subject to the above modification of the sentence till the rising of the Court.

26. Pending applications, if any, are disposed of.

27. No order as to costs.

Headnotes prepared by: Nidhi Jain *Result of the case:* Appeal dismissed.

[2024] 1 S.C.R. 1165 : 2024 INSC 77

Bharat Sher Singh Kalsia
v.
State of Bihar & Anr.

(Criminal Appeal No. 523 of 2024)

31 January 2024

[Vikram Nath and Ahsanuddin Amanullah*, JJ.]

Issue for Consideration

Whether the High Court was justified in rejecting the prayer for quashing of the FIR registered u/ss. 409, 467, 468, 471 and 420 IPC against the vendee for the criminal acts, misuse of power of attorney-PoA, misappropriation of property, and executing fraudulent sale deed, when he had no role either in the execution of the PoA nor in any misdeed by the PoA holder vis-à-vis the land-owners/principals.

Headnotes

Code of Criminal Procedure, 1973 – s. 482 – Quashing of FIR – Power of Attorney-PoA executed by the landowners/principals, including the informant and others in favour of the one for management and maintenance of their property – Allegations that the PoA holder sold some portion of the landowners' property to the appellant-vendee and executed the sale deed at Dehradun in favour of the vendee where the land is located, and when asked, the PoA did not respond to the legal notice nor gave any information to the informant and others about the sale – Case registered u/ss. 409, 467, 468, 471 and 420 IPC against the accused and the vendee alleging commission of criminal acts, that by misusing the PoA, they misappropriated the property, did not rendition the account and obtained the Sale Deed without the signatures of the land-owners – Magistrate, Buxar took cognizance of the offences – Petition for quashing of FIR – Rejected by the High Court – Challenge to, by the appellant:

Held: In the appropriate case, protection is to be accorded against unwanted criminal prosecution and from the prospect of unnecessary trial – On facts, dispute, if any, is between the land-owners/principals inter-se and/or between them and the PoA-

* Author

holder – It would not be proper to drag the vendee into criminal litigation, when he had no role either in the execution of the PoA nor any misdeed by the PoA holder vis-à-vis the land-owners/principals – Moreover, the entire consideration amount was paid by the vendee to the PoA-holder – Furthermore, the only controversy was related to the Sale Deed executed by the PoA-holder in favour of the vendee in Dehradun for property located at Dehradun, thus, needs to be examined by the Dehradun courts – Moreover, a suit filed by the land-owners/principals at Dehradun for the same cause of action was dismissed in favour of the vendee – Thus, case for interference not made out – Impugned judgment is set aside – FIR as also the order taking cognizance and all consequential acts emanating therefrom, insofar as they relate to the appellant, are quashed. [Paras 21, 34, 35]

Deeds and documents – Construction of a deed or a contract – Power of Attorney-PoA executed by the landowners/principals, in favour of the person from whom the vendee purchased the land – Clauses 3 and 11 of the PoA together authorized the PoA-holder to execute deeds, including of/for sale, receive consideration in this regard and proceed to registration upon accepting consideration on behalf of the land-owners/principals – Clause 15 of the PoA, states that the PoA-holder was authorized to present for registration the sale deeds or other documents signed by the land-owners/principals and admit execution thereof – Interpretation of:

Held: Is to be interpreted harmoniously as also logically the effect of a combined reading of the clauses – When the three clauses are read, Clause 15 is, in addition to Clauses 3 and 11 of the PoA and not in derogation thereof – Besides the contingencies where the PoAholder had been authorized to execute any type of deed and receive consideration and get registration done, which included sale of movable/immovable property on behalf of the landowners/principals, the land owners/principals had also retained the authority that if a Sale Deed was/had been signed by them, the very same PoAholder was also authorized to present it for registration and admit to execution before the authority concerned – Thus, there is no contradiction between Clauses 3, 11 and 15 of the PoA – All three clauses are capable of being construed in such a manner that they operate in their own fields and are not rendered nugatory – Even

if a conflict had been perceived between Clauses 3 and 11, on the one hand, and Clause 15 on the other, Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the later clause(s), when construing a Deed or a Contract. [Paras 24, 27-30]

Case Law Cited

Mukul Agrawal v State of Uttar Pradesh, **(2020) 3 SCC 402**; *K G Premshankar v Inspector of Police,* **[2002] 2 Suppl. SCR 350 : (2002) 8 SCC 87**; *Smt. Raj Kumari Vijh v Dev Raj Vijh,* **[1977] 2 SCR 997 : (1977) 2 SCC 190**; *Radha Sundar Dutta v Mohd. Jahadur Rahim,* **[1959] 1 SCR 1309 : AIR 1959 SC 24 – referred to.**

Forbes v Git, **[1922] 1 AC 256 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Power of Attorney; Quashing of FIR; Sale deed; Legal notice; Misusing power of attorney; Misappropriation; Unwanted criminal prosecution; Unnecessary trial; Power of attorney holder; Execution of power of attorney ; Misdeed by power of attorney holder; Construction of a Deed or a Contract; Harmonious interpretation; Consideration; Jurisdiction; Cause of action; Criminal litigation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.523 of 2024.

From the Judgment and Order dated 12.03.2021 of the High Court of Judicature at Patna in CRLM No.42776 of 2013.

Appearances for Parties

Maninder Singh, Sr. Adv., Ms. Shirin Khajuria, Ms. Oshi Verma, Rajesh Batra, Ms. Sonia Kukreja, Rohit Chandra, Advs. for the Appellant.

Siddhartha Dave, Sr. Adv., Santosh Krishnan, Simon Benjamin, Ms. Sonam Anand, Ms. Deepshikha Sansanwal, Ms. Mridul Singh, Devashish Bharuka, Ms. Sarvshree, Shobhit Dvivedi, Ms. Swati Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal arises out of the Final Judgment and Order dated 12.03.2021 (hereinafter referred to as the "Impugned Judgment") passed in Criminal Miscellaneous No.42776 of 2013 by the High Court of Judicature at Patna (hereinafter referred to as the "High Court") by which the prayer for quashing First Information Report No.87 of 2011 dated 19.03.2011 (hereinafter referred to as the "FIR") registered at Dumraon Police Station, Buxar, Bihar under Sections 467, 468, 469 and 471 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"), has been dismissed.

THE BRIEF FACTS:

4. The informant/respondent no.2 Maharaj Kumar Man Vijay Singh @ Man Vijay Singh gave a statement in writing to the Station House Officer, Dumraon Police Station alleging that Raj Kumar Karan Vijay Singh, s/o Group Captain Late Maharaj Kumar Ran Vijay Singh had sold off property belonging to 5 persons of the informant's family, including the informant himself. It was alleged that the informant and his family members had earlier given a Power of Attorney (hereinafter referred to as the "PoA") to Raj Kumar Karan Vijay Singh in respect of and as owners of property bearing Khasras No.459G, 472, 474, 475, 476 and 478B and further Khasra No.459E situated in Village Karbari Grant, Tehsil Vikasnagar, Pargana Pachwain, District Dehradun. It was stated that the informant Maharaj Kumar Man Vijay Singh and his brother Kumar Chandra Vijay Singh, both sons of Maharaja Kamal Singh, Smt. Sangeeta Kumari, Indumati, Ran Vijay Singh, his father's Sister, father, sisters and Aunt executed a PoA on 12.04.1994 for management and maintenance of their property. It was provided therein that the PoA holder shall pursue litigation, file plaint after obtaining signature of the land owners/principals of the PoA. It was alleged that some portion of the property of the informant and others was sold to the present appellant and on such knowledge, the informant sent a Legal Notice to the PoA-holder directing him to give the details of the sale made in conspiracy with

the appellant and a Notice was also given to revoke the PoA but the agent did not give any information/reply to the informant and others who had executed the PoA. In this backdrop, and as such, the criminal case was instituted. It was alleged that criminal acts were committed by the accused, including the appellant, by misusing the PoA and alleging that they had misappropriated the property, did not rendition the account(s) and that the Sale Deed was fraudulent as it was without obtaining the signatures of the land-owners/Principals of the PoA-holder. Upon investigation, the police had submitted final report finding a case under Sections 409, 467, 468, 471 and 420, IPC and the learned Chief Judicial Magistrate, Buxar thereupon took cognizance of the offences under Sections 409, 467, 468, 471 and 420, IPC on 18.11.2014 in GR No.515 of 2011.

5. During the pendency of Criminal Miscellaneous No.42776 of 2013 on the file of the High Court, originally filed for quashing the FIR, the appellant filed Interlocutory Application No.1261 of 2017 seeking amendment of the prayer to include quashing of the order dated 18.11.2014 mentioned above.

SUBMISSIONS BY THE APPELLANT:

6. Learned senior counsel for the appellant submitted that the appellant is merely the vendee of a portion of the land which was included in the PoA given to Raj Kumar Karan Vijay Singh on 12.04.1994.

7. He contended that the Sale deed dated 24.08.2000 was on the basis of the PoA given to Man Vijay Singh, s/o Kamal Singh by the land-owners/principals. It was submitted that it was an internal matter between the land-owners/executors of the said PoA with regard to the terms, which obviously were binding, inter se, between the parties.

8. Learned senior counsel drew the attention of the Court to the contents of the PoA, especially Clause 3 thereof and submitted that the same entitled the PoA-holder to execute any type of Deed and to receive consideration on behalf of the land-owners/executors of the PoA and get such Deed registered. Thus, it was contended that the following was not in dispute: (a) the PoA was admittedly neither forged nor withdrawn; (b)the appellant was the vendee of a piece of land covered under the PoA, and (c)for such sale, valuable consideration had also been paid. In this view, it was submitted, the appellant could not be held liable for any misdeed, much less, any criminal act.

9. Learned senior counsel submitted that the Revisional Court was right that cognizance, as far as the appellant is concerned, was totally illegal as no offence was made out against the appellant. It was further contended that even on the jurisdictional issue, the Sale Deed in question was executed at Dehradun, Uttarakhand and the land is also situated in Dehradun. It was submitted that even the consideration was paid in Dehradun. It was contended that the informant also filed Original Suit No. 27 of 2011 in the Court of the learned Additional District Judge, Vikas Nagar, Dehradun for setting aside the Sale Deed executed in favour of the appellant by the PoA holder and for rendition of accounts, which was dismissed and it was found that the PoA-holder/agent was duly authorized thereunder to sell the property after receiving consideration amount on behalf of the land-owners/principals, who were also not entitled to rendition of accounts. Thus, it was submitted that in a civil proceeding wherein the right of the PoA-holder to sell the property in question had been upheld and the appellant having bought the property from such PoA holder of the land covered under the PoA, the present FIR itself is misuse and abuse of the process of law, as far as the appellant is concerned. Further, he submitted, that the cancellation of the PoA was only on 09.01.2011, i.e., after almost 10½ years after the execution of the sale deed on 24.08.2000.

10. Moreover, it was contended that the issue being purely of civil nature i.e., there being a dispute as to whether the PoA-holder has paid to the land -owners/principals money received for the land sold, at best, it may give rise to a cause of action to the principals on the civil side against the PoA-holder, but the appellant could not be dragged into any such controversy.

11. Learned senior counsel submitted that at the time of the sale, the PoA was valid and Clauses 3 and 11 read with 5 gave full authority to the PoA-holder to sell the property, get the Sale Deed registered and receive consideration. He submitted that Clause 15, on which the complainant has relied, was not applicable. Further, neither in the FIR nor in the order taking cognizance or even in the Legal Notice(s), is there any reference to the appellant, and the chargesheet merely states that the seller/PoA-holder did not have the right to sell. It was contended that while granting anticipatory bail to the appellant, the

High Court by order dated 20.02.2014 in Criminal Miscellaneous No. 44830 of 2013, which was heard and decided with Criminal Miscellaneous No. 45146 of 2013 filed by the PoA-holder, the said PoA-holder had taken the stand that he was ready to give/return the sale proceed amounts to the informant, without admitting to the case of the informant and subject to such condition, he was also granted anticipatory bail.

12. On the civil nature of the dispute, it was submitted that the issue pertains to interpretation of various clauses of the PoA, which cannot be done in a criminal proceeding and rightly the Revisional Court had held it to be a civil dispute. It was also pointed out that the Buxar Courts would lack territorial jurisdiction.

13. It was submitted that the Original Suit No. 27 of 2011, filed by the respondent no.2 and others, at Dehradun, was prior to filing of the FIR, which was dismissed by order dated 07.12.2017 holding that the PoA holder had the right to sell the land, receive the consideration and hence the Sale deed was valid. The contention that the respondent no.2 and others had no knowledge of the Sale Deed dated 24.08.2000 could not be believed and the suit was also held to be time-barred as the prayer was for setting aside the Sale Deed dated 24.08.2000.

14. Learned senior counsel relied upon the decision in **Mukul Agrawal v State of Uttar Pradesh, (2020) 3 SCC 402**, wherein at Paragraph 7[1], it has been held that the finding of the Civil Court that the agreement was not a forged document, makes the very substratum of the criminal complaint vanish.

15. Reliance was also placed on the decision of **K G Premshankar v Inspector of Police, (2002) 8 SCC 87**, where at Paragraphs 15, 16, 30-32[2], Sections 40-43, of the Indian Evidence Act, 1872 have

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1 '***7.*** *In view of the conclusive opinion of the appellate court that the agreement dated 30-3-1988 was not a forged document, the very substratum of the criminal complaint vanishes. In the circumstances to allow the appellants to be prosecuted will only be a complete abuse of the process of law. The proceedings in Complaint Case No. 2705 of 2003 are therefore quashed and the appeal is allowed.*'

2 '***15.*** *Learned Additional Solicitor-General Shri Altaf Ahmed appearing for the respondents submitted that the observation made by this Court in V.M. Shah case [(1995) 5 SCC 767 : 1995 SCC (Cri) 1077] that "the finding recorded by the criminal court, stands superseded by the finding recorded by the civil court and thereby the finding of the civil court gets precedence over the finding recorded by the criminal court" (SCC p. 770, para 11)*
is against the law laid down by this Court in various decisions. For this, he rightly referred to the provi-

been interpreted with regard to the relevance of decision of a Civil Court on criminal proceedings against the same person(s) pertaining to the same cause. As far as territorial jurisdiction is concerned, it was the stand of the learned senior counsel that the only link in the chain is that the PoA was executed at Buxar, but in the present case, there is no dispute with regard to execution of the PoA and the dispute relates only to execution of the Sale Deed which occurred in Dehradun where the land lies. Thus, the submission was that the Courts at Buxar would not have any jurisdiction in the present matter.

16. Learned senior counsel summed up his arguments by contending that all points raised before us had been taken before the High Court but have not been dealt with in the Impugned Judgment.

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sions of Sections 41, 42 and 43 of the Evidence Act and submitted that under the Evidence Act to what extent judgments given in the previous proceedings are relevant is provided and therefore it would be against the law if it is held that as soon as the judgment and decree is passed in a civil suit the criminal proceedings are required to be dropped if the suit is decided against the plaintiff who is the complainant in the criminal proceedings.

***16.** In our view, the submission of learned Additional Solicitor-General requires to be accepted. Sections 40 to 43 of the Evidence Act provide which judgments of courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents any court while taking cognizance of a suit or holding a trial, to be a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:*

"40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

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***30.** What emerges from the aforesaid discussion is — (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.*

***31.** Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is — whether judgment, order or decree is relevant, if relevant — its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.*

***32.** In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397 : 1954 Cri LJ 1019] would be binding, wherein it has been specifically held that no hard-and-fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages*

"such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages".'

SUBMISSIONS BY THE RESPONDENT NO.2:

17. Per contra, learned senior counsel appearing for respondent no.2 submitted that the case before the High Court was confined to the question of territorial jurisdiction and it was observed that the same depends upon evidence. Thus, it was submitted that territorial jurisdiction does not go to the root of the matter, but is merely for administrative convenience. Reliance was placed on the decision in **Smt. Raj Kumari Vijh v Dev Raj Vijh, (1977) 2 SCC 190**, the relevant being at Paragraph 7[3].

18. It was submitted that the appellant has wilfully purchased the land of the complainant on the strength of the PoA, which itself required the assent of the land-owners/principals for sale of land, as would be clear from Clause 15 of the PoA.

19. Learned senior counsel, in the alternative took the stand that if relief was granted to the appellant with regard to quashing of the FIR, it may be confined to the appellant and not of the FIR as a whole, where the other co-accused has been charge-sheeted and summoned to face trial. It was urged that it may be left open to the Trial Court to summon the appellant if the evidence so warrants, under Section 319, Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC").

SUBMISSIONS ON BEHALF OF THE STATE:

20. A counter has been filed on behalf of the State of Bihar opposing the prayer made in the present appeal and justifying the prosecution of the appellant on the basis of the FIR.

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3 **7.** *Section 531 of the Code reads as follows:*
"531. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."
The section therefore relates to a defect of jurisdiction. As has been stated by this Court in Purushottamdas Dalmia v. State of West Bengal [(1962) 2 SCR 101 : AIR 1961 SC 1589 : (1961) 2 Cri LJ 728] there are two types of jurisdiction of a criminal court, namely, (1) the jurisdiction with respect to the power of the court to try particular kinds of offences, and (2) its territorial jurisdiction. While the former goes to the root of the matter and any transgression of it makes the entire trial void, the latter is not of a peremptory character and is curable under Section 531 of the Code. Territorial jurisdiction is provided "just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court". Sub-section (8) of Section 488 in fact provides that proceedings under the section "may be taken against any person in any district where he resides or is, or where he last resided with his wife or, as the case may be, the mother of the illegitimate child". This therefore is ordinarily the requirement as to the filing of an application under Section 488 within the limits of the jurisdiction of the Magistrate concerned.'

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the facts and submissions by the learned counsel for the parties, this Court finds that a case for interference has been made out. The undisputed and admitted facts are that the PoA was executed by the land-owners/principals, including respondent no.2 and others on 12.04.1994, in favour of the person from whom the appellant purchased the land on 24.08.2000.

22. It is also a fact that the PoA-holder executed a Sale Deed and got it registered at Dehradun in favour of the appellant as also that the land is located in Dehradun. Much has been said with regard to a harmonious reading of the various clauses of the PoA viz. Clauses 3, 11 and 15 which read as under:

> *'3. To execute any type of deed and to receipt consideration, if any, on our behalf and to get the Registration done of the same.*
>
> *xxx*
>
> *11. To sell moveable or immoveable property including land, live stock, trees etc. and receive payment of such sales on our behalf.*
>
> *xxx*
>
> *15. To present for registration all the sale deeds or other documents signed by us and admit execution there of before the District Registrar or the Sub-Registrar or such other Officer as may have authority to register the said deeds and documents as the case may be and take back the same after registration.'*

23. A mere perusal of the above indicates that as per Clause 3, the PoA-holder was authorised to execute any type of deed, to receive consideration in this behalf and to get the registration done thereof. Clause 11 of the PoA further makes it clear that the PoA-holder had the authority to sell movable or immovable property including land, livestock, trees etc. and receive payment of such sales on behalf of the land-owners/principals. However, Clause 15 of the PoA, which has been strenuously relied upon by the respondent no.2, while opposing

the present appeal, states that the PoA-holder was authorized to present for registration the sale deed(s) or other documents signed by the land-owners/principals and admit execution thereof before the District Registrar or the Sub-Registrar or such other officer as may have authority to register the said deeds and documents, as the case may be, and take back the same after registration.

24. Thus, the Court is required to interpret harmoniously as also logically the effect of a combined reading of the afore-extracted clauses. As such, our endeavour would, in the first instance, necessarily require us to render all three effective and none otiose. In order to do so, this Court would test as to whether all the three clauses can independently be given effect to and still not be in conflict with the other clauses.

25. With this object, when the three clauses are read, it is obvious, at the cost of repetition, that Clause 3 pertains to execution of any type of deed and receiving consideration, if any, on behalf of the land-owners/principals and to get the registration thereof carried out. Basically, this would take care of any type of deed by which the PoA-holder was authorized to execute and also receive consideration and get registration done on behalf of the land-owners/principals.

26. Clause 11 of the PoA deals specifically with regard to sale of movable or immovable property including land and receiving payments of such sales on behalf of the land-owners/principals.

27. In this eventuate, Clauses 3 and 11 of the PoA together authorized the PoA-holder to execute deeds, including of/for sale, receive consideration in this regard and proceed to registration upon accepting consideration on behalf of the land-owners/principals.

28. Coming to Clause 15 of the PoA, which states that the PoA-holder was authorized to present for registration the sale deeds or other documents signed by the land-owners/principals and admit execution thereof, is, in our understanding in addition to Clauses 3 and 11 of the PoA and not in derogation thereof. The reason to so hold is that besides the contingencies where the PoA-holder had been authorized to execute any type of deed and receive consideration and get registration done, which included sale of movable/immovable property on behalf of the land-owners/principals, the land owners/

principals had also retained the authority that if a Sale Deed was/had been signed by them, the very same PoA-holder was also authorized to present it for registration and admit to execution before the authority concerned.

29. Thus, in the instant case, had it been a situation where the land-owners/principals had executed a Sale Deed in favour of any third party prior to the Sale Deed executed and registered by the PoA-holder with regard to the property in question, and the PoA-holder had not presented the said Sale Deed and had gone ahead with himself executing and getting registered a different or a subsequent Sale Deed in favour of the appellant, the matter would be entirely different. Therefore, clearly, there is no contradiction between Clauses 3, 11 and 15 of the PoA. To restate, Clause 15 of the PoA is an additional provision retaining authority for sale with the land-owners/principals themselves and the process whereof would also entail presentation for registration and admission of its execution.

30. We are of the considered opinion that all three clauses are capable of being construed in such a manner that they operate in their own fields and are not rendered nugatory. That apart, we are mindful that even if we had perceived a conflict between Clauses 3 and 11, on the one hand, and Clause 15 on the other, we would have to conclude that Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the later clause(s), when construing a Deed or a Contract. Reference for such proposition is traceable to **Forbes v Git, [1922] 1 AC 256**[4], as approvingly taken note of by a 3-Judge Bench of this Court in **Radha Sundar Dutta v Mohd. Jahadur Rahim, AIR 1959 SC 24.** However, we have been able, as noted above, to reconcile the three clauses in the current scenario.

4 '*The principle of law to be applied may be stated in few words.* ***If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later. Thus, if A covenants to pay 100 and the deed subsequently provides that he shall not be liable under his covenant, that later provision is to be rejected as repugnant and void, for it altogether destroys the covenant. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole.*** *...*'

31. Another fact which cannot be lost sight of, is that it is apparent that the matter relates to a dispute among the co-sharers as the PoA-holder is the son of one of the co-sharers/principals namely Smt. Indumati R. V. Singh.

32. The PoA and its execution/registration not being in dispute, the only controversy relating to the Sale Deed executed by the PoA-holder in favour of the appellant in Dehradun for property located at Dehradun would thus, in the emerging factual matrix, clearly be an issue for the Courts at Dehradun to examine, much less give rise to any cause of action at Buxar.

33. We may add that this issue of jurisdiction is limited to the transaction of the execution of the Sale Deed in favour of the appellant, and not to any other controversy or dispute the land-owners/principals may have, either inter-se or against the PoA-holder. Moreover, a suit filed by the land-owners/principals at Dehradun prior to the lodging of the FIR, for the same cause of action, has been dismissed in favour of the appellant, where a specific plea to cancel the Sale Deed stands rejected.

34. In sum, the dispute, if any, is between the land-owners/principals inter-se and/or between them and the PoA-holder. We think it would be improper to drag the appellant into criminal litigation, when he had no role either in the execution of the PoA nor any misdeed by the PoA-holder vis-à-vis the land-owners/principals. Moreover, the entire consideration amount has been paid by the appellant to the PoA-holder.

35. On an overall circumspection of the entire facts and circumstances, we find that the Impugned Judgment needs to be and is hereby set aside. This Court has held that in the appropriate case, protection is to be accorded against unwanted criminal prosecution and from the prospect of unnecessary trial[5]. We quash FIR No.87 of 2011 dated 19.03.2011, Dumraon Police Station, Buxar, Bihar as also the order taking cognizance dated 18.11.2014 and all consequential acts emanating therefrom, insofar as they relate to the appellant.

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5 ***Priyanka Mishra v State of Madhya Pradesh*, 2023 SCC OnLine SC 978** and ***Vishnu Kumar Shukla v State of Uttar Pradesh*, 2023 SCC OnLine SC 1582**.

36. Learned senior counsel for the respondent no. 2 had submitted that the Trial Court be allowed to exercise power under Section 319, CrPC against the appellant, if warranted. Expressing no opinion thereon, we insert the caveat that the Trial Court will act in accordance with law.

37. The appeal is accordingly allowed, leaving the parties to bear their own costs.

Headnotes prepared by: Nidhi Jain *Result of the case:* Appeal allowed.

[2024] 1 S.C.R. 1179 : 2024 INSC 84

Atamjit Singh
v.
State (NCT of Delhi) & Anr.

(Criminal Appeal no. 516 of 2024)

22 January 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether the High Court was justified in quashing the order passed by the Metropolitan Magistrate summoning Respondent No. 2 in relation to commission of offence under Section 138 of the Negotiable Instruments Act, 1881, on the premise that as on the date of the issuance of the summoning order, the underlying debt and/or liability qua Respondent No. 2 was time barred.

Headnotes

Negotiable Instruments Act, 1881 – s.138 – Code of Criminal Procedure, 1973 – s.482 – Scope of interference by the High Court in proceedings u/s.138 of the NI Act qua allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction u/s.482 CrPC.

Held: Classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties – Question regarding time barred nature of an underlying debt or liability in proceedings u/s.138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction u/s.482 CrPC. [Para 7]

Case Law Cited

Yogesh Jain v. Sumesh Chadha, **Crl. Appeal Nos. 1706-1761 of 2022 – relied on.**

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973.

List of Keywords

Quashing; Summons; Summoning order; Debt; Liability; Time barred; Scope of interference; Limitation; Mixed question of law and fact.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.516 of 2024.

From the Judgment and Order dated 06.09.2022 of the High Court of Delhi at New Delhi in CRLMC No.556 of 2019.

Appearances for Parties

Sudeep Sehgal, Sandeep Singh, Advs. for the Appellant.

Vikramjit Banerjee, Mukesh Kumar Maroria, Bharat Sood, Saransh Kumar, Vishnu Shankar Jain, Shaurya Rai, Madhav Sinhal, Ms. Deeksha Ladi Kakar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

ORDER

1. Leave granted.

2. This is an appeal instituted at the instance of the original complainant of a complaint lodged under *inter alia* Section 138 of the Negotiable Instruments Act, 1881 (the "**NI Act**") (the "**Underlying Complaint**") assailing an order dated 06.09.2022 passed by the High Court of Delhi (the "**High Court**") in CRL. M.C. No. 556 of 2019 whereunder the High Court quashed an order dated 03.08.2017 passed by the Metropolitan Magistrate -10, South-East, Saket Court (the "**Trial Court**") summoning Mr. Amrit Sandhu Coaster/Respondent No. 2 in relation to the commission of an offence under Section 138 of the NI Act (the "**Impugned Order**").

3. The High Court by way of the Impugned Order deemed it appropriate to quash the underlying proceedings on the principal premise that as on the date of the issuance of the summoning order, the underlying debt and/or liability qua Respondent No. 2 was time barred.

4. *Prima-facie* from the materials placed before us, it is revealed that pursuant to various transactions entered into by and between the (i) Appellant; (ii) Respondent No. 2; and (iii) Jasween Sandhu i.e., Accused No. 2 in the Underlying Complaint, allegedly pertaining to year 2011,the Appellant was owed a sum of approximately Rs.20,10,000/- (Rupees Twenty Lakh Ten Thousand). Accordingly Respondent No. 2 issued a cheque bearing number 329623 dated 06.03.2017 drawn on Syndicate Bank, Branch West Punjabi Bagh, Central Market, New Delhi-110026 for a sum of Rs.20,00,000/- (Rupees Twenty Lakh) in favour of the appellant (the "**Subject Cheque**").

5. Upon a perusal of the Impugned Judgement, it is disclosed that High Court has relied upon (i) the Assured Returns Agreement dated 16.09.2011; and (ii) other receipts issued by the Appellant to Respondent No. 2, all of which pertain to transaction(s) entered into in the year 2011 to conclude that in the absence of an acknowledgment of any underlying debt between 2011 and the date of issuance of the Subject Cheque i.e., 06.03.2017, the underlying debt could not be held to be legally enforceable debt or liability on account of being barred by limitation. Accordingly, in the aforesaid circumstances, the prosecution of Respondent No. 2 under Section 138 of the NI Act was held to be improper; and accordingly, by way of impugned judgment, the High Court quashed the summoning order issued by the Trial Court; and the Underlying Complaint.

6. At the threshold, it would be apposite to refer to decisions of this Court in ***Yogesh Jain v. Sumesh Chadha***, Criminal Appeal Nos. 1760-1761 of 2022 whereunder this Court has opined on the scope of interference by the High Court in proceedings under 138 of the NI Act qua an allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (the "**CrPC**"). The operative paragraph in ***Yogesh Jain (Supra)*** has been reproduced as under:

> *"8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the Accused to dislodge the legal presumption available Under Sections 118 and 139 reply of the N.I. Act.* ***Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the Accused Under Section 482 of the CrPC.****"*

7. From a perusal of legal position enunciated above, it is clear that the classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties. We agree with aforesaid opinion. Undoubtedly, the question regarding the time barred nature of an underlying debt or liability in proceedings under Section 138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction under Section 482 of the CrPC.

8. Accordingly, the appeal is allowed, and the Impugned Order is set aside. The proceedings emanating from the Underlying Complaint i.e., CC No. 6437 of 2017 is restored to the file of the Trial Court.

9. Pending application(s), if any, are disposed of. No order as to costs.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: Appeal allowed.

[2024] 1 S.C.R. 1183 : 2024 INSC 105

Axis Bank Limited
v.
Naren Seth & Anr.

(M.A. No. 190 of 2024)
In
(Civil Appeal No. 2085 of 2022)

19 January 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Application was filed by the applicant-appellant seeking clarification of the judgment reported in [2023] 14 SCR 581.

Headnotes

Insolvency and Bankruptcy Code, 2016 – Limitation Act, 1963 – Judgment reported in [2023] 14 SCR 581, corrected to an extent – Word "unsecured creditor" referred in para 20 of the judgment to be read as "secured creditor".

Case Law Cited

Axis Bank Ltd. v. Naren Seth & Anr., **[2023] 14 SCR 581 – Corrected to an extent.**

List of Acts

Insolvency and Bankruptcy Code, 2016; Limitation Act, 1963

List of Keywords

Insolvency; Bankruptcy; Limitation; Clarification of judgment; Correction in judgment; Unsecured creditor; Secured creditor

Case Arising From

CIVIL APPELLATE JURISDICTION : Miscellaneous Application No.190 Of 2024

From the Judgment and Order dated 22.09.2021 of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No.930 of 2021.

Appearances for Parties

Sanjiv Sen, Sr. Adv., Ujjal Banerjee, Akash Khurana, Advs. for the Appellant.

Ms. Neha Sharma, Surya Prakash, Ms. Megha Karnwal, Arjun Bhatia, Devesh Dubey, Ms. Mahima Kapur, Ms. Divya Singh Pundir, Vikas Mehta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Delay condoned.

2. This application is filed by the applicant- appellant seeking clarification of the judgment dated 12.09.2023 passed in Civil Appeal No.2085 of 2022.

3. Heard learned counsel for the parties.

4. The word "unsecured creditor" referred to in paragraph 20 of the judgment be now read as "secured creditor".

5. Judgment dated 12.09.2023 is corrected to the above extent only.

6. Miscellaneous application is disposed of accordingly.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: M.A. disposed of.

[2024] 1 S.C.R. 1185 : 2024 INSC 89

Veena Gupta & Anr.
v.
Central Pollution Control Board & Ors.

30 January 2024

(Civil Appeal No(s). 1865-1866 of 2022)

[Pamidighantam Sri Narasimha* and Aravind Kumar, JJ.]

Issue for Consideration

Whether the impugned orders passed by National Green Tribunal – order arising out of an *ex parte* order in suo motu proceedings holding the appellants guilty and directing payment of compensation; and order of dismissal of the review petition filed by appellant No.2 alleging that he had not been given opportunity before adverse order was passed against him, were not sustainable.

Headnotes

Practice and Procedure – Opportunity of hearing to affected party – National Green Tribunal's recurrent engagement in unilateral decision making, provisioning *ex post* facto review hearing and routinely dismissing it – Deprecated.

Held: On facts, it is evident that the Tribunal itself noted that notices were not issued to the Project Proponents – The Tribunal, in fact, considered it unnecessary to hear the Project Proponent to verify the facts in issue – The persons who were prejudiced by the order of the Tribunal naturally filed Review Petitions before the Tribunal – Appellant No.2 is one amongst them – The National Green Tribunal's recurrent engagement in unilateral decision making, provisioning *ex post* facto review hearing and routinely dismissing it has regrettably become a prevailing norm – It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process – It appears that the appellants did not have a full opportunity to contest the matter and place all their defenses before the Tribunal – The matter is remanded back to the Tribunal to issue notice to all the affected parties, hear them and pass appropriate orders. [Paras 1, 3, 4, 5, 6]

* Author

Case Law Cited

Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey & Ors., [2023] 10 SCR 440 **: (2023) 8 SCC 35 – referred to.**

List of Keywords

National Green Tribunal; *ex parte* order; Suo motu proceedings; Review petition; Adverse order; Opportunity of hearing; Affected party; Unilateral decision making; *ex post* facto review hearing; Facts in issue; Prejudice; Prevailing norm; Procedural integrity; Harmonious balance; Justice; Due process; Opportunity to contest the matter; Remand.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.1865-1866 of 2022.

From the Judgment and Order dated 31.08.2021 in OA No.65 of 2021 and dated 26.11.2021 in RA No.37 of 2021 of the National Green Tribunal.

Appearances for Parties

Sanjay Parikh, Sr. Adv., Ashish Aggarwal, Ms. Tanya Aggarwal, Ms. Tatini Basu, Ms. Nitipriya Kar, Subodha Pandey, Advs. for the Appellants.

Avneesh Arputham, Ankit Sharma, Pradeep Misra, Daleep Dhyani, Suraj Singh, Manoj Kumar Sharma, Praveen Swarup, Ameet Singh, Devesh Maurya, Ravi Kumar, Ms. Payal Swarup, Aman, Rajeev Kumar Bansal, Vidya Sagar, Rajesh Sonthalia, Mrs. Amita Agarwal, Shekher Kaushik, Ganesh Barowalia, Mrs. Vandana Gupta, Rahul Gupta, Deepak Goel, Ms. Archana Preeti Gupta, Ms. Harshita Maheshwari, Ms. Alka Goyal, Jitendra Bharti, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. These appeals arise out of two orders passed by the National Green Tribunal (“Tribunal” for short). The main order arises out of an ex parte order in suo motu proceedings holding the appellants to be

guilty and directing payment of compensation. The second order is the dismissal of the review petition filed by the appellant No.2 alleging that he had not been given an opportunity before an adverse order was passed against him. For the reasons to follow, we set aside the orders and remand the matter back to the Tribunal to issue notice to all the affected parties, hear them and pass appropriate orders.

2. The relevant portion of the order impugned[1] is as under:

> "7. Even though no notice was issued by the Tribunal to the PP in absence of particulars, the Joint Committee has visited the site. Notice has been issued to the PP under the Employees Compensation Act for death of a person. Remedial measures have been suggested for future. The PP has been found to be operating without statutory consents in non-conforming area without safety precautions, endangering life and health of others. In these circumstances, reserving liberty to the PP to move this Tribunal, we do not consider it necessary to defer the matter and to proceed by notice to the PP in view of established facts, duly verified by the statutory authorities who are themselves competent to take the recommended measures.
>
> 8. In view of the above, further action may be taken by the Statutory Authorities, following due process. The compensation assessed may be recovered and if not paid within one month, coercive measures be taken against the concerned persons as well as against the property involved. We request the Member Secretary, Delhi State Legal Services Authority to ensure legal aid to the heirs of the deceased to enable due compensation to be paid to them. If the owners/tenant or other persons against whom action is taken are aggrieved, they are at liberty to take their remedies, including moving this Tribunal. The Authorities may also maintain vigil and take measures to prevent such incidents in future. We have noted the constitution of zone wise STF to check the illegal industrial activities and godowns in residential/non-conforming areas

1 Original Application No. 65/2021, dated 31.08.2021

> and are of the view that the same should be manned by officers of higher rank than the constitution now proposed. The Chief Secretary, Delhi may review the constitution accordingly."

3. It is evident from the above that the Tribunal itself has noted that notices were not issued to the Project Proponents. The Tribunal, in fact, considers it unnecessary to hear the Project Proponent to verify the facts in issue. The Tribunal thought it appropriate to adopt this method in view of a Joint Inspection Report that had been submitted. The persons who were prejudiced by the order of the Tribunal naturally filed Review Petitions before the Tribunal. Appellant No. 2 is one amongst them. The Review Petition was taken up and dismissed by the Tribunal on 26.11.2021.

4. The National Green Tribunal's recurrent engagement in unilateral decision making, provisioning ex post facto review hearing and routinely dismissing it has regrettably become a prevailing norm. In its zealous quest for justice, the Tribunal must tread carefully to avoid the oversight of propriety. The practice of ex parte orders and the imposition of damages amounting to crores of rupees, have proven to be a counterproductive force in the broader mission of environmental safeguarding.

5. Significantly, these orders have consistently faced stays from this Court, resulting in the unraveling of the commendable efforts put forth by the learned Members, lawyers, and other stakeholders[2]. It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process. Only then can it reclaim its standing as a beacon of environmental protection, where well-intentioned endeavors are not simply washed away.

6. It appears that the appellants did not have a full opportunity to contest the matter and place all their defenses before the Tribunal. They filed this appeal and by order dated 04.03.2022, this Court stayed the judgment and order passed by the Tribunal. This was inevitable.

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2 *Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey & Ors.*, [2023] 10 SCR 440 : (2023)8 SCC 35. This Court has already noticed the practice of the Tribunal in not providing an opportunity of hearing to the affected party and consequently set aside its orders and remanded the matter to the Tribunal for reconsideration after following principles of natural justice.

Two years have passed by and the stay is still operating. We have no other alternative except to set aside the orders dated 31.08.2021 and 26.11.2021 and remand the matter back to the Tribunal. The Tribunal issue notices to all the necessary parties, hear them in detail, and pass appropriate orders. Needless to say that the Tribunal shall hear the case, uninfluenced by the observations and conclusions drawn in the orders dated 31.08.2021 and 26.11.2021.

7. We make it clear that this order does not deal with the merits of the matter and the actions of those guilty of statutory and environmental violation will have to be subject to strict scrutiny and legal consequences.

8. The Civil Appeals are allowed with these directions.

9. Pending applications, if any, shall stand disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: Appeals allowed with directions.

[2024] 1 S.C.R. 1190 : 2024 INSC 88

Government of Goa through the Chief Secretary v. Maria Julieta D'Souza (D) & Ors.

(Civil Appeal No. 722 of 2016)

31 January 2024

[Pamidighantam Sri Narasimha* and Aravind Kumar, JJ.]

Issue for Consideration

Whether the High Court, while allowing first appeal against judgment of trial court that dismissed the suit filed by respondent for declaration of title and injunction, had wrongly shifted the burden of proof on to the State (defendant) rather than requiring the plaintiff to prove its title.

Headnotes

Suit – Suit for declaration of title and injunction – Standard of proof – While inquiring into whether a fact is proved, sufficiency of evidence to be seen in the context of standard of proof, which in civil cases is by preponderance of probability.

Held: While it was submitted that the High Court wrongly shifted the plaintiff's burden to prove its own case for declaration on to the State and that the plaintiff must prove its own case, it is found that what was being submitted was not about the burden of proof but the standard of proof – This is a matter relating to the sufficiency of evidence – While inquiring into whether a fact is proved, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability – By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced. [Paras 6, 8]

Evidence – Common law jurisprudence – Distinction between burden of proof and standard of proof – This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. [Para 8]

* Author

Government of Goa through the Chief Secretary v. Maria Julieta D'Souza (D) & Ors.

Case Law Cited

Sebastiao Luis Fernandes (Dead) through LRs. v. K.V.P. Shastri (Dead) through Lrs., [2013] 11 SCR 1076 **: (2013) 15 SCC 161** *and Union of India v. Vasavi Cooperative Housing Society Limited,* **(2014) 2 SCC 269 :** [2014] 1 SCR 180 **– referred to.**

List of Keywords

Suit; Declaration of title and injunction; Burden of proof; Common law; Jurisprudence; Burden of proof; Standard of proof; Sufficiency of evidence; Preponderance of probability; Title; Injunction; Evidence.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.722 of 2016

From the Judgment and Order dated 21.10.2010 of the High Court of Bombay at Panaji, Goa in FA No.282 of 2007

Appearances for Parties

Ms. Ruchira Gupta, Shishir Deshpande, Ms. Harshita Sharma, Ms. Swati Jain, Ms. Pooja Tripathi, Tejaswin Suri, Advs. for the Appellant.

Huzefa Ahmedi, Sr. Adv., U R Timble, Ajay Kumar Jha, Abhishek Chaudhary, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. This is an appeal against the final judgment of the High Court of Bombay at Goa allowing the first appeal against the judgment of the Trial Court dated 25.07.2007 that dismissed the suit filed by the respondent herein.

2. The suit came to be filed by the respondent(s) herein for declaration of title and injunction. The Trial Court dismissed the suit on two grounds: first, the plaintiff could not establish her title by way of a clear document of title in her favour. Second the suit is itself barred by limitation.

3. In appeal, the High Court considered the matter in detail and in so far as the first ground is concerned, the High Court referred to various documents including deeds evidencing the presence of title in favour of the plaintiffs' predecessor followed by their continuous possession and came to the conclusion that her title over the property is well-established. So far as limitation is concerned, the High Court held that the suit is within the period of limitation, apart from also noting that the question of limitation was not pressed by the Government before the Trial Court.

4. We heard Ms. Ruchira Gupta, who was well-prepared on law and fact. She prepared a detailed list of dates and has also taken us through the relevant portions of the pleadings in the suit and other documents. She has pointed out the findings of fact as arrived by the Trial Court. Referring to the reasoning of the High Court, she submitted that the High Court had wrongly shifted the burden of proof on to the State (defendant) rather than requiring the plaintiff to prove its title. She further submitted that the High Court wrongly asked for proof of possession of the property rather than for proof of title of the property, which is the only inquiry in a suit for declaration. In support of her submission, she has referred to the precedents of this Court in *Sebastiao Luis Fernandes (Dead) through LRs. v. K.V.P. Shastri (Dead) through LRs.*[1] *and* *Union of India v. Vasavi Cooperative Housing Society Limited*[2].

5. Having considered the matter in detail, we are of the opinion that the High Court has correctly reappreciated the facts and evidence while exercising first appellate jurisdiction and has also followed the law as applicable in proving a suit for declaration. The High Court has also examined the plea of limitation and held that the suit is within the period of limitation.

6. While Ms. Ruchira Gupta submitted that the High Court wrongly shifted the plaintiff's burden to prove its own case for declaration on to the State and that the plaintiff must prove its own case, we found that what she was submitting was not about the burden of proof but the standard of proof. We will explain this in the context of fact as well as law.

1 [2013] 11 SCR 1076 : (2013)15 SCC 161

2 [2014] 1 SCR 180 : (2014)2 SCC 269

**Government of Goa through the Chief Secretary v.
Maria Julieta D'Souza (D) & Ors.**

7. On fact, the High Court referred to multiple pieces of evidence, orders, and documents and string them together to come to a clear conclusion that the title subsists in the plaintiff. Suffice for us to say that these pieces of evidence were adduced and proved by the plaintiff alone. The High Court did not solely rely on the lack of evidence by the State to establish its own title in coming to its conclusion. Thus, the burden of proof was well-discharged by the plaintiff and the High Court correctly examined and concluded its findings based on the plaintiff's evidence.

8. On law, the position is as follows. There is a clear distinction between burden of proof and standard of proof. This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. What Ms. Ruchira sought to point out is that the documents relied on by the plaintiff did not point out the existence of title at all. She is right to the extent that no single document in itself concludes title in favour of the plaintiff, but this is not an issue of burden of proof. This is a matter relating to the sufficiency of evidence. While inquiring into whether a fact is proved[3], the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability. By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced.

9. For these reasons, Civil Appeal arising out of judgment of the High Court in First Appeal No. 282 of 2007 dated 21.10.2010 is dismissed.

10. Pending application(s), if any, shall stand disposed of.

11. No order as to costs.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: Appeal dismissed.

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3 Section 3 of the Indian Evidence Act defines the terms as:
"Proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists

[2024] 1 S.C.R. 1194 : 2024 INSC 78

In Re: T. N. Godavarman Thirumulpad v. Union of India and Ors.

(Writ Petition (Civil) No. 202 of 1995)

31 January 2024

[B.R. Gavai, Pamidighantam Sri Narasimha and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Institutionalisation and Reconstitution of the Central Empowered Committee.

Headnotes

Environment – Environment (Protection) Act, 1986 – Central Empowered Committee (CEC) – Institutionalisation and Reconstitution – Central Empowered Committee (CEC) constituted by Supreme Court's order in 2002 functioned as an ad hoc body almost for two decades – Suggestion of the Court to constitute the CEC as a permanent statutory body was accepted – Draft notification published by Ministry of Environment, Forest and Climate Change (MoEFCC) for constitution of the CEC – Examined, suggestions made were incorporated – Eventually, notification dtd. 05.09.2023 u/s.3(3), Environment (Protection) Act was issued by MoEFCC constituting the CEC as a permanent authority:

Held: By virtue of the Notification dtd. 05.09.2023, the concerns regarding the functioning of the CEC as an ad hoc body and its institutionalisation as a permanent body have been taken care of – The Notification provides for the constitution of the CEC, its powers, functions, mandate, members, method of appointment, terms of service, and monitoring of its functioning – CEC to adopt the measures directed to promote institutional transparency, efficiency, and accountability in its functioning. [Paras 20, 21]

Environment (Protection) Act, 1986 – Notification issued constituting the CEC as a permanent authority – It provided that the States or Central Government shall give reasons in

writing for not accepting any suggestion/recommendation of the CEC and the decision of the Central Government shall be final; in case of deferment of the decision of any State Government with the CEC's recommendation, the matter shall be referred to the Central Government and its decision shall be final and binding – Decisions of the Central Government/State Governments are subject to the orders of Court, reiterated:

Held: Decisions of the Central Government or State Governments are always subject to the orders of this Court – When this notification was placed before this Court, this position was clarified – Order of the State and/or Central Government under clauses 3 and 4 will be subject to any direction or order that this Court may pass from time to time. [Para 17]

Environment – Environmental governance – Environmental rule of law – Role of constitutional courts:

Held: Environmental rule of law refers to environmental governance that is undergirded by the fundamental tenets of rule of law – While several laws, rules, and regulations exist for protection of the environment, their objective is not achieved as there is a considerable gap as these laws remain unenforced or ineffectively implemented – Rule of law in environmental governance seeks to redress this issue as the implementation gap has a direct bearing on the protection of the environment, forests, wildlife, sustainable development, and public health, eventually affecting fundamental human rights to a clean environment that are intrinsically tied to right to life – In India, environmental rule of law must draw attention to the existing legal regime, rules, processes, and norms that environmental regulatory institutions follow to achieve the goal of effective and good governance and implementation of environmental laws – More importantly, the focus must be on the policy and regulatory and implementation agencies – In doing so, environmental rule of law fosters open, accountable, and transparent decision making and participatory governance – The renewed role of constitutional courts will be to undertake judicial review to ensure that institutions and regulatory bodies comply with the principles of environmental rule of law. [Paras 23-25]

Environment – Environmental governance – Environmental rule of law – Existing institutional governance of the environment in India – Principles formulated for the effective monitoring of various bodies, institutions and regulators established for protecting forests, wildlife, environment and ecology – An overview of the bodies regulating the environment in India encapsulated – Bodies, authorities, and officers under the Union and States involved in environmental governance also enumerated – Importance of ensuring the effective functioning of these environmental bodies for the protection, restitution, and development of the ecology, reiterated – Role of the constitutional courts is to monitor the proper institutionalisation of environmental regulatory bodies and authorities – The bodies, authorities, regulators, and executive offices entrusted with environmental duties must function with the institutional features as stipulated. [Paras 26, 30 and 31]

Words and Phrases – 'Rule of law' – Discussed. [Para 23]

Case Law Cited

T.N. Godavarman Thirumulpad v. Union of India, **(2013) 8 SCC 198;** *T.N. Godavarman Thirumulkpad v. Union of India,* **[1996] 9 Suppl. SCR 982 : (1997) 2 SCC 267;** *T.N. Godavarman Thirumulkpad v. Union of India,* **[1997] 2 SCR 642 : (1997) 3 SCC 312;** *T.N. Godavarman Thirumulpad v. Union of India,* **(2002) 10 SCC 646;** *T.N. Godavarman Thirumulpad v. Union of India,* **(2009) 17 SCC 755;** *T.N. Godavarman Thirumulpad v. Union of India,* **(2013) 8 SCC 204;** *T.N. Godavarman Thirumulpad v. Union of India,* **[2008] 3 SCR 141 : (2008) 3 SCC 182;** *T.N. Godavarman Thirumulpad v. Union of India,* **(2009) 16 SCC 401;** *T.N. Godavarman Thirumulpad v. Union of India,* **(2022) 10 SCC 584;** *Vijay Rajmohan v. CBI,* **[2022] 19 SCR 563 : (2023) 1 SCC 329;** Greater Mumbai v. Ankita Sinha, **[2021] 10 SCR 1 : 2021 SCC OnLine SC 897;** *S. Jagannath v. Union of India,* **[1996] 9 Suppl. SCR 848 : (1997) 2 SCC 87;** *M.C. Mehta v. Union of India,* **(1997) 11 SCC 312 ;** *Hanuman Laxman Aroskar v. Union of India,* **[2019] 5 SCR 916 : (2019) 15 SCC 401 ;** *Himachal Pradesh Bus-Stand Management & Development Authority v. Central Empowered Committee,* **(2021) 4 SCC 309 – referred to.**

In Re: T. N. Godavarman Thirumulpad v. Union of India and Ors.

Books and Periodicals Cited

United Nations, '*Environmental Rule of Law: First Global Report*' (2019) https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report, p.1, 8.

List of Acts

Environment (Protection) Act, 1986; Forest (Conservation) Act, 1980; Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981; Wildlife Protection Act, 1972; Biological Diversity Act, 2002; National Green Tribunal Act, 2010.

List of Keywords

Central Empowered Committee; Reconstitution; Institutionalisation; Ad hoc body; Permanent statutory body; Institutional transparency; Environmental governance; Environmental rule of law; Principles of environmental rule of law; Rule of law; Environmental jurisprudence; Role of constitutional courts; Judicial review; Environmental matters;

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.202 of 1995.

Appearances for Parties

A.D.N. Rao, Harish N. Salve, Ms. Aparajita Singh, Sr. Advs. [A.Cs.], Siddhartha Chowdhury, K. Parameshwar, Advs. [A.Cs.], M.V. Mukunda, Ms. Kanti, Ms. Aarti Gupta, Chinmay Kalgaonkar, Advs.

Tushar Mehta, SG, Ms. Aishwarya Bhati, A.S.G., A.N.S. Nadkarni, Sr. Adv., Ms. Shagun Thakur, Ms. Manisha Chava, Gurmeet Singh Makker, Ms. Archana Pathak Dave, Ms. Suhashini Sen, S. S. Rebello, Shyam Gopal, Raghav Sharma, Sughosh Subramanyam, Ms. Ruchi Kohli, Atul Sharma, Salvador Santosh Rebello, Ms. Deepti Arya, Ms. Arzu Paul, Siddhant Gupta, Ms. Manisha Gupta, Rishikesh Haridas, Abhishek Atrey, Ms. Vidyottma Jha, Shailesh Madiyal, Sravan Kumar Karanam, Santhosh Kumar Puppala, Shireesh Tyagi, Advs for the appearing parties.

Petitioner/Applicant-in-person

Judgment / Order of the Supreme Court

Judgment

P. C.

1. This judgment is in the context of institutionalisation and reconstitution of the Central Empowered Committee.[1] The CEC was originally directed to be constituted by an order of this Court dated 09.05.2002.[2] Almost for a period of two decades, the CEC was functioning as an *ad hoc* body. We noticed that the present composition of the CEC also consisted of persons who are more than 75 years of age and some of whom are also residing outside India. We also noticed that much water had flown when the CEC was initially constituted, inasmuch as, various enactments concerning environmental issues were enacted, so also various regulatory bodies were constituted under the said enactments. We further found it necessary to have a relook at the CEC's functioning. We, therefore, passed orders dated 24.03.2023 and 18.05.2023 in this regard.

2. The Ministry of Environment, Forest and Climate Change thereafter issued a Notification dated 05.09.2023 under Section 3(3) of the Environment (Protection) Act, 1986, constituting the CEC as a permanent body for *"the purposes of monitoring and ensuring compliance of the orders of the Supreme Court covering the subject matter of Environment, Forest and Wildlife, and related issues arising out of the said orders and to suggest measures and recommendations generally to the State, as well as Central Government, for more effective implementation of the Act and other orders of the Court"*.[3] By our order dated 18.08.2023, we have approved the aforesaid Notification. While approving the Notification, we also declared that the CEC shall continue to function subject to such orders and directions that this Court may pass from time to time.

3. In Part I of this judgment, we will first present the conception, constitution, functions, and finally the institutionalisation of the CEC. In Part II, to entrench environmental rule of law in our environmental

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1 Hereinafter 'CEC'.

2 In IA No. 295 in WP(C) No. 202/1995 reported as *T.N. Godavarman Thirumulpad* v. *Union of India,* (2013) 8 SCC 198. Pursuant to the said direction, a notification dated 17.09.2002 was issued by the Central Government constituting the CEC as a statutory authority under Section 3(3) of the Environment (Protection) Act, 1986.

3 See the Preamble of the notification dated 05.09.2023.

governance, we have attempted to formulate some new principles for the effective monitoring of various bodies, institutions, and regulators established for protecting our forests, wildlife, environment, and ecology.

PART - I

4. *Original Constitution and Functioning of CEC till 2023:* This Court's endeavours to protect forests in India and to ensure regulation of non-forest activities in forests commenced in 1996. Even prior to the constitution of the CEC, this Court directed the constitution of various bodies to oversee and monitor the compliance of its orders. In one of the most important orders dated 12.12.1996,[4] this Court defined the term 'forest' as covering all statutorily recognised forests, irrespective of how they were designated (either as reserved, protected or otherwise). The term 'forest land' in Section 2 of the Forest (Conservation) Act, 1980 was held to include any area recorded as a forest in government records, irrespective of its ownership. Along with mandating prior approval of the Central Government to undertake any non-forest activities in forests and issuing directions on the felling of trees, this Court also directed the constitution of *Expert Committees* by each state government to identify 'forests' and sustainable existence of saw mills in forests. This Court also directed each state government to constitute a *committee with the Principal Chief Conservator of Forests and another Senior Official* to oversee the compliance of its orders and the filing of status reports by the states.

5. In its order dated 04.03.1997,[5] this Court constituted a *High-Powered Committee*[6] to oversee the implementation of its orders in the North-Eastern region and to also oversee preparation of inventory of timber, apart from permitting its sale. By order dated 17.04.2000,[7] this Court empowered the HPC to also supervise the transportation of illegal timber, oversee investigation into cases of illegal felling of trees, and to re-examine licensing of units.

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4 *T.N. Godavarman Thirumulkpad* v. *Union of India,* [1996] Supp. (9) SCR 982 *: (1997) 2 SCC 267.*

5 *T.N. Godavarman Thirumulkpad* v. *Union of India,* [1997] 2 SCR 642 *:* (1997) 3 SCC 312.

6 Hereinafter 'HPC'.

7 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2002) 10 SCC 646.

6. The CEC was constituted by this Court by order dated 09.05.2002[8] to monitor the implementation of its orders and to present cases of non-compliance, including with respect to encroachment removals, implementation of working plans, compensatory afforestation, plantations and other conservation issues. The Court directed that the CEC must be constituted until such time that the Central Government constitutes a statutory body under Section 3 of the Environment (Protection) Act. The CEC, so constituted comprised: (i) a Chairman, nominated by the Ministry of Environment and Forests[9] in consultation with the amicus curiae, (ii) a nominee of the MoEF, (iii) two NGOs who are to be nominated in consultation with the amicus curiae, and (iv) a Member Secretary. These members (other than the nominee of the MoEF) could not be removed without the Court's permission.

7. The above order required that the reports and affidavits filed by states pursuant to this Court's orders were to be placed before the CEC for its examination and recommendations. The recommendations of the CEC would be placed before this Court for orders. Further, persons who are aggrieved by any steps taken by the government in purported compliance of this Court's orders could seek relief from the CEC, which must decide the applications in conformity with the Court's orders. To perform these functions, the CEC was given the power to call for documents from any person or government, summon any person and receive evidence on oath, and seek assistance/ presence of any person or official, including the power to co-opt persons as special invitees for dealing with specific issues. When an issue pertains to a particular state, the Chief Secretary and Principal Chief Conservator of Forests of that state were to be co-opted as special invitees wherever feasible. The composition of the CEC was finalised by this Court by order dated 09.09.2002.[10] In this order, the Court also took note of the draft proposed notification under Section 3(3) of the Environment (Protection) Act that constituted the CEC

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8 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2013) 8 SCC 198.

9 Hereinafter 'MoEF'.

10 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2009) 17 SCC 755. Under this order, the Court appointed the following members of the CEC:

a. PV Jayakrishnan, Secretary, Government of India as Chairman;
b. Shri NK Joshi, ADG of Forests, Member;
c. Valmik Thapar, Ranthambore Foundation as Member;
d. Advocate Mahendra Vyas as Member;
e. MK Jiwrajka, IGF as Member Secretary.

as a statutory body for five years. The Court directed that once the notification is issued, the functions and responsibilities of the CEC are to be exercised as a statutory committee. The Central Government issued the notification constituting the CEC under Section 3(3) on 17.09.2002.[11]

8. The first modification of the order dated 09.05.2002 came by way of order dated 14.12.2007.[12] The modified terms of reference, which superseded all previous orders, were as follows:

> *"1.2. The committee shall exercise the following powers and perform the following functions:*
>
> *(i) to monitor the implementation of this Court's orders and place reports of non-compliance before the Court and the Central Government for appropriate action;*
>
> *(ii) to examine pending interlocutory applications in the said writ petitions (as may be referred to it by the Court) as well as the reports and affidavits filed by the States in response to the orders passed by the Hon'ble Court and place its recommendations before the Court for orders;*
>
> *(iii) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf;*
>
> *(iv) for the purposes of effective discharge of powers conferred upon the Committee under this order, the Committee can:*
>
> *(a) call for any documents from any persons or the Government of the Union or the State or any other official;*
>
> *(b) undertake site inspection of forest area involved;*
>
> *(c) seek assistance or presence of any person(s) or official(s) required by it in relation to its work;*
>
> *(d) co-opt one or more persons as its members or as special invitees for dealing with specific issues;*

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11 No.13-21/98-SU-PT.II.

12 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2013) 8 SCC 204.

(e) co-opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State;

(f) to suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court;

(v) to examine and advise/recommend on any issue referred to the Committee."

9. The composition of the CEC was modified by this Court by its order dated 21.02.2008[13] and the term of office for the new members was directed to be for three years or until further orders, whichever is earlier. In another order dated 11.09.2009, one of the members of the CEC was replaced[14] and by order dated 03.02.2017, the Member Secretary was replaced.[15]

10. *Developments in 2023:* It is in the context of IA No. 174896/2019 seeking permission of this Court to construct a Convention Centre at Patnitop that the present issue of reconstitution of CEC is taken up. The said application was allowed by this Court on 24.02.2023 subject to obtaining clearance from the concerned statutory authorities.[16]

11. The CEC submitted its report on the subject matter on 13.03.2023. When the report was placed before this Court on 24.03.2023, the Court made the following observations regarding the functioning of the CEC. The relevant portion of the order dated 24.03.2023 is extracted below:[17]

"10. In any case, we are of the view that once an order is passed by this Court, it is not appropriate for a Committee which was constituted under the very orders of this Court to give a report which in effect, questions the correctness or otherwise, of the orders passed by this Court.

13 *T.N. Godavarman Thirumulpad* v. *Union of India,* [2008] 3 SCR 141 : (2008) 3 SCC 182.

14 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2009) 16 SCC 401.

15 *T.N. Godavarman Thirumulpad* v. *Union of India,* (2022) 10 SCC 584.

16 IA No. 196062 and 174896 of 2019 in *T.N. Godavarman Thirumulpad* v. *Union of India,* W.P. (C) No. 202/1995, order dated 24.02.2023

17 IA No. 196062 and 174896 of 2019 along with CEC Report No. 11/2023 in *T.N. Godavarman Thirumulpad* v. *Union of India,* W.P. (C) No. 202/1995, order dated 24.03.2023.

11. A Committee which is constituted under the orders of the Court cannot consider itself to be an appellate authority in regard to the orders passed by this Court.

12. We are further informed by the learned Solicitor General that at times, the members of the CEC are not ad idem on all the issues, which are ultimately reported to this Court.

13. We, therefore, direct that hereinafter, wherever there is a separate or dissenting opinion of any of the members of the CEC, such opinion shall also be placed before the Court alongwith the report.

14. It is further informed that some of the members of the Committee have crossed the age of 75 years and some of the members are also living abroad.

15. No doubt, the Committee has rendered yeomen services to the cause of environment. However, we are of the view that for effective functioning of the CEC, it is appropriate that some experts in the relevant fields who are relatively younger to the present incumbents, can contribute in a more energetic and efficient manner. It will therefore be appropriate that some of the old members, who have attained an advanced age or are not available in India all the time, are replaced by younger members.

16. We, therefore, request the learned Solicitor General and both the learned Amicus Curiae to give a list of persons, who have expertise in environmental and ecological fields. The same shall be done within three weeks from today.

17. List these applications on 19.04.2023 for direction."

12. When the matter was next listed on 18.05.2023,[18] learned Solicitor General submitted that the Central Government had accepted the suggestion of the Court to constitute the CEC as a permanent statutory body. Union of India was to publish a draft notification under Section 3 of the Environment (Protection) Act, 1986 to constitute the CEC within 15 days and place the notification before this Court. This

18 *T.N. Godavarman Thirumulpad* v. *Union of India,* I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.05.2023.

notification would contain provisions on the qualification of members, their tenure, powers and responsibilities, etc. The relevant portion of the order dated 18.05.2023 is extracted below:

> "*On the last date when the matter was heard, a suggestion was made by the Bench that instead of the CEC (Central Empowered Committee) being an ad-hoc body, it would be in the larger interest that the CEC as an institution should be a permanent statutory body.*
>
> *Mr. Tushar Mehta, learned Solicitor General, has accepted the said suggestion. He states that the Union of India would publish a draft notification under the provisions of Section 3 of the Environment (Protection) Act, 1986 providing for the constitution of the CEC.*
>
> *He submitted that the draft notification would contain provisions related to the qualification of the Members to be appointed, their tenure, their powers and responsibilities etc.*
>
> *Learned Solicitor General submits that the draft notification will be published within a period of 15 days from today and that the same shall be placed before the Court on the next date.*"

13. On 18.08.2023,[19] a draft notification issued by the Ministry of Environment, Forest and Climate Change[20] for constitution of the CEC was placed before the Court, with a copy to the learned amicus curiae. We examined the draft notification in detail and made certain suggestions about incorporating certain features for the effective and efficient functioning of the CEC. Certain suggestions were also made by the learned amicus curiae. The learned Solicitor General did not have any objection to the same and submitted that the suggestions would be incorporated in the final notification. Pursuantly, the Central Government was permitted to proceed with the issuance of the notification to constitute the CEC as a permanent body in the interest of all stakeholders. This Court also permitted the MoEFCC to

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19 *T.N. Godavarman Thirumulpad* v. *Union of India*, I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.08.2023.

20 Hereinafter 'MoEFCC'.

proceed with the constitution of members of the CEC in accordance with the notification. The relevant portion of the order passed by this Court is extracted below:

> "*2. In pursuance of the aforesaid order, Mr. Tushar Mehta, learned Solicitor General of India, has handed over a draft notification to be issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) regarding constitution of Central Empowered Committee (CEC). The said draft has already been shared with Mr. K. Parameshwar, learned Amicus Curiae.*
>
> *3. Learned Amicus Curiae submits that he has only one suggestion to the draft notification i.e. there should be a provision for periodical audit of the functioning of the CEC by the MoEFCC.*
>
> *4. Learned Solicitor General does not have any objection to the said suggestion. He states that the suggestion given by the learned Amicus Curiae would be incorporated in the final notification that would be issued by the MoEFCC.*
>
> *5. We, therefore, permit the Union of India to proceed further with the issuance of notification for constitution of the CEC as a permanent body.*
>
> *6. We find that rather than CEC functioning as an ad hoc body, it functioning as a permanent body would be in the interest of all the stake holders.*
>
> *7. We also permit the MoEFCC to proceed further with the constitution of the CEC in accordance with the notification that will be issued by the MoEFCC.*"

14. Pursuant to the above referred orders dated 18.05.2023 and 18.08.2023, the MoEFCC issued a Notification dated 05.09.2023[21] under Section 3(3) of the Environment (Protection) Act to constitute a permanent authority, i.e., the Central Empowered Committee (CEC), for monitoring and ensuring compliance of this Court's orders covering the subject-matter of environment, forest, and wildlife and related issues arising out of these orders; and to suggest measures and make recommendations to the states and Central Government for more effective implementation of the Act and this Court's orders.

21 E. F. No. 13-12/2022-SU.

15. Under the new notification, the CEC shall comprise: i) Chairman, ii) Member Secretary, and iii) Three expert members (one each from the fields of environment, forest, and wildlife). The Chairman and three expert members are to be nominated by the Central Government for a tenure of 3 years, which can be extended to one more tenure subject to the prescribed age limit of 66 years. The Member Secretary is appointed by the Central Government to be the Chief Coordinating Officer of the CEC and to assist the CEC in the discharge of its functions.

16. The notification also provides for the functions and powers of the CEC in accordance with the orders of this Court along with certain other functions. They are:

"2. The Committee shall exercise the following powers and perform the following functions:-

A. Powers and functions conferred upon the Committee by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202/1995 and 171/1996 in the case of T. N. Godavarman Thirumalpad Vs. Union of India and others:-

a) to monitor the implementation of Supreme Court's orders in above matters and place reports of noncompliance before the Central Government for appropriate actions;

b) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to the Central Government in that matter;

c) for the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can:-

i. call for any documents from any persons or the government of the Union or the State or any other official.

ii. undertake site inspection.

iii. seek assistance or presence of any person(s) or official(s) required by it in relation to its work.

iv. co-opt one or more persons as special invitees for dealing with specific issues.

v. co-opt, wherever feasible, the Secretary of the State Government dealing with the subjects related to Forest or Wildlife or Environment or his representative or the Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State.

vi. to suggest or recommend measures generally to the State as well as Central Government, for the more effective implementation of the Act and other orders of the Supreme Court in above matters.

B. to examine and advise or recommend on any issue referred to the Committee by the Central Government, from time to time."

17. The notification provides that the states or Central Government shall give reasons in writing for not accepting any suggestion or recommendation of the CEC and the decision of the Central Government shall be final.[22] Further, in case of deferment of the decision of any State Government with the CEC's recommendation, the matter shall be referred to the Central Government and the decision of the Central Government shall be final and binding.[23] We may clarify at this very stage that the decisions of the Central Government, or, for that matter, State Governments, are always subject to the orders of this Court. When this notification was placed before us, we clarified this position, and we hereby reiterate that the order of the State and/or Central Government under clauses 3 and 4 will be subject to any direction or order that this Court may pass from time to time.

18. The members of the CEC are appointed in their personal capacity and are to function under the administrative control of the MoEFCC, with headquarters in Delhi.[24] The salaries and allowances payable, other perks and conditions of service of the Chairperson and members are to be prescribed and they cannot be varied to their disadvantage after the appointment.[25] MoEFCC is required to provide suitable and adequate office accommodation for the CEC and requisite manpower,

22 ibid, s.3.

23 ibid, s.4.

24 ibid, s.5.

25 ibid, s.6.

budgetary support, and infrastructure for the discharge of functions and powers delegated to the CEC.[26] MoEFCC is also required to meet the expenditure incurred, including salaries and remuneration to members and supporting staff.[27] The CEC is required to submit quarterly reports to the Central Government and MoEFCC for periodical review and audit of the CEC's functioning.[28]

19. Finally, the Central Government appointed the members of the CEC by another notification dated 08.09.2023, and the composition is as follows:[29] i) Sri Siddhant Das, Chairman, ii) Sri Chandra Prakash Goyal, Member, iii) Sri Sunil Limaye, Member, iv) Dr. J.R. Bhatt, Member and v) Ms Banumathi G, Assistant Inspector General of Forests, MoEFCC, Member Secretary. Thereafter, the matter came up before us on 11.12.2023. On the said date, we heard the learned Solicitor General as well as the learned amicus curiae at length. We had also called for suggestions for more effective functioning of the CEC.

20. We find that by virtue of the Notification dated 05.09.2023, our concerns regarding the functioning of the CEC as an *ad hoc* body and that hereinafter it should be institutionalised as a permanent body have been taken care of. The said Notification provides for the constitution of the CEC, its powers, functions, mandate, members, method of appointment, terms of service, and monitoring of its functioning.

21. We further direct the CEC to adopt the following measures to promote institutional transparency, efficiency, and accountability in its functioning:

i. The CEC shall formulate guidelines for the conduct of its functions and internal meetings. The CEC shall formulate the operating procedures delineating the roles of its members and the Secretary of the CEC.

ii. The CEC shall formulate guidelines about the public meetings that it holds, ensure the publication of meeting agenda in advance on its website, maintain minutes of meetings, and set out rules regarding notice to parties.

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26 ibid. s.7.

27 ibid, s.8.

28 ibid, s.9.

29 F. No. 13-12/2022-SU.

iii. The CEC shall formulate guidelines for site visits and, if necessary, hearing the public and affected parties therein.

iv. The CEC shall formulate guidelines fixing time limits for site visits, preparation of reports, and also the manner of preparation of reports.

v. We further direct that these guidelines/regulations must be accessible for anyone to seek. They shall be posted on the official website of the CEC.

PART-II

22. As new bodies, authorities, and regulators for environmental governance emerge from time to time, their institutionalisation assumes extraordinary importance. Institutionalisation means that these bodies must work in compliance with institutional norms of efficiency, integrity, and certainty. In this context, the role of the constitutional courts is even greater.

23. *Environmental Rule of Law:* Environmental rule of law refers to environmental governance that is undergirded by the fundamental tenets of rule of law.[30] The rule of law regime is one that has effective, accountable, and transparent institutions; responsive, inclusive, participatory, and representative decision-making; and public access to information.[31] It recognises the vital role that institutions play in governance and focuses on defining the structural norms and processes that guide institutional decision-making.[32]

24. While several laws, rules, and regulations exist for protection of the environment, their objective is not achieved as there is a considerable gap as these laws remain unenforced or ineffectively implemented.

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30 United Nations, 'Environmental Rule of Law: First Global Report' (2019) **https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report,** p.1, 8. The United Nations has defined environmental rule of law with reference to 7 core components, which are:

i. Fair, clear, and implementable environmental laws;
ii. Access to information, public participation, and access to justice through courts, tribunals, commissions, and other bodies;
iii. Accountability and integrity of decision-makers and institutions;
iv. Clear and coordinated mandates and roles, across and within institutions;
v. Accessible, fair, impartial, timely and responsive dispute resolution mechanisms;
vi. Recognition of the mutually reinforcing relationship between rights and environmental rule of law; and
vii. Specific criteria for the interpretation of environmental law.

31 *Hanuman Laxman Aroskar* v. *Union of India,* [2019] 5 SCR 916 : (2019) 15 SCC 401, para 156.

32 *Himachal Pradesh Bus-Stand Management & Development Authority* v. *Central Empowered Committee,* (2021) 4 SCC 309, para 48.

Rule of law in environmental governance seeks to redress this issue as the implementation gap has a direct bearing on the protection of the environment, forests, wildlife, sustainable development, and public health, eventually affecting fundamental human rights to a clean environment that are intrinsically tied to right to life.[33] Accountability of the authorities impressed with the duty to enforce and implement environmental and other ecological laws is an important feature of judicial governance. In the context of accountability, this Court in *Vijay Rajmohan* v. *CBI*[34] has held:

> "*34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.*
>
> *35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognised as one of the six principles of the Citizens Charter Movement.*
>
> *36. Accountability has three essential constituent dimensions : (i) responsibility, (ii) answerability, and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.*"

33 *Hanuman Laxman Aroskar* (supra), paras 143-144.

34 (2023) 1 SCC 329.

25. In India, environmental rule of law must draw attention to the existing legal regime, rules, processes, and norms that environmental regulatory institutions follow to achieve the goal of effective and good governance and implementation of environmental laws. More importantly, the focus must be on the policy and regulatory and implementation agencies. In doing so, environmental rule of law fosters open, accountable, and transparent decision-making and participatory governance. The renewed role of constitutional courts will be to undertake judicial review to ensure that institutions and regulatory bodies comply with the principles of environmental rule of law.

26. *Existing Institutional Governance of the Environment in India:* Environmental regulation in our country is performed by various bodies constituted under legislations concerning the environment, forests, and wildlife. Governance is also through the exercise of executive power by the Central and State Governments. These bodies perform their function of regulating private and public activities that impact the environment, forests, and wildlife in accordance with environmental legislations, rules, regulations, and notifications passed under them. An overview of some of the main bodies that regulate the environment in India can be encapsulated as follows:

i. *Central Pollution Control Board* (CPCB) and *State Pollution Control Boards* (SPCB): These Boards were initially constituted under the Water (Prevention and Control of Pollution) Act, 1974.[35] They also function under the Air (Prevention and Control of Pollution) Act, 1981.[36] The function of the CPCB under these Acts is to promote cleanliness of water streams and wells and to improve air quality and combat air pollution. In furtherance of these functions, the Board advises the Central Government, coordinates activities of states, provides technical assistance to SPCBs, lays down standards, and performs any other function as may be prescribed. The SPCBs perform similar functions by advising the State Governments on matters concerning air and water pollution.[37]

35 Water (Prevention and Control of Pollution) Act, 1974, ss. 3 and 4.

36 Air (Prevention and Control of Pollution) Act 1981, ss. 3 and 4.

37 Water (Prevention and Control of Pollution) Act, 1974, ss. 16 and 17; Air (Prevention and Control of Pollution) Act 1981, ss. 16 and 17.

ii. Authorities concerning protection of wildlife under the Wildlife Protection Act, 1972: The Central Government appoints a Director of Wild Life Preservation and the State Government appoints Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens.[38]

The Central Government shall constitute the *National Board for Wild Life* to promote the conservation and development of wildlife and forests.[39] The National Board can frame policies and advise the Central and State Governments on promoting wildlife conservation and effectively controlling poaching and illegal trade; recommend setting up and managing national parks and sanctuaries; conduct impact assessment of activities on wildlife; review progress of wildlife conservation; and prepare and publish status reports on wildlife in the country.[40] Similarly, *State Board(s) for Wild Life* must also be constituted under the Act for selecting and managing protected areas; formulating policies for protection and conservation of wildlife; harmonising the needs of tribals and forest dwellers with wildlife conservation; and any other matter referred to it by the State Governments.[41]

The Central Government must constitute the *Central Zoo Authority* that regulates the functioning of zoos by laying down minimum standards, recognition and derecognition, maintaining records, coordinating personnel training, and providing assistance.[42] The Central Government must also constitute the *National Tiger Conservation Authority* under the Act,[43] whose powers and functions have been set out in Section 38O.

iii. The Central Government constitutes the *Advisory Committee* under the Forest (Conservation) Act, 1980 to advise the Central Government on the grant of approval for State Government's use of forest land for non-forest purposes and on any other matter connected with forest conservation which may be referred to it by the Central Government.[44]

38 Wildlife Protection Act, 1972, ss. 3 and 4.

39 Wildlife Protection Act, 1972, ss. 5A and 5C.

40 ibid.

41 Wildlife Protection Act, 1972, ss. 6 and 8.

42 Wildlife Protection Act, 1972, ss. 38A and 38C.

43 Wildlife Protection Act, 1972, s. 38L.

44 Forest (Conservation) Act 1980, s. 3.

iv. The Central Government, in exercise of its power under Section 3 of the Environment (Protection) Act, 1986 constitutes the *State Environment Impact Assessment Authorities* (SEIAA) at the state level to grant prior environmental clearance to certain projects, as specified in the Environment Impact Assessment Notification.

v. *National Biodiversity Authority* and *State Biodiversity Boards* are constituted under the Biological Diversity Act, 2002.[45] The National Biodiversity Authority has the power to grant permission for obtaining biological resources and to regulate matters pertaining to the grant of such permission, including intellectual property rights. The Authority also advises the Central Government on conservation and sustainable and equitable use of biodiversity, the State Governments on the management of heritage sites, and such other functions as may be prescribed by the Central Government.[46] The State Biodiversity Boards are tasked with advising State Governments on conservation and sustainable and equitable use of biodiversity, regulating the grant of approvals for commercial utilisation, bio-survey and bio-utilisation of biological resources in India, and such other functions as may be prescribed by the State Government.[47]

vi. *National Green Tribunal* (NGT) has been constituted by the Central Government by notification under the NGT Act, 2010.[48] It has jurisdiction over all civil cases where a substantial question relating to the environment is involved and such question arises out of implementation of various legislations pertaining to the environment.[49] The NGT also has appellate jurisdiction over certain matters arising out of the Water (Prevention and Control of Pollution) Act, 1974; Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981; Environment

45 Biological Diversity Act, 2002, ss. 8 and 22.

46 Biological Diversity Act, 2002, s. 18.

47 Biological Diversity Act, 2002, s. 23.

48 NGT Act, 2010, s. 3.

49 As per Schedule I of the NGT Act, the following legislations are covered: (i) The Water (Prevention and Control of Pollution) Act, 1974; (ii) The Water (Prevention and Control of Pollution) Cess Act, 1977; (iii) The Forest (Conservation) Act, 1980; (iv) The Air (Prevention and Control of Pollution) Act, 1981; (v) The Environment (Protection) Act, 1986; (vi) The Public Liability Insurance Act, 1991; (vii) The Biological Diversity Act, 2002.

(Protection) Act, 1986; and Biological Diversity Act, 2002.[50] In *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha*,[51] this Court has held that the NGT is a sui generis body with all-encompassing jurisdiction to protect the environment. It not only performs an adjudicatory role but also performs wider functions in the nature of prevention, remedy, and amelioration.[52]

vii. In *S. Jagannath* v. *Union of India*,[53] which was a writ petition regarding prawn farming in ecologically fragile coastal areas, this Court directed the Central Government to constitute an authority under the Environment (Protection) Act, 1986 and confer it with powers to protect ecologically fragile coastal areas, seashores, waterfronts, and other coastal areas. Pursuant to this judgment, the Central Government by notification under Section 3(3) constituted the *National Coastal Zone Management Authority*,[54] *State Coastal Zone Management Authorities*,[55] and *Union Territory Coastal Zone Management Authorities*[56] in coastal states and union territories. The NCZMA coordinates the actions of SCZMAs and UTCZMAs, examines proposals for classifying coastal zonal areas, reviews violations, and provides technical assistance to the State Governments and Central Government.

viii. In *M.C. Mehta* v. *Union of India*,[57] this Court took suo motu cognisance of falling ground water levels and directed the Central Government to constitute a *Central Groundwater Board* as an authority to regulate and control groundwater management and development under Section 3(3) of the Environment (Protection) Act, 1986. The main object of constituting the Board was the urgent need to regulate indiscriminate boring and withdrawal of underground water.[58]

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50 NGT Act 2010, s. 16.

51 2021 SCC OnLine SC 897, para 61.

52 ibid, para 46.

53 (1997) 2 SCC 87, para 52.

54 Hereinafter 'NCZMA'.

55 Hereinafter 'SCZMA'.

56 Hereinafter 'UTCZMA'.

57 (1997) 11 SCC 312, para 9.

58 ibid, para 12.

There are many more bodies, authorities, and officers under the Union and states that are involved in environmental governance. A comprehensive list of such bodies, including the above, is as follows:

i. Animal Welfare Board of India[59]

ii. Atomic Energy Regulatory Board[60]

iii. Central Pollution Control Board[61]

iv. State Pollution Control Boards[62]

v. Director of Wild Life Preservation, Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens [63]

vi. National Board for Wild Life[64]

vii. State Boards for Wild Life[65]

viii. Central Zoo Authority[66]

ix. National Tiger Conservation Authority[67]

x. Coastal Zone Management Authority[68]

xi. Central Groundwater Board[69]

xii. Advisory Committee[70]

xiii. National Biodiversity Authority[71]

xiv. State Biodiversity Boards[72]

xv. National Disaster Management Authority[73]

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59 Constituted under the Prevention of Cruelty to Animals Act, 1960.

60 Constituted under the Atomic Energy Act, 1962.

61 Constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution Act, 1981.

62 ibid.

63 Appointed under the Wildlife Protection Act, 1972.

64 Constituted under the Wildlife Protection Act, 1972.

65 ibid.

66 ibid.

67 ibid.

68 Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87.

69 Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in *M.C. Mehta* v. *Union of India,* (1997) 11 SCC 312.

70 Constituted under the Forest (Conservation) Act, 1980.

71 Constituted under the Biological Diversity Act, 2002.

72 ibid.

73 Constituted under The Disaster Management Act, 2005.

xvi. State Disaster Management Authorities[74]

xvii. District Disaster Management Authorities[75]

xviii. National Green Tribunal[76]

xix. State Level Advisory Bodies[77]

xx. National Compensatory Afforestation Fund Management and Planning Authority[78]

xxi. State Compensatory Afforestation Fund Management and Planning Authority[79]

xxii. Environment Impact Assessment Authorities[80]

xxiii. Expert Appraisal Committee[81]

xxiv. Dahanu Taluka Environment Protection Authority[82]

xxv. Wildlife Crime Control Bureau

xxvi. Forest Survey of India

27. The above referred bodies, authorities, regulators, and officers are constituted with persons having expertise in the field. They have the requisite knowledge to take appropriate decisions about contentious issues of the environment, forests, and wildlife, and also to ensure effective implementation of environmental laws. These bodies constitute the backbone of environmental governance in our country. They need to function with efficiency, integrity, and independence. As duty-bearers, they are also subject to accountability.

28. We may ask a simple question – how effectively are these environmental bodies functioning today? This question has a direct bearing on the protection and restoration of ecological balance.

74 ibid.

75 ibid.

76 Constituted under the NGT Act, 2010.

77 Constituted under the Solid Waste Management Rules, 2016.

78 Constituted under the Compensatory Afforestation Fund Act, 2016.

79 ibid.

80 Constituted under the Environment Impact Assessment Notification issued by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986.

81 ibid.

82 Constituted by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986.

29. As environmental governance through these bodies emerges, the obligation of the constitutional courts is even greater. Hitherto, the constitutional courts focused on decisions and actions taken by the executive or private persons impacting the environment and ecology because the scrutiny by regulators was felt to be insufficient. Their judgment, review, and consideration did not inspire confidence and therefore, the Court took up the issue and would decide the case. In this process, a large number of decisions rendered by this Court on sensitive environmental, forest, and ecological matters constitute the critical mass of our environmental jurisprudence. This Court would continue to exercise judicial review, particularly in environmental matters, whenever necessary.

30. We however seek to emphasise and reiterate the importance of ensuring the effective functioning of these environmental bodies as this is imperative for the protection, restitution, and development of the ecology. The role of the constitutional courts is therefore to monitor the proper institutionalisation of environmental regulatory bodies and authorities.

31. In furtherance of the principles of environmental rule of law, the bodies, authorities, regulators, and executive offices entrusted with environmental duties must function with the following institutional features:

i. The composition, qualifications, tenure, method of appointment and removal of the members of these authorities must be clearly laid down. Further, the appointments must be regularly made to ensure continuity and these bodies must be staffed with persons who have the requisite knowledge, technical expertise, and specialisation to ensure their efficient functioning.

ii. The authorities and bodies must receive adequate funding and their finances must be certain and clear.

iii. The mandate and role of each authority and body must be clearly demarcated so as to avoid overlap and duplication of work and the method for constructive coordination between institutions must be prescribed.

iv. The authorities and bodies must notify and make available the rules, regulations, and other guidelines and make them accessible by providing them on the website, including in

regional languages, to the extent possible. If the authority or body does not have the power to frame rules or regulations, it may issue comprehensive guidelines in a standardised form and notify them rather than office memoranda.

v. These bodies must clearly lay down the applicable rules and regulations in detail and the procedure for application, consideration, and grant of permissions, consent, and approvals.

vi. The authorities and bodies must notify norms for public hearing, the process of decision-making, prescription of right to appeal, and timelines.

vii. These bodies must prescribe the method of accountability by clearly indicating the allocation of duties and responsibilities of their officers.

viii. There must be regular and systematic audit of the functioning of these authorities.

32. The role of the constitutional courts is to ensure that such environmental bodies function vibrantly, and are assisted by robust infrastructure and human resources. The constitutional courts will monitor the functioning of these institutions so that the environment and ecology is not only protected but also enriched.

33. Ordered accordingly.

Headnotes prepared by: Divya Pandey *Result of the case:* Directions issued.

[2024] 1 S.C.R. 1219 : 2024 INSC 93

Omdeo Baliram Musale & Ors.
v.
Prakash Ramchandra Mamidwar & Ors.

(Petition for Special Leave to Appeal (C) No. 11258 of 2015)

24 January 2024

[Pamidighantam Sri Narasimha and Aravind Kumar, JJ.]

Issue for Consideration

Whether the High Court erred in dismissing the application for restoration of revision petition (in a suit for declaration) and accompanying application for condonation of delay.

Headnotes

Suit – Suit for declaration related to a property dismissed for default – Application for restoration dismissed – Appeal dismissed – Revision petition dismissed by High Court – Application for restoration of the revision petition and condonation of delay dismissed by High Court – SLP thereagainst.

Held: The facts indicate that the suit that was filed in 1982 never took off as even summons were not issued – The suit that was filed in the year 1982 relates to an alleged unauthorized sale more than four decades back – The suit has virtually become infructuous for more than one reason – SLP dismissed. [Paras 13, 15]

List of Keywords

Suit for declaration; Revision petition; Application for restoration; Condonation of delay; Default; Summons; Infructuous.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION : Special Leave Petition No. 11258 of 2015

From the Judgment and Order dated 05.11.2014 of the High Court of Judicature at Bombay at Nagpur in CA (CAO) No. 1109 of 2013 in MCA St. No. 12275 of 2013 in CRA No. 284 of 2003

Appearances for Parties

Ms. Jayshree Satpute, Ms. Manju Jetley, Advs. for the Petitioners.

Satyajit A. Desai, Siddharth Gautam, Abhinav K. Mutyalwar, Gajanan N Tirthkar, Vijay Raj Singh Chouhan, Luv Kumar, Ananya Thapliyal, Ms. Anagha S. Desai, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. This Special Leave Petition is against the decision of the High Court[1] in dismissing an application for restoration of a Civil Revision Application and the accompanying application for condonation of delay in sheer exasperation. The facts are as follows:

2. A simple prayer was made by the petitioners in a suit for declaration that the property belonging to the joint family, but their father wrongly sold it to third parties through a sale deed in the year 1980.

3. The suit came to be dismissed for default for not paying the process fee for service of notice on the LRs. of defendant no.2. The petitioners therefore filed an application for restoration in 1993.

4. This application for restoration was decided after seven years and the Trial Court on 04.02.2000 dismissed the application on the ground that it was filed under Order IX Rule 9 of the CPC whereas it ought to have been filed under Order IX Rule 4 of the CPC as the suit was originally dismissed under Order IX, Rule 2 of the CPC. The petitioner filed an appeal against this order.

5. After three years, the appeal came to be dismissed on 25.06.2003. The petitioner then filed a revision petition in which the High Court issued notice.

6. While the revision was pending before the High Court, the petitioner was unable to serve respondent no. 8 for a long time due to some issue about change in the names. Having waited for long, High Court passed a peremptory order on 01.12.2005 that if the objections were not removed within a period of two weeks, the revision petition would stand dismissed without reference to the Court.

1 In CA No. 1109/2013 in MCA No. 12275/2013 in CRA No. 284/2003 dated 05.11.2014.

7. On 12.12.2005, the petitioner's advocate is said to have prepared an application for change of name of respondent no. 8 and a copy was also served on the respondent's advocate but in the meanwhile the peremptory order came into operation and the revision petition came to be dismissed on 15.12.2005.

8. Despite the dismissal of the revision petition, the petitioner filed the application for change in name of respondent no. 8 on 21.12.2005.

9. The sad story continues. In 2011, i.e. after six years, an M.A. for restoration was filed by the petitioner through his son. The son's affidavit was taken on record. However, the High Court by order dated 03.07.2013 dismissed the M.A. only on the ground that it was not moved by the original party to the revision petition.

10. In view of the above referred order, another application was filed in 2013 by the petitioner himself for restoration of the revision petition and condonation of delay. The High Court by the order dated 05.11.2014, impugned herein, dismissed the application for restoration.

11. The story does not stop here. The petitioner then filed a Special Leave Petition against the above-said impugned order and notice was issued by this Court on 06.04.2015.

12. From 2015, the matter has been pending before this Court. Proceedings in the case indicate that the SLP was listed several times between 2015 and 2024 but could not be heard as notice on some respondents was not complete.

13. The above referred facts indicate that the suit that was filed in 1982 never took off as even summons were not issued. It might not be surprising for lawyers, judges and those who are acquainted with civil court proceedings. The real danger is when we accept this position and continue with it as part of a systematic problem. Until and unless we believe that this situation is unacceptable and act accordingly, the power, authority and jurisdiction of Courts to address simple reliefs of citizens will be consumed and destroyed by passage of time. This is not acceptable at all.

14. There must be a solution, idea and resolve to rectify this situation and ensure that simple, quick and easy remedies are available to correct an illegality for a rightful restitution. We have referred to all this only to take note of what has happened and take steps to rectify it in the time to come.

15. Coming back to this case, we have noticed that the suit that was filed in the year 1982 relates to an alleged unauthorized sale by father more than four decades back. The suit has virtually become infructuous for more than one reason. The Special Leave Petition is dismissed.

16. Pending application(s) shall also stand disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: SLP dismissed.

[2024] 1 S.C.R. 1223 : 2024 INSC 98

Priyanka Prakash Kulkarni
v.
Maharashtra Public Service Commission

Civil Appeal No. 1982 of 2024

29 January 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Appellant was not able to take benefit of female reservation on account of her inability to produce a valid Non-Creamy Layer (NCL) certificate on the last date of submission of the application form. Later, a corrigendum enabled candidates to submit an NCL certificate valid in the current financial year. However, the High Court held that since the petitioner had applied from Open General Category because she did not hold the NCL certificate, her prayer for change of category cannot be accepted.

Headnotes

Service Law – Female Reservation – Non-Creamy Layer certificate – Change of category – Appellant contended that she did not submit her application under the 'Reserved Female Category' on account of her inability to obtain an NCL Certificate which was valid as on the last date of submission of the application form i.e., 01.06.2022 – However, upon the issuance of the Corrigendum, the appellants' eligibility qua the 'Reserved Female Category' came to be revived as the appellant was no longer mandated to furnish an NCL Certificate which was valid as on the last date of submission of the application form but instead was called upon to furnish an NCL Certificate pertaining to current financial year:

Held: Admittedly, the appellant i.e., a candidate who was scrupulously following the terms and conditions of the impugned advertisement was constrained to apply under the 'Open General Category' only on account of certain logistical limitations preventing her from obtaining a valid NCL Certificate – Consequently, in the absence of the requisite documents evidencing status as a

person belonging to the NCL under the impugned advertisement read with the Circular i.e., a valid NCL Certificate as on the date of submission of the application form, the appellant did not mark 'yes' against the specific question pertaining to her status as a person belonging to the NCL – The aforenoted conduct of the appellant is bonafide – Accordingly, the appellant cannot be unfairly deprived of the benefit of female reservation merely on account of the appellant's honesty and restraint which did not allow her to mark 'yes' against a column inquiring about a prospective candidates' status as a person belonging to the NCL, in the absence of the underlying supporting document – Additionally, other similarly situated candidates have been granted the benefit under the Corrigendum; and their otherwise defective applications have now been considered by the Respondent – The High Court adopted a hypertechnical interpretation of the instructions without appreciating that such an interpretation would nullify the effect of the Corrigendum – Impugned order set aside. [Paras 16, 17, 18]

Case Law Cited

State of T.N. v. G. Hemalathaa **(2020) 19 SCC 430** – referred to.

List of Keywords

Service Law; Female reservation; Non-creamy Layer certificate; Eligibility qua 'reserved female category; hypertechnical interpretation of instructions; Benefit of corrigendum; Relaxed instructions.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1982 of 2024

From the Judgment and Order dated 23.08.2023 of the High Court of Judicature at Bombay in WP No.9040 of 2023

Appearances for Parties

Abhijeet Pawar, Praveen B. Kamble, Lalit Kaushik, Dinesh Bhardwaj, Sashank Gaurav, Amit Sharma, Advs. for the Appellant.

Rahul Chitnis, Garv Singh, Ms. Samiksha Gupta, Chander Shekhar Ashri, Advs. for the Respondent.

Priyanka Prakash Kulkarni v. Maharashtra Public Service Commission

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The decision of the Division Bench of the High Court of Judicature at Bombay (the "**High Court**") wherein the High dismissed Writ Petition No. 9040 of 2023; and consequently, granted imprimatur to the decision of the Maharashtra Administrative Tribunal, Mumbai (the "**MAT**") dated 07.07.2023 in Original Application No. 396 of 2023 (the "**OA**") is assailed before us (the "**Impugned Order**").

3. An advertisement was issued by the Respondent on 11.05.2022 in relation to the State Services Preliminary Examination for the recruitment of person(s) to the gazetted post of 'Group A' and 'Group B' officers under the Government of Maharashtra (the "**Impugned Advertisement**"). Pertinently, Paragraph 5.5 of the Impugned Advertisement contemplated the benefit of *inter alia* female reservation subject to certain prerequisites which included (i) that the candidate must be a domicile of Maharashtra; and (ii) that the candidate must belong to the Non-Creamy Layer ("**NCL**").

4. Furthermore, under Paragraph 5.10 read with Paragraph 5.14 of the Impugned Advertisement, a candidate seeking to avail *inter alia* female reservation must not only clearly state that he/she is domiciled in Maharashtra but should also submit an NCL Certificate issued by the competent authority which must be valid as on the last date of submission of the application form i.e., 01.06.2022.

5. In the aforesaid context, the Appellant i.e., a candidate employed as State Tax Officer in the Goods and Services Tax ("**GST**") Department, Nodal 3, Pune, Maharashtra submitted her application for the aforesaid examination under the 'Open General Category' on account of her inability to produce a valid NCL Certificate as on the last date of submission of the application form. However admittedly, and undoubtedly the Appellant was otherwise eligible to apply under 'Reserved Female Category' qua the underlying examination being conducted pursuant to the Impugned Advertisement.

6. Thereafter, the Appellant cleared the preliminary examination and qualified for the main examination. Subsequently, on 11.10.2023, the Appellant cleared the main examination from the 'Open General Category'.

7. However, in the *interregnum,* on 17.02.2023, the Department of Other Backward Bahujan Welfare issued a corrigendum (the "**Corrigendum**") amending Clause 2 (iii) of a circular bearing number CBC-2012/P.No.182/Vijabhaj-1, dated 25.03.2013 issued by Department of Social Justice and Special Assistance, Government of Maharashtra whereunder (i) the procedure of obtaining; and (ii) validity of *inter alia* NCL Certificates' were regulated (the "**Circular**"). Pertinently, the Corrigendum enabled candidates to submit an NCL Certificate which would have been valid in the current financial year as against an NCL Certificate which had to have been valid as on the last date of submission of the application form i.e., 01.06.2022.

8. In light of the changed circumstances following the issuance of the Corrigendum as more particularly delineated above, the Appellant, who had otherwise been eligible to apply under the 'Reserved Female Category' but for mandatory requirement of a valid NCL Certificate as on 01.06.2022, subsequently obtained an NCL Certificate on 09.03.2023. Thereafter, the Appellant made a representation to the Respondent to consider her candidature as a 'Reserved Female Category' candidate.

9. Aggrieved by the non-consideration of her representation, the Appellant preferred the OA before the MAT. *Vide* an order dated 07.07.2023, the MAT dismissed the OA observing *inter alia* that the Appellant was not in possession of an NCL Certificate prior to the issuance of the Corrigendum (the "**Underlying Order**"). Aggrieved by the Underlying Order, the Appellant herein preferred a writ petition before the High Court. *Vide* the Impugned Order, the writ petition came to be dismissed. The operative paragraph of the Impugned Order is reproduced below:

> *"6. Therefore, after hearing both the side and considering the conspectus of the matter, it is amply clear that the Petitioner had applied from Open General Category, because she did not hold the NCL Certificate. Having appeared for the Preliminary examination as well as Main examination from the "Open General" Category, merely because a corrigendum is issued, the Petitioner cannot be allowed to change the category at this stage, more so, on background of the general instructions to the candidate contained in paragraph Nos.1.2.5.6 and 1.2.5.7, which does*

not permit to make any changes once the form is filled in. If the Petitioner was desirous of making an Application for general women category, she ought to have obtained the NCL in advance showing diligence, which she has failed. At this stage, if the Petitioner is allowed to change her category, it will open a flood gate of litigation, as observed by the MAT. Hence, the said prayer of the Petitioner cannot be considered."

10. Mr. Amit Sharma, Ld. Counsel appearing on behalf of the Appellant has fairly submitted before us that the Appellant did not submit her application under the 'Reserved Female Category' on account of her inability to obtain an NCL Certificate which was valid as on the last date of submission of the application form i.e., 01.06.2022. However, upon the issuance of the Corrigendum, the Appellants' eligibility qua the 'Reserved Female Category' came to be revived as the Appellant was no longer mandated to furnish an NCL Certificate which was valid as on the last date of submission of the application form but instead was called upon to furnish an NCL Certificate pertaining to current financial year.

11. Furthermore, Mr. Sharma has submitted before us that 7 (seven) – 8 (eight) other persons who dishonestly applied under the 'Reserved Female Category' without a valid NCL Certificate, have been granted the benefit under the Corrigendum, and subsequently upon producing the NCL Certificate as per the terms of the Corrigendum, the Respondent has proceeded to consider their candidature under the 'Reserved Female Category'.

12. On the other hand, Mr. Rahul Chitnis, Ld. Counsel appearing on behalf of the Respondent has vehemently opposed the aforesaid submission(s). The main thrust of the arguments of Mr. Chitnis is two-fold i.e., (i) the Appellant cannot be allowed to change the category of her candidature in light of Clause 1.2.5.6 and 1.2.5.7 of the General Instructions to Candidates published on the Respondent Commission's website (the "**Instructions**")[1]; and (ii) the Appellant has failed to mark 'yes' against the specific question pertaining to a prospective candidates' status as a person belonging to the NCL. Accordingly, it was submitted that the Appellant's case is differently

1 Reliance in this regard was placed on ***State of T.N. v. G. Hemalathaa***, *(2020) 19 SCC 430*.

placed from the other 7 (seven) – 8 (eight) persons whom whilst having applied without a valid NCL Certificate, marked 'yes' against the specific question pertaining to their status as a person belonging to the NCL, and accordingly were granted the benefit under the Corrigendum.

13. Upon a perusal of Paragraph 5.10 read with Paragraph 5.14 of the Impugned Advertisement, it is clear that any application under the 'Reserved Female Category' was to be supported by an NCL Certificate that was valid as on the last date of submission of the application form i.e., 01.06.2022. Subsequently, *vide* the issuance of the Corrigendum, the aforenoted position changed; and candidates were now eligible to furnish an NCL Certificate pertaining to the current financial year.

14. Additionally, Clause 1.2.5.6 and 1.2.5.7 of the Instructions although prohibits any modification and / or change in the application submitted pursuant to the Impugned Advertisement, could not have been interpreted in such a manner so as to nullify the effect of the Corrigendum.

15. In this regard, the reliance placed on ***G. Hemalathaa, (Supra)*** is misdirected as therein a rule issued by the Tamil Nadu Public Service Commission was admittedly contravened; and thereafter relaxed by the High Court on humanitarian grounds erroneously. Herein, it is the on account of the Corrigendum that certain relaxations have been awarded to all person(s) however, on account of an overly restrictive interpretation of (i) the Corrigendum; and (ii) the Instructions, the benefit(s) under the Corrigendum are being selectively restricted by the Respondent.

16. Admittedly, the Appellant i.e., a candidate who was scrupulously following the terms and conditions of the Impugned Advertisement was constrained to apply under the 'Open General Category' only on account of certain logistical limitations preventing her from obtaining a valid NCL Certificate. Consequently, in the absence of the requisite documents evidencing status as a person belonging to the NCL under the Impugned Advertisement read with the Circular i.e., a valid NCL Certificate as on the date of submission of the application form, the Appellant did not mark 'yes' against the specific question pertaining to her status as a person belonging to the NCL.

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17. The aforenoted conduct of the Appellant is *bona-fide*. Accordingly, in our view the Appellant cannot be unfairly deprived of the benefit of female reservation merely on account of the Appellant's honesty and restraint which did not allow her to mark 'yes' against a column inquiring about a prospective candidates' status as a person belonging to the NCL, in the absence of the underlying supporting document. Additionally, other similarly situated candidates have been granted the benefit under the Corrigendum; and their otherwise defective applications have now been considered by the Respondent.

18. In our considered opinion, the High Court adopted a hyper-technical interpretation of the Instructions without appreciating that such an interpretation would nullify the effect of the Corrigendum. Such an interpretation ought not to have been adopted especially in light of the fact that other persons have been granted the benefit of the Corrigendum; and that the Respondent has relaxed the Instructions qua such persons so as to enable valid NCL Certificates to be furnished.

19. In light of the aforesaid, we find that the Impugned Order and resultantly, the Underlying Order ought to be set aside. Accordingly, taking note of the peculiar facts of the case; and that the Appellant is a meritorious candidate who has cleared the main examination under the 'Open General Category' despite being deserving of the benefit of female reservation, we are inclined to balance the equities and do justice by exercising our power under Article 142 of the Constitution of India. Accordingly, we direct the Respondent to forthwith treat the Appellant as a candidate under the 'Reserved Female Category'.

20. The appeal is allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 1 S.C.R. 1230 : 2024 INSC 332

Vinod Kumar & Ors. Etc.
v.
Union of India & Ors.

(Civil Appeal Nos. 5153-5154 of 2024)

30 January 2024

[Vikram Nath* and K.V. Viswanathan, JJ.]

Issue for Consideration

The Tribunal's judgment negated the appellants' plea for regularization and absorption into the posts of 'Accounts Clerk' against which they were temporarily appointed. The High Court upheld the order of the Tribunal.

Headnotes

Service Law – Regularization – Temporary appointment – The appellants' pleaded for regularization and absorption into the posts of 'Accounts Clerk' against which they were temporarily appointed:

Held: The essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time – The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement – Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status – The appellants' service conditions, as evolved over time, warrant a reclassification from temporary to regular status – The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations – Thus, the judgment of the High Court set aside. [Paras 5, 8, 9]

* Author

Vinod Kumar & Ors. Etc. v. Union of India & Ors.

Case Law Cited

Secretary, State of Karnataka v. Umadevi [2006] 3 SCR 953 **: (2006) 4 SCC 1 – distinguished.**

List of Keywords

Service law; Regularization; Temporary appointment; Continuous service; Permanent post; Principles of equity, Fairness; Employment regulations; Service conditions; Reclassification; Regular status.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5153-5154 of 2024

From the Judgment and Order dated 30.03.2016 of the High Court of Judicature at Allahabad in CMWP No. 42692 and 42688 of 2001

Appearances for Parties

Ajayveer Singh, Ms. Divya Garg, Uday Ram Bokadia, Shubham Tomar, Ms. Deepika Jain, Atit Jain, Ajay Jain, Sonal Jain, Advs. for the Appellants.

K. Parameshwaran, Mrs. Sakshi Kakkar, Sandeep Kumar Mahapatra, Mrs. Swarupama Chaturvedi, Amrish Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Vikram Nath, J.

Leave granted.

2. These appeals arise out of the judgment dated 30.03.2016, passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 42688 of 2001 and Civil Misc. Writ Petition No. 42692 of 2001, whereby the writ petitions filed by the appellants challenging the judgment of the Central Administrative Tribunal, Allahabad Bench, dated 21.11.2001 were dismissed. The Tribunal's judgment negated the appellants' plea for regularization and absorption into the posts of 'Accounts Clerk' against which they were temporarily appointed. Despite being appointed for what was termed a temporary or scheme-

based engagement, the appellants have been continuously working in these positions from 1992 till the present, spanning a period exceeding 25 years.

3. Pursuant to a notification dated 21.02.1991, the appellants were initially appointed to ex-cadre posts of Accounts Clerks after a selection process involving written tests and viva voce interviews. After the rejection of their representation for regularization to the Divisional Railway Manager in 1999, the appellants approached the Central Administrative Tribunal by way of Original Applications. The Tribunal vide order dated 21.11.2001 dismissed the applications of the appellants, concluding that their appointments were temporary and for a specific scheme, thus not entitling them to regularization or absorption into permanent posts. Thereafter, the appellants approached the High Court and the High Court upheld the order of the Tribunal and dismissed their Writ Petitions observing that the appellants' employment under a temporary scheme could not confer upon them the rights akin to those held by permanent employees and relied upon the judgement of this Court in **Secretary, State of Karnataka vs. Umadevi reported in 2006 (4) SCC 1**, which held that temporary or casual employees do not have a fundamental right to be absorbed into service.

4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of **Uma Devi (supra)** to their situation.

5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts,

and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in **Uma Devi (supra)** by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of **Uma Devi (supra)**.

7. The judgement in the case **Uma Devi (supra)** also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the **Uma Devi (supra)** case is reproduced hereunder:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or

> of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

9. Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment.

10. No order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals allowed.

[2024] 1 S.C.R. 1235 : 2024 INSC 230

Ernakulam Regional Cooperative Milk Producers Union Ltd. Etc.
v.
Nithu & Ors. Etc.

(Civil Appeals No. 1455 - 1459 of 2024)
With
(Civil Appeals No. 1460 - 1461 of 2024)
With
(Civil Appeal No. 1462 of 2024)

31 January 2024

[Hima Kohli and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

The appellant, a Cooperative Society, had issued a notification dated 29.01.2011 inviting applications for regular recruitment to, *inter alia*, the post of Plant Attender, Grade-III. The Respondents challenged the notification before the High Court of Kerala and prayed, *inter alia*, for their regularization on the post of Plant Attenders. The Respondents, admittedly, did not avail the remedy under the Industrial Disputes Act, 1947 (ID Act) but directly invoked Article 226 of the Constitution of India and filed a writ petition before the High Court. The appellant-Society had pleaded, before the High Court, *inter alia*, that the nominees did not have any right of permanent employment, and even otherwise, none of the Respondents had worked for over 200 days in a calendar year which disentitled them from any claim of permanent employment. However, the appellant was directed by the High Court to prepare a list of casual labourers from amongst the Respondents and consider their claims for regularization ; Whether the High Court was justified in directing the appellant to consider the Respondents' claims for regularisation.

Headnotes

Constitution of India – Art.226 – Industrial Disputes Act, 1947 – Appeal against common judgment of the High Court of Kerala dated 09.01.2018 – Appellant was directed to prepare a list of casual labourers from amongst the Respondent and consider their claims for regularization in terms of *State of Karnataka and Others v. Umadevi* (2006) 4 SCC 1 –

Respondents' claimed before the High Court that they were working as casual labourers on contract basis with the appellant-Society for several years; engaged continuously for a period of 60 days and then on rotational basis; all of them were in continuous service for a period of over 240 days in a period of 12 calendar months; and ought to be treated as permanent workers under the provisions of ID Act; and that Appellant-Society is an organization covered under the provisions of the ID Act – Remedy under the ID Act not invoked by the Respondents – During pendency of conciliation proceedings before the District Labour, instead of seeking remedies under the ID Act, Respondents continued to press the writ petition filed by them – Respondents admittedly did not invoke the provisions of the ID Act after the conciliation proceedings had failed – Did not seek a reference of the dispute to the Competent authority – Submissions of the Appellant that Respondents were engaged purely on a casual basis; nominated from amongst the members of the Apex Cooperative Society and that Terms and conditions of the Circulars made it clear that the nominees would not have any right of permanent employment and further that none of the Respondents had worked for over 200 days in a calendar year and therefore not entitled to claim permanent employment.

Held: 1. All questions fall in the realm of disputed questions of fact – Would have required evidence to be lead and proper adjudication before an appropriate authority which would have been a remedy under the ID Act- Disputed questions of facts go to the very root of the matter – Judgment dated 09th January, 2018 which is quashed and set aside – Liberty granted to the Respondents to seek their remedies under the ID Act – Respondents continuing in service under the appellant-Society shall not be disturbed for a period of six months to enable them to seek appropriate legal recourse under the ID Act. [Paras 12, 21-24]

2. Powers of judicial review can always be exercised by a writ Court under Article 226 of the Constitution of India but wherever there are disputed questions of facts that need adjudication, it is best left to the competent forum to adjudicate the same by examining the evidence brought on record before any findings can be returned- Writ is a discretionary remedy; High Court to refuse grant of any writ if the aggrieved party can have an adequate or

suitable remedy elsewhere unless the party makes out a strong case that there exist convincing grounds to invoke its extraordinary jurisdiction- When there is a hierarchy of appeals provided under the statute, a party ought to exhaust the statutory remedies before resorting to approaching a writ court. [Paras 15, 17, 18]

Case Law Cited

Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and Others [1961] 2 SCR 931 **: AIR 1961 SC 564;** *Yogender Pal Singh and Others v. Union of India and Others* [1987] 2 SCR 49 **: (1987) 1 SCC 631;** *G. Veerappa Pillai v. Raman & Raman Ltd. and Others* [1952] 1 SCR 583 **: (1952) 1 SCC 334 : AIR 1952 SC 192;** *C.A. Abraham v. ITO and Another* [1961] 2 SCR 765 **: AIR 1961 SC 609;** *Titaghur Paper Mills Co. Ltd. and Another v. State of Orissa and Others* [1983] 2 SCR 743 **: (1983) 2 SCC 433 : 1983 SCC (Tax) 131 : AIR 1983 SC 603;** *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others* [1998] Supp. 2 SCR 359 **: (1998) 8 SCC 1 : AIR 1999 SC 22;** *Punjab National Bank v. O.C. Krishnan* [2001] Supp. 1 SCR 466 **: (2001) 6 SCC 569;** *Radha Krishan Industries v. State of Himachal Pradesh and Others* [2021] 3 SCR 406 **: (2021) 6 SCC 771 – relied on.**

State of Karnataka and Others v. Umadevi [2006] 3 SCR 953 **: (2006) 4 SCC 1;** *K.S. Rashid and Son v. Income Tax Investigation Commission and Another* [1954] 1 SCR 738 **: AIR 1954 SC 207;** *Sangram Singh v. Election Tribunal* [1955] 2 SCR 1 **: AIR 1955 SC 425;** *Union of India v. T.R. Varma* [1958] 1 SCR 499 **: AIR 1957 SC 882;** *State of U.P. v. Mohd. Nooh* [1958] 1 SCR 595 **: AIR 1958 SC 86;** *K.S.Venkatraman and Co. (P) Ltd. v. State of Madras* [1966] 2 SCR 229 **: AIR 1966 SC 1089;** *U.P. State Spinning Co. Ltd. v. R.S. Pandey & Another* [2005] Supp. 3 SCR 603 **: (2005) 8 SCC 264;** *Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and Others* **(2003) 2 SCC 107 – referred to.**

List of Acts

Industrial Disputes Act, 1947.

List of Keywords

Judicial Review; Writ; Discretionary Remedy; Alternative Remedy; Extraordinary Jurisdiction; Statutory Remedies.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.1455-1459 of 2024

From the Judgment and Order dated 09.01.2018 of the High Court of Kerala at Ernakulam in WA Nos.2484, 2532, 2569, 2613 and 2614 of 2017

With

Civil Appeal Nos.1460-1461 And 1462 of 2024

Appearances for Parties

Chander Uday Singh, Sr. Adv., E. M. S. Anam, Advs. for the Appellants.

Kaleeswaram Raj, Ms. Thulasi K. Raj, Ms. Aparna Menon, Suvidutt M. S., C. K. Sasi, Ms. Meena K. Poulose, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The appellant, a Cooperative Society has filed the present appeals being aggrieved by the common judgment dated 09th January, 2018 passed by the High Court of Kerala at Ernakulam in writ appeals[1] preferred by it against the common judgment dated 11th August, 2017[2] passed by the learned Single Judge of the High Court. By the said judgment, the learned Single Judge has directed the Managing Director of the appellant-Society to prepare a list of casual labourers from amongst the writ petitioners as on the date of the judgement and forward it to the Director, Dairy Development Department to consider their claims for regularization in terms of the judgement of this Court in the case of ***State of Karnataka and Others v. Umadevi*** [3].

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1 Writ Appeals No.2484, 2532, 2564, 2569, 2578, 2612, 2613, 2614/2017

2 Writ Petitions No.12126, 12353, 12354, 13469, 13998, 15931, 20085, 20848/2011

3 [2006] 3 SCR 953 : (2006) 4 SCC 1

4. The appellant-Society took a specific plea, both in the writ petitions as also before the Appellate Court that it is Cooperative Society and not a State or any other authority, as contemplated under Article 12 of the Constitution of India and therefore, is not amenable to judicial review. On merits, it was submitted that the judgment in ***Umadevi*** (supra) cannot have any application to the facts of the instant case for the reason that the respondents-writ petitioners were not irregular appointees but appointed illegally and therefore, not entitled for regularization.

5. We may note that the respondents-writ petitioners were appointed temporarily on a daily wage basis in terms of the Circulars dated 15th December, 1992 and 10th December, 2010 which stated in clear terms that their appointments were made on a temporary basis and on daily wages on the recommendations by the members of the Society. Some of the relevant stipulations in the Circular dated 15th December, 1992 are extracted hereinbelow for ready reference:

> "(1) Only persons who are members of the member-Societies and their dependants will be considered;
>
> (2) Only one person from one member-Society will be included in the list;
>
> (3) Preference will be given to members of the member-Societies first and only thereafter dependants will be considered;
>
> Xxxxxx
>
> (10) Those who are engaged in this manner will not be given any preference for permanent job."

6. The Circular dated 10th December, 2010 has elaborated in para 1 that :

> "1. Only persons who are members of the member-Societies and their dependants will be considered (Dependants means children of member of Society, wife/husband)."

7. On 29th January, 2011, the appellant-Society issued a Notification inviting applications for regular recruitment to several posts including the post of Plant Attender, Grade-III. It is not in dispute that the nature of work being undertaken by the respondents was that of

Plant Attenders which is the lowest post in that category. Aggrieved by the aforesaid notification, the respondents filed a writ petition in the High Court praying *inter alia* for quashing of the notification and for issuing directions to the appellant-Society to regularize them on the post of Plant Attenders in their establishment and further, not to alter the conditions of their service pending the conciliation of disputes raised by them.

8. We have specifically inquired from Mr. Kaleeswaram Raj, learned counsel for the respondents as to whether the respondents had subsequently invoked the provisions of the Industrial Disputes Act, 1947[4] after the conciliation proceedings had failed and sought a reference of their dispute to the Competent authority. He submits that in view of the exigencies of the situation, where the appellant-Society had issued a notification inviting applications for appointments to the subject posts, the respondents were left with no other alternative but to invoke Article 226 of the Constitution of India and file a writ petition before the High Court.

9. A perusal of the averments made in the writ petition filed by the respondents shows that they claimed that they were working as casual labourers on contract basis with the appellant-Society herein for the past several years and they claimed that they were engaged continuously for a period of 60 days and thereafter, engaged for short intervals for the same work on rotational basis.

10. At the same time, in ground (A) taken by the respondents in the writ petition they have averred that all of them were in continuous service for a period of over 240 days in a period of 12 calendar months and therefore, ought to be treated as permanent workers under the provisions of ID Act. It has also been asserted that the appellant-Society herein is an organization covered under the provisions of the ID Act. Despite that, the respondent did not raise a dispute for it to be referred for adjudication by the State Government. Instead, while the conciliation proceedings were still pending before the District Labour Officer, who has been impleaded as respondent No.11 herein and the same did not bear any positive result instead of seeking their remedies under the ID Act, the respondents continued to press the writ petition filed by them.

4 For short 'the ID Act'

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11. Despite a specific plea taken by the appellant-Society in its counter affidavit filed in response to the writ petition, as pointed out by Mr. C.U. Singh, learned Senior counsel appearing for the appellant-Society, that the writ petitioners were engaged purely on a casual basis and that they were nominated from amongst the members of the Apex Cooperative Society (APCOS) and the terms and conditions of the Circulars issued by the appellant-Society had made it abundantly clear that the nominees would not have any right of permanent employment, such a plea did not find favour with the High Court. Further, the appellant-Society had specifically averred in its counter affidavit that as none of the writ petitioners had worked for over 200 days in a calendar year, even otherwise, they were not entitled to claim permanent employment.

12. In our opinion, all the aforesaid questions would fall in the realm of disputed questions of fact that would have required evidence to be lead and proper assessment and adjudication before an appropriate authority which in the instant case, even as per the respondents-writ petitioners, would have been a remedy available under the ID Act. This aspect seem to have been lost sight of by the learned Single Judge as also the Division Bench. The learned Single Judge appears to have got swayed by the judgement in the case of *Umadevi* (supra) to hold that the respondents - writ petitioners had put in service for over two decades and were therefore entitled to be regularized in terms of the directions issued in the said decision, unmindful of the fact that the appellant-Society had categorically refuted the plea taken by the respondents-writ petitioners that they had put in 240 days of regular service in the past 12 months and instead, had asserted that they failed to satisfy the criteria laid down in *Umadevi* (supra) for purposes of regularization.

13. In such circumstances, the services rendered by the respondents-writ petitioners could not be treated as irregular and would fall in the category of illegal appointments without meeting the requisite criteria for being appointed to the subject post. Moreover, the Circulars dated 15th December, 1992 and 10th December, 2010, reveal that the pool of appointees were confined by the appellant-Society to persons who were members of the Member-Society and their dependents while excluding all others. This itself runs contrary to the very spirit of Article 16 of the Constitution of India, as expounded

in ***Gazula Dasaratha Rama Rao vs. State Of Andhra Pradesh and Others***[5] and ***Yogender Pal Singh and Others vs. Union of India and Others***[6].

14. The following observations made in the case of ***Yogender Pal Singh*** *(supra)* are pertinent:

> "16. We should, however, point out at this stage a fundamental defect in the claim of the appellants, namely, that Rule 12.14(3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons and near relatives of persons serving in the police service became unconstitutional on the coming into force of the Constitution. Clauses (1) and (2) of Article 16 of the Constitution which are material for this case read thus:
>
> > "16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
> >
> > (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."
>
> 17. While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. **Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service.** In ***Gazula Dasaratha Rama Rao v. State of A.P.*** ***[AIR***

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5 [1961] 2 SCR 931 : AIR 1961 SC 564

6 [1987] 2 SCR 49 : 1987 (1) SCC 631

1961 SC 564 : (1961) 2 SCR 931] the question relating to the constitutional validity of Section 6(1) of the Madras Hereditary Village Offices Act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in Section 3, clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the Constitution. The court observed in that connection at pp. 940-41 and 946-47 thus :

> "Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds — religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16 clause (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of

citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Article 16 does. **We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject....** (pp. 940-41).

There can be no doubt that Section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the persons to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Article 16(2) of the Constitution." (pp. 946-47)

(emphasis in original)

18. **We are of the opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards or children or relatives of the police officers has got to be negatived since their claim is based on "descent" only, and others will thereby be discriminated against as they do not happen to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional.** The appellants have not

> shown that they were otherwise eligible to be recruited as Constables in the absence of the order of relaxation on which they relied. Hence they cannot succeed."
>
> (emphasis added)

15. We also take note of the submission made by Mr. Kaleeswaram Raj, learned counsel for the respondents-writ petitioners that the power of judicial review cannot be excluded as that is a remedy which was always available to the respondents-writ petitioners *dehors* the equally alternative efficacious remedy available under the ID Act. It is no doubt true that powers of judicial review can always be exercised by a writ Court under Article 226 of the Constitution of India but wherever there are disputed questions of facts that need adjudication, it is best left to the competent forum to adjudicate the same by examining the evidence brought on record before any findings can be returned.

16. There are a line of decisions of this Court relating to entertaining writ petitions when an alternative remedy is available. Constitution Benches of this Court have held that Article 226 of the Constitution of India confers a vide power on the High Courts in matters relating to issuance of writs (Refer: ***K.S. Rashid and Son v. Income Tax Investigation Commission and Another***[7], ***Sangram Singh v. Election Tribunal***[8], ***Union of India v. T.R. Varma***[9], ***State of U.P. v. Mohd. Nooh***[10] and ***K.S.Venkatraman and Co. (P) Ltd. V. State of Madras***[11]).

17. At the same time the remedy of writ is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable remedy elsewhere (Refer: ***U.P State Spinning Co. Ltd. V. R.S. Pandey & Another***[12]). This discretion is more a rule of self-imposed restrain than a statutory embargo. In essence, it can be described as a rule of convenience and discretion. Conversely, even

7 (1954) SCR 738 : AIR 1954 SC 207

8 (1955) 2 SCR 1 : AIR 1955 SC 425

9 (1958) SCR 499 : AIR 1957 SC 882

10 (1958) SCR 595 : AIR 1958 SC 86

11 (1966) 2 SCR 229 : AIR 1966 SC 1089

12 [2005] Supp. 3 SCR 603 : (2005) 8 SCC 264

if there exists an alternative remedy, it is well within the jurisdiction and the discretion of the High Court to grant relief under Article 226 of the Constitution of India, in some contingencies, as for example, where the writ petition has been filed for enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the orders or proceedings are wholly without jurisdiction or further, where the *vires* of the Act is under challenge (Refer: ***Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and Others***[13]). The limitation imposed on itself by the High Court is more a rule of good sense.

18. If a party approaches the High court without availing of the alternative remedy provided under the statute, the High court ought not to interfere except in circumstances where the party makes out a strong case that there exist convincing grounds to invoke its extraordinary jurisdiction. In the very same spirit, this Court has held that when there is a hierarchy of appeals provided under the statue, a party ought to exhaust the statutory remedies before resorting to approaching a writ court. (Refer: ***G. Veerappa Pillai v. Raman & Raman Ltd. and Others***[14], ***C.A. Abraham v. ITO and Another***[15], ***Titaghur Paper Mills Co. Ltd. and Another V. State of Orissa and Others***[16], ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others***[17] and ***Punjab National Bank v. O.C. Krishnan***[18]).

19. The rule of alternative remedy came up for discussion in in ***Whirlpool Corporation*** ***(supra)*** and it was held thus:

> "14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

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13 (2003) 2 SCC 107

14 [1952] 1 SCR 583 : (1952) 1 SCC 334 : AIR 1952 SC 192

15 (1961) 2 SCR 765 : AIR 1961 SC 609

16 [1983] 2 SCR 743 : (1983) 2 SCC 433 : 1983 SCC (Tax) 131 : AIR 1983 SC 603

17 [1998] Supp. 2 SCR 359 : (1998) 8 SCC 1 : AIR 1999 SC 22

18 [2001] Supp. 1 SCR 466 : (2001) 6 SCC 569

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".

20. In ***Radha Krishan Industries v. State of Himachal Pradesh and Others***[19], a matter relating to the interface between citizens and their businesses with the fiscal administration in the context of the Himachal Pradesh Goods and Service Tax Act, 2017, where the High Court dismissed a writ petition filed under Article 226 of the Constitution of India challenging the orders of provisional attachment of the property of the assessee by the Commissioner of State Tax and Excise, this Court had the occasion to discuss the maintainability of the writ petition before the High Court and summarized the principles of law in the following words:

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

19 [2021] 3 SCR 406 : (2021) 6 SCC 771

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions."

21. In the instant case, the disputed questions of facts go to the very root of the matter inasmuch as the appellant-Society has questioned the plea of the respondents-writ petitioners that they have put in 240 days of continuous service in the previous 12 months and would therefore, be entitled to regularization. This aspect requires evidence and its evaluation before the proper forum.

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22. In view of the aforesaid discussion, we are unable to sustain the impugned judgment dated 09th January, 2018 which is quashed and set aside. At the same time, liberty is granted to the respondents-writ petitioners to seek their remedies under the ID Act and have their disputes adjudicated in accordance with law.

23. It is clarified that those of the respondents-writ petitioners who are continuing in service under the appellant-Society shall not be disturbed for a period of six months to enable them to seek appropriate legal recourse under the ID Act and move an application for stay which shall be heard and disposed of at the earliest on its own merits.

24. The appeals are allowed and disposed of with the aforesaid directions.

Headnotes prepared by:
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Result of the case:
Appeals allowed.